Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Jose Maria Cantos v. Argentina
Doc. Type:	Judgment (Preliminary Objections)
Decided by:	President: Antonio A. Cancado Trindade; Judges: Hernan Salgado Pesantes; Oliver Jackman; Alirio Abreu Burelli; Sergio Garcia Ramirez; Carlos Vicente de Roux Rengifo; Julio A. Barberis Judge Maximo Pacheco Gomez advised the Court that, owing to circumstances beyond his control, he would be unable to attend the fifty-second session of the Court; therefore, he did not take part in the deliberation and signature of this judgment.
Dated:	7 September 2001
Citation:	Cantos v. Argentina, Judgment (IACtHR, 7 Sep. 2001)
Represented by:	APPLICANTS: Susana Albanese, Viviana Krsticevic, Ariel Dulitzky, Emilio Weinschelbaum and Martin Abregu
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In the Cantos case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in accordance with Article 36 of its Rules of Procedure [FN2] (hereinafter "the Rules of Procedure"), delivers judgment on the preliminary objections filed by the Argentine Republic (hereinafter "the State" or "Argentina").

[FN2] In accordance with the order of the Court of March 13, 2001, on Transitory Provisions for the Rules of Procedure of the Court, this judgment on preliminary objections was delivered under the Rules of Procedure adopted by the order of the Court of September 16, 1996.

I. INTRODUCTION OF THE CASE

1. This case was submitted to the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on March 10, 1999. The Commission's application arises from petition No. 11,636 received by its Secretariat on May 29, 1996.

II. FACTS SET FORTH IN THE APPLICATION

2. In its application, the Inter-American Commission set out the facts on which the complaint is based. According to the Commission, at the beginning of the 1970s, José María Cantos was the owner of an important business group in the province of Santiago del Estero in Argentina. This group comprised the companies Citrícola del Norte, Canroz S.A., José María Cantos S.R.L., Rumbo S.A., José María Cantos S.A., Miguel Ángel Cantos S.A. and Marta Inés S.A. Mr. Canto was also the principal shareholder of Radiodifusora Santiago del Estero S.A.C. and of the Nuevo Banco de Santiago del Estero and owned rural and urban properties in that province. The above-mentioned companies employed over 700 persons.

In March 1972, the Revenue Department of the Province, headed at that time by Luis María J. J. Peña, conducted a series of searches in the administrative offices of Mr. Canto's companies, owing to an alleged violation of the Stamp Act [FN3]. During these procedures, all the accounting documentation, company books and records, receipts and supporting documents of payments by those companies to third parties and suppliers, as well as numerous shares and securities were seized, without being inventoried.

From then on there were financial losses, because the said companies could not operate, owing to the lack of the company documents and also due to the impossibility of setting up a defense against liens filed by third parties to exact payment of bills that had already been settled.

Since March 1972, Mr. Cantos has filed various lawsuits to defend his interests. In this respect, at that time, he filed a criminal complaint against the Director General of Revenue of the Province. Two months later he filed an application for amparo, which was unsuccessful. On September 10, 1973, he filed an administrative claim preparatory to the judicial complaint before the Federal Auditor of the Province, to have the losses caused by the searches and the retention of the business documentation by officials of the Revenue Department of the Province acknowledged. The amount of the losses was estimated at 40,029,070.00 pesos (forty million twenty-nine thousand and seventy pesos) under Act 18,188 [FN4]. This claim was expanded on May 23, 1974, when the losses were estimated at 90,214,669.10 pesos (ninety million two hundred and fourteen thousand six hundred and sixty-nine pesos and ten cents) under Act 18,188. In view of the lack of response, on June 6, 1974, and April 26, 1976, Mr. Cantos requested "fast-track" settlement of the administrative claim.

Apart from the lawsuits he filed, José María Cantos reached an agreement with the Government of the Province of Santiago del Estero on July 15, 1982, by which the latter acknowledged a debt towards a group of his companies, and established a compensatory amount and a date to comply with this obligation.

As a result of the lawsuits he had filed, Mr. Canto was subjected to "systematic persecution and harassment by State agents." For example, Mr. Cantos was detained incommunicado more than 30 times by police agents. His sons, who were minors at the time, were detained on several occasions and police agents were even posted outside his house on a permanent basis to impede anyone from entering or leaving. According to the records of the Police Force of the Province of Santiago del Estero, from 1972 to 1985, 17 different cases were filed against José María Cantos for the crimes of fraud, embezzlement and forgery. All the cases were dismissed.

Since the Province of Santiago del Estero did not comply with its agreement with Mr. Cantos on July 15, 1982, once the time limit had expired, Mr. Cantos filed a petition against the province and against the State of Argentina before the Supreme Court of Justice, on July 4, 1986. The amount claimed was 130,245,739.30 pesos (one hundred and thirty million two hundred and forty-five thousand seven hundred and thirty-nine pesos and thirty cents) under Act 18,188. The amount was calculated by updating the amount claimed from May 23, 1974, to December 31, 1984, according to the value of the United States dollar, with a daily interest rate of one per cent.

On September 3, 1996, the Supreme Court of Justice delivered judgment rejecting the petition and requiring Mr. Cantos to pay the costs of the proceeding. These costs amounted to approximately US$ 140,000,000.00 (one hundred and forty million United States dollars).

[FN3] The Stamp Act relates to registration and stamp taxes.
[FN4] The Act of April 15, 1969, which states that 100 pesos would be equal to one "peso Act 18,188."

III. PROCEEDING BEFORE THE COMMISSION

3. On May 29, 1996 the Commission received a complaint for alleged violation of the rights of José María Cantos embodied in Articles 5 (Right to Humane Treatment), 11 (Right to Privacy), 17 (Rights of the Family), 21 (Right to Property), 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). Violation of the obligation contained in Article 1(1) (Obligation to Respect Rights) of the Convention was also cited, as well as non-compliance with several articles of the American Declaration of the Rights and Duties of Man (hereinafter "the Declaration"). The complaint was submitted by the alleged victim, José María Cantos, his legal advisers, Germán J. Bidart Campos, Susana Albanese and Emilio Weinschelbaum, and by the Center for Justice and International Law (hereinafter "CEJIL"). On June 13, 1996, the Commission sent the State the pertinent parts of the complaint and requested its answer thereto.

4. Between July and October 1996, the original petitioner expanded the complaint and the corresponding information was forwarded to the State.

5. Argentina requested several extensions which the Commission authorized. Finally, the State replied on December 23, 1996, requesting that the complaint be declared inadmissible. The following day, the Argentine request was communicated to the petitioners, who forwarded their answer on January 16, 1997. This answer was then transmitted to Argentina on January 22, 1997.

6. On March 4, 1997, a hearing was held during which the parties presented the facts and the applicable law. The following March 6, Mr. Cantos submitted additional information from which it emerged that he had been subject to new and disproportionate regulations regarding fees in the domestic sphere; he therefore requested the adoption of precautionary measures. Consequently, on March 11, 1997, the Commission requested the State to adopt measures aimed at suspending the attachment of the property of Mr. Cantos.

7. On March 13, 1997, the Commission made itself available to the parties in order to reach a friendly settlement and, to this end, convened a hearing on October 6, 1997. Three days after this, the State of Argentina advised that it could not agree to the proposal of a friendly settlement made at the said hearing.

8. On November 3, 1997, the petitioners informed the Commission that, in their opinion, it would not be possible to reach a friendly settlement at that time and that it should continue processing the case. This information was forwarded to the State. The petitioners sent the Commission further documents relating to the status of the domestic judicial and administrative proceedings and investigations, and the Commission forwarded the pertinent parts to the State.

9. On September 28, 1998, the Commission adopted Report No. 75/98 and remitted it to the State on December 10 that year. The Commission concluded that Argentina had violated the rights to a fair trial and judicial protection stipulated in Articles 8 and 25 of the American Convention and the right to property established in its Article 21, "all of them in relation to the obligation of the State to respect, investigate, punish and re-establish the violated rights indicated in Article 1(1) of that instrument." The Commission also considered that the State had violated the right to a fair trial and the right of petition set forth in Articles 18 and 24 of the American Declaration with regard to Mr. Cantos. In the operative part of Report No. 75/98, the Commission decided:

A. To recommend that the State of Argentina re-establish all the rights of José María Cantos and, among other measures, provide adequate reparation and compensation for the above-mentioned violations […].
B. To transmit this report to the State and grant it a period of two months to adopt the necessary measures to comply with the preceding recommendation. In accordance with the provisions of Article 50 of the American Convention, the State is not authorized to publish this report.
C. To notify the petitioner of the adoption of a report in this case under Article 50 of the American Convention.

10. On March 10, 1999, the Commission submitted the case to the Inter-American Court (supra § 1).

IV. PROCEEDING BEFORE THE COURT

11. In its application, the Inter-American Commission pled as follows:

Based on the denial of justice of which José María Cantos has been a victim, by the Argentine authorities, who arbitrarily abstained from effectively repairing the grave damages that State agents caused him, the Commission requests the Honorable Court to deliver judgment in this case declaring that the State of Argentina has violated and continues to violate the rights to a fair trial and judicial protection stipulated in Articles 8 and 25 of the Convention and the right to property recognized in its Article 21, all of them in relation to the obligation of the said State to

respect, investigate, punish and re-establish the violated rights indicated in Article 1(1) of that instrument.

The Commission also requests the Honorable Court:

1. To declare that the State has violated the following rights of Mr. Cantos embodied in the American Declaration: the right to a fair trial (Article XVIII) and the right of petition (Article XXIV).
2. To declare, based on Article 2 of the Convention and on the pacta sunt servanda principle, recognized in the jurisprudence of the Court, that the State of Argentina has violated Article 50(3) of the Convention, by failing to comply with the recommendations made by the Commission in its Report No. 75/98.
3. To order the State of Argentina to fully re-establish the rights of José María Cantos and, among other measures, provide adequate reparation and compensation for the said violations, in accordance with the provisions of Article 63(3) of the Convention. The adequate compensation should include material, mental and moral damages at their current value.
4. To order the State of Argentina to pay the costs of the international bodies, including both the expenses resulting from the proceeding before the Commission and those resulting from this proceeding before the Court, and also the fees of the professionals who assist the Commission in processing this case; and that, at the corresponding procedural stage, a special segment should be opened so that the Commission may detail the expenses that Mr. Cantos has incurred by processing this case and establish reasonable fees for the professionals involved and the accountants, so that they may be duly reimbursed by the State of Argentina.
5. To declare that the State of Argentina must repair and compensate all the adverse effects of the judgment delivered by the domestic court that violated an international norm.

12. The Commission appointed Robert K. Goldman, Carlos M. Ayala Corao and Germán J. Bidart Campos as delegates and Raquel Poitevien and Hernando Valencia Villa as legal advisers. The Commission also named Susana Albanese, Viviana Krsticevic, María Claudia Pulido [FN5], Ariel Dulitzky, Emilio Weinschelbaum and Martín Abregú as assistants. These assistants also acted as representatives of the alleged victim.

[FN5] In a note of August 15, 2001, CEJIL advised that María Claudia Pulido did not form part of its team.

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13. On April 16, 1999, after the President of the Court (hereinafter “the President”) had made a preliminary examination of the application, the Secretariat of the Court (hereinafter “the Secretariat”) transmitted it to the State.

14. On May 19, 1999, Argentina appointed Ambassador María Matilde Lorenzo Alcalá de Martinsen as its agent for the case and Luis Ugarte as its deputy agent. On March 31, 2000, Argentina revoked these appointments and designated Ernesto Alberto Marcer as its agent and Ambassador Leandro Despouy as its deputy agent.On May 24, 2001, Argentina once again

substituted its representatives and appointed Andrea G. Gualde as its agent and María Rosa Cilurzo as its deputy agent.

15. On May 19, 1999, Argentina appointed Julio A. Barberis as Judge ad hoc.

16. On June 18, 1999, Argentina filed preliminary objections with regard to the competence of the Court, based on Article 1(2) of the American Convention and under the terms of its acceptance of the Court's jurisdiction.

17. On June 24, 1999, the Secretariat notified the brief filing objections to the Inter-American Commission and the latter replied on August 27, 1999.

18. On August 17, 1999, the Secretariat of the Court received the State's answer to the application.

19. On April 23, 2001, the President decided to convene the parties to a public hearing to be held at the seat of the Court on May 30, 2001, to hear their arguments on the preliminary objections.

20. The public hearing was held at the seat of the Court on the specified date.

There appeared before the Court:

for the Inter-American Commission:

Robert K. Goldman, delegate
Raquel Poitevien, legal adviser
Susana Albanese, assistant
Emilio Weinschelbaum, assistant, and
Viviana Krsticevic, assistant

for the State of Argentina:

Andrea G. Gualde, agent, and
María Rosa Cilurzo, deputy agent.

V. COMPETENCE

21. Argentina has been a State party to the American Convention since September 5, 1984. On that day it also accepted the contentious jurisdiction of the Court. In the instant case, the State argues in its objections that the Court is not competent to hear the application based on Article 1(2) of the American Convention and under the terms in which the State accepted the jurisdiction of the Court. In accordance with the rule of the compétence de la compétence/Kompetenz-Kompetenz, established in both the jurisprudence of this Court and in standard, ongoing arbitral and juridical practice [FN6], this Court is competent to hear the instant case. Article 62(3) of the

Convention recognizes this rule. Therefore, the Court will now decide on the two objections that were filed.

[FN6] Cf. Constantine et al. case, Preliminary Objections. Judgment of September 1, 2001. Series C No. 82, paras. 69 and 72; Benjamin et al. case, Preliminary Objections. Judgment of September 1, 2001. Series C No. 81, paras. 70 and 73; Hilaire case, Preliminary Objections. Judgment of September 1, 2001. Series C No. 80, paras. 78 and 81; Case of the Constitutional Court. Competence. Judgment of September 24, 1999. Series C No. 55, para. 35; and Ivcher Bronstein case. Competence. Judgment of September 24, 1999. Series C No. 54, para. 36; and see also the cases of the "Betsey" (1797) (La Pradelle-Politis, Recueil des Arbitrages Internationaux, 2ª. ed., Paris, 1957, t. I, p. 51 and ff.) the "Sally" (1797) (La Pradelle-Politis, op. cit., t. I, p. 127 and ff.) and the "Alabama" (1872) (La Pradelle-Politis, op. cit., t. II, pp. 839, 840, 889 and ff.).

VI. FIRST PRELIMINARY OBJECTION

22. The first preliminary objection that the Court will analyze and decide on relates to Article 1(2) of the American Convention which states: "For the purposes of this Convention, "person" means every human being." Based on this text, Argentine maintains that the American Convention is not applicable to legal entities and that the companies of José María Cantos, which have been incorporated under different regimes, are therefore not protected by Article 1(2) of the Convention.

23. To support its argument, the State invokes the practice of the Inter-American Commission with regard to the interpretation of Article 1(2) of the Convention and cites the following two passages, among others, extracted from statements made by the Commission:

[t]hat the Preamble to the American Convention on Human Rights and also the provisions of Article 1(2) establish that 'for the purposes of this Convention, "person" means every human being' and, therefore, the system of natural persons and does not include legal entities [... c]onsequently, in the inter-American system, the right to property is a personal right and the Commission has authority to protect the rights of an individual whose property is confiscated, but does not have jurisdiction over the rights of legal entities, such as companies, or banking institutions, as in this case [FN7].

[…] according to the second paragraph of the norm transcribed above [Article 1], the person protected by the Convention is 'every human being' [....]. Hence, the Commission considers that the Convention grants protection to natural persons, excluding legal entities from its sphere of application, because they are legal fictions and lack real material existence [FN8].

[FN7] Report No. 10/91 of II.22.1991, Banco de Lima – Peru, considering 1 and 2.
[FN8] Report No. 39/99 of III.11.1999, Mevopal, S.A.-Argentina, para. 17.

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24. For the time being, it will be useful to accept the interpretation suggested in the passages cited above and the consequences it would have. According to this opinion, a civil or commercial company that suffered a violation of its constitutional rights, such as the inviolability of defense in a lawsuit or the impunity of its correspondence, would be unable to invoke Article 25 of the Convention merely because it was a legal entity. Similar examples could be mentioned with regard to Articles 10 and 24 of the Convention, among others.

25. It is also worth examining Article 21 of the American Convention with regard to private property, which is the subject of this case. According to the interpretation suggested by Argentina, which the Commission appears to share, if a landowner acquires a harvesting machine to work his fields and the Government confiscates it, he would be protected by Article 21. But if, instead of a landowner, it was a case of two poor farmers who formed a company to buy the same harvester and the Government confiscated it, they would not be able to invoke the American Convention because the harvester in question would be owned by a company. Now, if these same farmers, instead of constituting a company, bought the harvester in co-ownership, the Convention could protect them because, according to a principle that goes back to Roman law, co-ownership does not constitute a legal entity.

26. All legal norms always refer to human conduct and describe it as permitted, prohibited or obligatory. When a legal norm attributes a right to a company, it presumes a voluntary association of persons who establish a joint capital fund to collaborate in operating a company in order to obtain individuals benefits, by sharing the profits. The law offers the individual a wide range of alternatives to regulate his relations with other individuals and to limit his responsibility. Thus, there are general partnerships, corporations, limited responsibilities, limited partnerships, etc. In any case, this organized union allows for the coordination of individual efforts in order to attain a greater common goal. Accordingly, a legal entity that is different from its components is constituted; this, in turn, establishes a capital fund, which presumes a movement of things or rights from the patrimony of the partners to the company, introducing limits in the responsibility of these partners towards third parties. In this respect, the International Court of Justice in the Barcelona Traction case [FN9] has differentiated between the rights of the shareholders of a company and those of the company itself, indicating that domestic legislation grants shareholders specific direct rights, such as those of receiving the agreed dividends, attending and voting at general meetings, and receiving part of the assets of the company when it is liquidated.

[FN9] Cf. Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970, p. 36, para. 47.

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27. In the case sub judice, Argentina asserts that legal entities are not included in the American Convention and, therefore, its provisions are not applicable to them, since they do not have human rights. However, the Court observes that, in general, the rights and obligations attributed to companies become rights and obligations for the individuals who comprise them or who act in their name or representation.

28. In addition, we could recall the Vienna Convention on the Law of Treaties in this respect, as this Court has on several occasions [FN10], and affirm that the interpretation alleged by the State leads to unreasonable results, because it implies removing an important group of human rights from protection by the Convention.

[FN10] Cf., among others, Constantine et al. case, Preliminary Objections, supra note 6, paras. 75; Benjamin et al. case, Preliminary Objections, supra note 6, para. 76; Hilaire case, Preliminary Objections, supra note 6, para. 84; The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paras. 58, 114 and 128; Enforceability of the Right to Reply or Correction (Articles 14(1), 1(1) and 2, American Convention on Human Rights). Advisory Opinion OC-7/86 of August 29, 1986. Series A No. 7, para. 21; Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 21; and Restrictions to the Death Penalty (Article 4(2) and 4(4), American Convention on Human Rights), Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3., para. 48.

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29. This Court considers that, although the figure of legal entities has not been expressly recognized by the American Convention, as it is in Protocol No. 1 to the European Convention on Human Rights, this does not mean that, in specific circumstances, an individual may not resort to the inter-American system for the protection of human rights to enforce his fundamental rights, even when they are encompassed in a legal figure or fiction created by the same system of law. However, it is worth making a distinction in order to identify which situations could be examined by this Court within the framework of the American Convention. In this respect, this Court has already examined the possible violation of the rights of individuals when they are shareholders [FN11].

[FN11] Cf. Ivcher Bronstein case. Judgment of February 6, 2001. Series C No. 74, paras. 123, 125, 138 and 156. Similarly, communication of the Human Rights Committee No. 502/1992, Barbados, March 31, 1994; and communication of the Human Rights Committee No. 737/1997, Australia, April 30, 1997. Also, in its case Pine Valley Developments Ltd and Others v. Ireland, the European Court decided that, although there were three petitioners: the “Pine Valley” company; the “Healy Holdings” company, owner of “Pine Valley”; and Mr. Healy, the former, that is, the legal entities, were only vehicles through which Mr. Healy, in his capacity as a natural person, carried out a determined economic activity. In any case, this Court rejected the argument of the State and indicated that it was artificial to make distinctions between the petitioners in order to consider them victims of a violation of a right embodied in the European Convention. Eur. Court H.R., Pine Valley Developments Ltd and Others Judgment of 29 November 1991, Series A no. 222.

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30. In the case sub judice, legal file C-1099, processed before the Supreme Court of Justice, confirms that all administrative and legal recourses, with the exception of a criminal complaint and an amparo filed in 1972, at the onset of the alleged facts, were submitted directly by Mr. Cantos in his "own name and in the name of his companies." Consequently, this Court could examine the alleged violation of the rights of Mr. Cantos under the Convention at the corresponding merits stage, in the terms of paragraphs 40 and 41.

31. Argentina does not explain the logic used to derive the conclusion it reached from the text of Article 1(2) of the Convention (supra §§ 22 and 23). However, international jurisprudence has reiterated that those who seek to use logic must demonstrate the steps used in this operation [FN12]. Having demonstrated that the interpretation of Article 1(2) of the American Convention is based on an invalid reasoning, the Court considers that it must reject the objection filed on lack of competence.

[FN12] Cf. Arbitral award of VII.31.1989, on the delimitation of the maritime frontier between Guinea-Bissau and Senegal, Reports of International Arbitral Awards, vol. XX, pp. 135-136; and arbitral award of X.10.1995, on la Laguna del Desierto, §§ 77 and 78.

VII. SECOND PRELIMINARY OBJECTION

32. The other preliminary objection filed by Argentine is based on the terms on which it accepted the jurisdiction of this Court. As mentioned above (supra, § 21), the State became a party to the Convention on September 5, 1984, and deposited the respective ratification instrument with the Secretariat of the Organization of American States. On the same date, it accepted the obligatory jurisdiction of the Court, but put on record that the obligations it had assumed "would only take effect with regard to acts that occurred after the ratification of the said instrument." In view of this statement, Argentina maintains that the Court is only competent to hear cases on acts that occurred after September 5, 1984. The State considers that the facts of the instant case occurred before that date and, therefore, the Court is not competent to hear them.

33. Before examining this objection on lack of competence, the Court deems it appropriate to indicate some rules of international law that have not been set forth clearly in this dispute.

34. In this respect, it is evident from the text of the Convention that a State may be a party to it and accept or reject the obligatory jurisdiction of the Court. Article 62 of the Convention uses the verb "may" to signify that acceptance of the jurisdiction is optional. It should also be emphasized that the Convention establishes obligations for States. These obligations are the same for all the States parties, in other words, they bind in the same way and with the same strength both the State party that has accepted the obligatory jurisdiction of the Court and the State party that has not done so. Also, it is necessary to distinguish between "reservations to the Convention" and "acceptance of the jurisdiction of the Court". The latter is a unilateral act of each State, governed by the terms of the American Convention as a whole [FN13] and, therefore, not subject to reservations. Although some doctrine refers to "reservations" to the acceptance of

the jurisdiction of an international court, in reality, this refers to limitations in the acceptance of the jurisdiction and not, technically, to reservations to a multilateral treaty.

[FN13] Cf. Constantine et al. case, Preliminary Objections, supra note 6, para. 74; Benjamin et al. case, Preliminary Objections, supra note 6, para. 75; Hilaire case, Preliminary Objections, supra note 6, para. 83; Case of the Constitutional Court. Competence, supra note 6, paras. 35 and 36; and Ivcher Bronstein case. Competence, supra note 6, paras. 36 and 37.

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35. When codifying general law on this issue, Article 28 of the Vienna Convention on the Law of Treaties establishes that:

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

36. It is worth indicating that Argentina deposited the instrument ratifying the American Convention and accepting the contentious jurisdiction of the Court on the same date, in the understanding (pursuant to Article 62) that it would only have effect with regard to juridical acts or facts that occurred after the instrument ratifying the Convention and accepting the Court's contentious jurisdiction had been deposited.

37. In view of the foregoing, the Court considers that the principle of the non-retroactivity of international norms embodied in the Vienna Convention on the Law of Treaties and in general international law should be applied, respecting the terms in which Argentina became a party to the American Convention [FN14].

[FN14] This Court has indicated that "the criteria on interpretation embodied in the Vienna Convention on the Law of Treaties may be considered rules of international law on the issue." (Cf. The Right to Information on Consular Assistance in the framework of the Guarantees of the Due Process of Law, supra note 10, para. 114; Enforceability of the Right to Reply or Correction (Articles. 14(1), 1(1) and 2, American Convention on Human Rights), supra note 10, para. 21; Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, supra note 10, para. 21; and Restrictions to the Death Penalty (Article 4(2) and 4(4), American Convention on Human Rights), supra note 10, para. 48). The Court has also determined that the interpretation of the American Convention, in accordance with the Vienna Convention on the Law of Treaties (Article 31(1): good faith), is subordinate to its purpose and goal, which is the effective protection of human rights (Cf., among others, Constantine et al. case, Preliminary Objections, supra note 6, para. 75; Benjamin et al. case, Preliminary Objections, supra note 6, para. 76; Hilaire case, Preliminary Objections, supra note 6, para. 84; The Right to Information on Consular Assistance in the framework of the Guarantees of Due Process of Law, supra note 10, paras. 58 and 128; and Caballero Delgado and Santana case, Preliminary Objections, Judgment of January 21, 1994. Series C No. 17, para. 30).

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38. The Court now examines the facts set out in the application, in accordance with the terms in which Argentine ratified the Convention and accepted the Court's contentious jurisdiction.Among the facts set forth (supra § 2), it is necessary to determine those that may fall within the Court's contentious jurisdiction. In this respect, a first series of facts comprises those that occurred mainly in the 1970s and allegedly caused damages to the companies and person of Mr. Cantos, such as the searches by the Revenue Department of the Province of Santiago del Estero, the seizure of the accounting documentation, the detentions and the harassment. A second category comprises the agreement signed by the Government of the Province of Santiago del Estero and Mr. Cantos on July 15, 1982. The facts included in these two groups occurred before the entry into effect of the Convention for Argentina and, therefore, do not fall within the Court's jurisdiction.

39. The Commission argues that some of the facts of which the State is accused are ongoing illicit acts; that is, the illicit acts continue to exist today. The Court does not consider it necessary to examine here the legal theory of ongoing illicit acts [FN15]; it is sufficient that it confirm that, if any of the facts imputed to the State were of this nature, it would not be a "fact that had occurred after September 5, 1984", the only category of facts for which Argentina accepted the jurisdiction of this Court [FN16].

[FN15] Cf. Blake case, Preliminary Objections. Judgment of July 2, 1996. Series C No. 27, paras. 29 and ff.
[FN16] C.P.J.I., Series A/B, No. 74, p. 37.

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40. The third category of facts with regard to which the contentious jurisdiction of the Court may be exercised includes the proceedings before the Supreme Court of Justice of Argentina after September 5, 1984, including the judgment of September 3, 1996, if it were alleged that the said proceedings could constitute per se violations of the American Convention.

41. In view of the foregoing, the Court considers that it should only accept partially the second preliminary objection.

VIII. OPERATIVE PARAGRAPHS

42. Therefore,

THE COURT,

DECIDES:

unanimously,

1. Not to accept the first preliminary objection of lack of competence based on Article 1(2) of the American Convention on Human Rights.

2. To accept partially the second preliminary objection on lack of competence in accordance with the terms of paragraphs 38, 39, 40 and 41 of this judgment.
3. To continue hearing and processing the instant case.
4. To authorize its President to duly convene the State and the Inter-American Commission on Human Rights to a public hearing on the merits of the case, to be held at the seat of the Inter-American Court of Human Rights.
5. To notify this judgment to the State and the Inter-American Commission on Human Rights.

Done at San José, Costa Rica, on September 7, 2001, in Spanish and English, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes
Oliver Jackman
Alirio Abreu-Burelli
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Julio A. Barberis
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary