Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Jose Maria Cantos v. Argentina
Doc. Type:	Judgment (Merits, Reparations and Costs)
Decided by:	President: Antonio A. Cancado Trindade; Vice President: Alirio Abreu Burelli; Judges: Maximo Pacheco Gomez; Hernan Salgado Pesantes; Oliver Jackman; Sergio Garcia Ramirez; Carlos Vicente de Roux Rengifo; Julio A. Barberis
Dated:	28 November 2002
Citation:	Cantos v. Argentina, Judgment (IACtHR, 28 Nov. 2002)
Represented by:	APPLICANT: Maria Dolores Retondo de Spaini

In the Cantos case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), in accordance with articles 29 and 55 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), [FN1] delivers the following judgment.

[FN1] In accordance with the Court's Order of March 13, 2001 regarding Transitory Provisions of the Court's Rules of Procedure, the instant Judgment is delivered in accordance with the provisions of the Rules of Procedure in force since June 1, 2001.

I. INTRODUCTION OF THE CASE

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted this case against the Argentine Republic (hereinafter "the State" or "Argentina" or "the Argentine State") via application dated March 10, 1999. The Commission's case was based on complaint No. 11,636, received at its Secretariat on May 29, 1996.

II. PROCEEDING BEFORE THE COMMISSION

2. On that day, the Commission received a complaint alleging violations of Mr. José María Cantos' human rights. On June 13, 1996, the Commission forwarded the pertinent parts of the complaint to the State and requested from it the corresponding answer. Between July and October 1996, the complainants expanded upon the complaint; that information was also forwarded to the State. The latter requested a number of extensions, which the Commission

authorized.The State finally sent its answer on December 23, 1996, and requested that the complaint be declared inadmissible. The following day, Argentina's answer was forwarded to the petitioners, who filed their reply on January 16, 1997. That reply was sent to Argentina on January 22, 1997.

3. On March 4, 1997, a hearing was held where the parties set out the facts and the applicable law. On March 6, 1997, Mr. Cantos provided new facts to the effect that the Argentine courts had made new and disproportionate demands upon Mr. Cantos with regard to payment of attorneys' fees. He therefore asked the Commission to adopt precautionary measures. Accordingly, on March 11, 1997, the Commission requested precautionary measures to suspend attachment of Mr. Cantos' property.

4. On March 13, 1997, the Commission made itself available to the parties with a view to reaching a friendly settlement and, to that end, convened a hearing for October 6, 1997. Three days after the hearing, the Argentine State reported that it could not accede to the terms of the friendly settlement proposal drawn up during that hearing. On November 3, 1997, the petitioners informed the Commission that in their view, the conditions to arrive at a friendly settlement were not present. They therefore asked the Commission to continue processing the case. That information was conveyed to the State.

5. On September 28, 1998, the Commission adopted Report No. 75/98 wherein it concluded that Argentina had violated the rights to a fair trial and to judicial protection provided for 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 as required under Article 1(1) of that instrument." The Commission also considered that the State had violated Mr. Cantos' right to a fair trial and his right of petition, recognized in Articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man. In the operative part of Report No. 75/98, the Commission decides:

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 petitioners of the adoption of a report in this case under Article 50 of the American Convention.

6. The Commission forwarded the report to the State on December 10, 1998. The State, however, never offered any reply as to the recommendations adopted.

III. PROCEEDING BEFORE THE COURT

7. On March 10, 1999, the Commission submitted its application to the Inter-American Court (supra 1) setting out the facts upon which its case was based:

a) 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 (hereinafter "the Province" or "Santiago del Estero"), composed of the firms 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. Cantos 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 the province.

b) In March 1972, the Revenue Department of the Province conducted a series of searches of the administrative offices of the businesses owned by Mr. Cantos, based on a purported violation of the Stamp Act. [FN2]In these searches, all the accounting documentation, company books and records, vouchers and receipts attesting to payments made by those companies to third parties and suppliers, as well as numerous shares and securities were seized, without being inventoried.

c) The firms began to incur financial losses as a result of the searches and seizures, as they were unable to operate without their business records and papers and had no way of mounting a defense against legal actions brought by third parties demanding payment of bills that had already been settled.

d) To defend his interests, Mr. Cantos began a series of legal actions. The first was in March 1972, when he filed a criminal complaint against the Director General of Revenue of the Province. Two months later he filed a petition seeking amparo relief, which was denied. On September 10, 1973, in preparation for the lawsuit, he filed an administrative claim with the federally appointed de facto Governor [interventor federal] of the Province, seeking acknowledgment of the damages and losses caused by the searches conducted by Revenue Department officials and their withholding of the business documents. The losses were estimated at 40,029,070.00 pesos (forty million twenty-nine thousand and seventy pesos) under Act 18,188. [FN3] 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.

e) Because of the lawsuits he had filed, Mr. Cantos was subjected to "systematic persecution and harassment by State agents." For example, Mr. Cantos was detained and held incommunicado more than 30 times by police agents. His sons, 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. The defendant was acquitted in every case.

f) 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 to a group of his companies and established a compensatory amount and a date to comply with this obligation.

g) As the Province of Santiago del Estero did not honor its July 15, 1982 agreement with Mr. Cantos, the latter filed suit with the Argentine Supreme Court against the province and the Argentine State on July 4, 1986, by which time the time period for compliance had expired. The amount claimed was 130,245,739.30 pesos (one hundred thirty million two hundred and forty-five thousand seven hundred and thirty-nine pesos and thirty cents) under Act 18,188. This figure

was arrived at by bringing the amount claimed on May 23, 1974 current with the value of the United States dollar as of December 31, 1984, plus a daily interest rate of one percent.
h) On September 3, 1996, the Supreme Court of Justice delivered its judgment rejecting the case and ordering Mr. Cantos to pay costs amounting to approximately US$140,000,000.00 (one hundred forty million United States dollars).

[FN2] The Stamp Act relates to registration and stamp taxes.
[FN3] The Act of April 15, 1969, states that 100 pesos is equal to one "Act 18,188 peso."
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8. 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(1) 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.

9. The Commission designated Robert K. Goldman, Carlos M. Ayala Corao and Germán J. Bidart Campos as delegates, and Raquel Poitevien and Hernando Valencia Villa as advisors. The Commission also accredited Susana Albanese, Viviana Krsticevic, María Claudia Pulido, Emilio Weinschelbaum, Martín Abregú and Ariel Dulitzky as assistants.

10. On April 16, 1999, after the President of the Court (hereinafter "the President") had completed a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") forwarded it to the State and to the alleged victim.

11. On May 19, 1999, Argentina designated Ambassador María Matilde Lorenzo Alcalá de Martinsen as agent in this case, and Luis Ugarte as alternate agent. On March 31, 2000, Argentina revoked its designations and named Ernesto Alberto Marcer as agent in the case and Ambassador Leandro Despouy as alternate agent. Argentina replaced its agents again on May 24, 2001, this time designating Mrs. Andrea G. Gualde as agent and Ms. María Rosa Cilurzo as alternate agent. On June 6, 2002, the State advised that it was making a change in its representation, and that M. Luz Monglia was being designated as its new alternate agent.

12. On May 19, 1999, Argentina named Mr. Julio A. Barberis as judge ad hoc.

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

14. On November 29, 1999 and April 6, 2000, the Inter-American Commission and Argentina, respectively, entered additional written pleadings on the merits of the case, having been so authorized by the President of the Court.

15. On September 7, 2001, the Court delivered a judgment on preliminary objections and resolved to continue hearing and processing the present case, as it did not accept the first preliminary objection based on Article 1(2) of the American Convention and did partially accept the second preliminary objection of lack of jurisdiction based on Argentina's terms of ratification of the Convention, and its acceptance of the Court's contentious jurisdiction.

16. On December 14, 2001, the Court granted the Commission a period of one month, not subject to extension, to present its arguments and proofs apropos possible reparations in the case. The Court also asked the Commission to inform the representatives of the alleged victim that they could tender, by way of the Commission, any reparations-related arguments and evidence they might have. On January 9, 2002, the representatives of the alleged victims presented their arguments and evidences on reparations in the present case. They also reported that the same document had been sent to the Commission to comply with the Court's request of December 14, 2001.

17. On January 14, 2001, the Inter-American Commission submitted its pleadings on reparations in the instant case. It also submitted the reparations brief prepared by the alleged victim's representatives, which had been sent to the Court earlier (supra 16).

18. On January 16, 2002, the Secretariat forwarded to the State the briefs entered by the Inter-American Commission and by the representatives, and informed the State that it had one month to submit its observations and evidence regarding possible reparations.

19. The State presented its observations on the brief regarding possible reparations on February 15, 2002.

20. On April 12, 2002, the President decided to summon the parties to a public hearing, to be held at the seat of the Court on June 17, 2002, to hear the arguments regarding the alleged violations and the possible reparations, as well as the statements of the witnesses proposed by the Inter-American Commission.

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

appeared before the Court:

for the Inter-American Commission:

Robert K. Goldman, delegate
Germán Bidart Campos, delegate
Raquel Poitevien, legal advisor;
Susana Albanese, assistant;
Emilio Weinschelbaum, assistant, and
Ariel Dulitzky, assistant.

for the State of Argentina:

Andrea G. Gualde, agent, and
Luz Monglia, deputy agent.
Ambassador Juan José Arcuri.

Witnesses called by the Commission:

José María Cantos; and
María Retondo de Spaini.

22. On September 24, 2002, the Secretariat forwarded the pertinent parts of the transcript of the public hearing to those who had participated in it, so that they might correct any material errors that may have been made. The President also advised them that they had until October 24, 2002, to submit their final written arguments.

23. On October 17, 2002, the State objected to the presentation of final arguments on the merits and possible reparations and asked the Court to rule on the matter. The Court responded the following day by rejecting the State's request.

24. The briefs containing the final arguments were presented within the time period set by the President.

The Commission and the victim's representatives presented the following final pleadings:

a) That the Court find that the Argentine State violated and continues to violate the right to a fair trial and the right to judicial protection, protected under Articles 8 and 25 of the Convention, respectively, and the right to property recognized in Article 21 of the Convention, all in relation to that State's obligation under Article 1(1) of the Convention, to respect the rights recognized in the Convention and ensure their free and full exercise. That the Court also find that Articles XVIII and XXIV of the American Declaration have been violated.
b) That the State order that Mr. José María Cantos be restored to the full enjoyment of his rights and, inter alia, be given adequate reparation and compensation for the aforesaid violations, pursuant to Article 63(1) of the Convention.
c) That Argentina be ordered to effect payment of the sums corresponding to material and moral damages within no more than 6 months of the notification of the Honorable Court's judgment, plus interest in the event of delinquency, at the delinquency interest rate that Argentine banks charge.
d) That the Honorable Court is asked to set an equitable sum for court costs and expenses, including those incurred for travel and accommodations and the fees of the attorneys representing José María Cantos. It is requested that the State be ordered to pay those sums of money within six months, plus interest in the event of delinquency, at the interest rate that Argentine banks charge for delinquency. The Honorable Court is asked to order that the payments for material and moral damages and costs and expenses, including the fees of the representatives of the original plaintiff, be exempt from any existing or future tax or charge.
e) That the Honorable Court order that any attachments or other general property encumbrances resulting from the legal action undertaken by José María Cantos with the Supreme Court be lifted and that his personal records with the corresponding public agencies be expunged so that José María Cantos' reputation and honor are not sullied by inaccurate or offending information.
f) It is once again requested that the matter not be referred back to the domestic courts to fix the amount of compensation, bearing in mind the arguments made by the representatives of the plaintiff when the submissions on reparations were presented, and inasmuch as the Argentine judicial system is in a state of collapse because, among other reasons, of the socio-economic measures adopted by the government, which are public knowledge.

Argentina, for its part, requests that the Court dismiss the application and underscores the following in its final arguments:

From the allegations made by representatives [of the alleged victim] and from the testimony given in the public hearing of June 17, 2002, the following conclusions can be drawn:

a) The Argentine Republic has not committed any violation of Article 8(1) of the Convention to the detriment of Mr. Cantos, because:
- It was Mr. Cantos who filed a baseless claim with the Argentine Supreme Court, seeking astronomical sums virtually unprecedented in the judicial history of the Argentine Republic.

- It was Mr. Cantos who determined and manipulated the duration of the proceedings before Argentina's Supreme Court.
- It was Mr. Cantos who consented to and even sought rulings by the Supreme Court such as deferment of the preliminary objections until the final ruling was handed down.
- It was Mr. Cantos who, either by his unfathomable inaction or by his clearly immaterial and irrelevant motions calculated to delay the proceedings, succeeded in dragging out what even the Commission itself acknowledged was a complex case.
- Confronted with this brazen incursion into the legal system, the Argentine Supreme Court responded diligently, listening to each and every one of Mr. Cantos' motions, however irrelevant and immaterial they were.
- The Commission did not prove a single fact showing that the Argentine State had contributed to needless delays in the Supreme Court proceedings.

b) The Argentine Republic has not committed any violation of Article 25 of the Convention because:

- The ruling handed down by the Supreme Court was a just one. Contrary to its own doctrine and the case law of this Honorable Court, the Commission appears to be equating a sentence unfavorable to the plaintiff with a denial of justice.
- The temper of the judgment with regard to the alleged 1982 agreement was due entirely to the fact that Mr. Cantos invoked this instrument for the sole purpose of benefiting from a statute of limitations five times longer than he would be entitled to under his original claim.
- The Argentine State never acknowledged any debt in Mr. Cantos' favor.Any documents he submitted to that effect are, at best, of doubtful authenticity and have been disclaimed time and time again. They could never be taken seriously in a court of law to attribute any blame to the Argentine Republic.
- It was Mr. Cantos who never made clear in his claim exactly what blame he sought to attribute to the Argentine Republic and the Province of Santiago del Estero.
- It was Mr. Cantos who never proved the legal status of the businesses that he claimed to own, which is why the Supreme Court denied him active legitimation.
- The statute of limitations that expired in the case was simply the mandatory application of the law, based on the claim that Mr. Cantos himself articulated, and that the courts are by law obligated to observe.
- It was Mr. Cantos who brought a claim long after the statute of limitations had run.
- It was Mr. Cantos who brought a claim seeking exorbitant sums, but then, contrary to the terms set out in his own complaint, claimed that unspecified amounts were involved.
- Mr. Cantos lost the benefit of litigating without paying filing fees because his witnesses failed to convince the court that he qualified for this exception; it follows, then, that he cannot rightfully blame the Argentine State for the consequences of his own conduct.
- Mr. Cantos was ordered to pay costs.
- Having lost the benefit of litigating without paying filing fees and having been ordered to pay filing fees and the fees of the opposing side's attorneys, both consequences of the fact that he was litigating a baseless complaint, Mr. Cantos had to pay the costs of his unfounded claim.
- Mr. Cantos could have used the domestic courts to challenge the constitutionality of the decision and the sum he was ordered to pay, but chose not to do so. He opted instead to turn to this international forum to bring a baseless charge of unfairness.

- However, what is most objectionable is that after having to underwrite costs that Mr. Cantos was ordered to pay, the Argentine State now finds itself in an international court, having to defend itself against charges that it denied Mr. Cantos justice.
- One has to ask, how was justice denied in this case and how was the right to a hearing "within a reasonable time" violated when Mr. Cantos spent years litigating his case before Argentina's highest court, manipulating the duration of the proceedings to fit his curious strategy and without putting out a single penny?

IV. COMPETENCE

25. The Court's competence to hear this case was one of the preliminary objections decided in the judgment of September 7, 2001. There, the Court held that it is competent to hear all proceedings that occurred subsequent to September 5, 1984, if it were alleged that those proceedings per se constituted violations of the American Convention. Mr. Cantos began his case with the Supreme Court of Argentina in early July 1986, and the Court issued its judgment on September 3, 1996. Therefore, the present judgment will examine the procedural aspects of the proceedings before the Supreme Court and the latter's ruling of September 3, 1996, insofar as a violation of the American Convention may have occurred.

Argentina accepted the binding jurisdiction of this Court with regard to events or juridical acts that occurred subsequent to September 5, 1984. The Cantos case is not a new case, as it dates back to the 1970s. Therefore, the case itself and the decision handed down in the case are outside this Court's jurisdiction, even though they occurred subsequent to September 5, 1984. What do fall within the jurisdiction of this Court are the events that occurred subsequent to that date and that are themselves violations of the American Convention. [FN4]

[FN4] This Court notes that in its Judgment on the preliminary objections in this case, it held that in the case of the supposed violations that occurred prior to the date on which Argentina accepted the Court's contentious jurisdiction, this Court was not called upon to consider the allegations made with respect to Article 21 of the American Convention, as it does not have competence ratione temporis, regardless of whether the violations were committed against natural or legal persons. Hence, this request from the Commission is pointless in this case.

V. EVIDENCE

26. Before turning to the evidence received, the Court will, based on the provisions of Articles 43 and 44 of its Rules of Procedure, make some observations pertinent to the instant case, most of which are part of this Court's own case law.

27. In the matter of the receiving and weighing of evidence, the Court has previously indicated that its proceedings are not subject to the same formalities as domestic proceedings and that when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties. [FN5] The Court has taken account of the

fact that while international jurisprudence has always held that international courts have the authority to assess and evaluate the evidence according to rules of sound criticism, it has always steered clear of making a rigid determination as to the quantum of evidence needed to support a judgment. [FN6] This criterion is especially true for international human rights courts which, for purposes of determining the international responsibility of a State for violation of a person's rights, have considerable latitude to evaluate the evidence tendered regarding the facts of the case, in accordance with the principles of logic and on the basis of experience. [FN7]

[FN5] Las Palmeras Case, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of February 22, 2002. Series C No. 96, par. 18; El Caracazo Case, Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, par. 38; and Hilaire, Constantine, and Benjamin et al. Case. Judgment of June 21, 2002. Series C No. 94, par. 65.

[FN6] Cf. El Caracazo Case, Reparations, supra note 5, par. 38; Hilaire, Constantine, and Benjamin et al. Case, supra note 5 par. 65, and Trujillo Oroza Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, par. 37.

[FN7] Cf. Caracazo Case, Reparations, supra note 5, par. 39; Hilaire, Constantine, and Benjamin et al. Case, supra note 5, par. 69; and Trujillo Oroza Case, Reparations, supra note 6, par. 38.

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28. One of the functions of this Court is to protect the victims, determine which of their rights have been violated, and order reparation of the damages caused by the States responsible for those violations. [FN8] To that end:

[t]he sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention. Moreover, the State's international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations. [FN9]

[FN8] Cf. Hilaire, Constantine, and Benjamin et al. Case, supra note 5, par. 66; Constitutional Court Case, Judgment of January 31, 2001. Series C No. 71, par. 47; and Bámaca Velásquez Case. Judgment of November 25, 2000. Series C No. 70, par. 98.

[FN9] Cf. Hilaire, Constantine, and Benjamin et al. Case, supra note 5, par. 66; Constitutional Court Case,. supra, note 8, par. 47; and Bámaca Velásquez Case., supra, note 8, par. 98.

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A) DOCUMENTARY EVIDENCE

29. Attached to the Commission's application brief (supra 1) was a copy of 95 documents, contained in 77 appendices. [FN10]

[FN10] File in the Secretariat of the Court.

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30. When the State submitted its answer to the application (supra 13), it attached a copy of four court records of cases prosecuted in the domestic courts. [FN11]

[FN11] Case files titled "Cantos, José María c/Santiago del Estero, Provincia de y Estado Nacional s/Cobro de pesos" ["Cantos, José María v/ Santiago del Estero, Province of, and National State for payment of amounts owed"], Supreme Court case file C-1099; copy of case file No. 440/72 heard by the Second Bench of the Criminal and Correctional Examining Court of the Provincial Capital of Santiago del Estero; a copy of case file No. 565/72, titled "Complaint brought by Dr. Carim Nassif Neme, as counsel for Miguel Angel Cantos S.A.C.I.F. v/ Luis María Juan José Peña, Director General of Revenue of the Province on abuse of authority and violation of the duties of public office"; copy of motions numbers 8 and 9, filed by Mr. Cantos' former attorneys, Walter Omar Peralta Rondano and Francisco Alberto Cavalotti. On file with the Secretariat of the Court.

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31. With its reply (supra 14), the Commission sent a copy of 242 documents, contained in 53 appendices. [FN12]

[FN12] On file with the Secretariat of the Court.

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32. In its filing of November 29, 2001, the Commission sent a press clipping. [FN13]

[FN13] Case file on the merits, which is on file with the Secretariat of the Court, at 226.

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33. In their brief on reparations, the alleged victim's representatives tendered a copy of a document, which appeared as an appendix. [FN14]

[FN14] Document titled "Algunas consideraciones sobre el procedimiento de solución amistosa en el ámbito internacional de los derechos humanos" [Some thoughts on the friendly settlement procedure in international human rights cases], at 24-31 of the Reparations Case on record with the Secretariat of the Court.

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34. In the brief containing its final arguments, the State supplied a copy of Law No. 23,898 and tables on the fees of domestic court proceedings in Argentina, involving a total of 3 documents.

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B) TESTIMONIAL EVIDENCE

35. At the public hearing held on June 21, 2002, the Court received the statements of the witnesses offered by the Inter-American Commission. Those statements are summarized below, in the order in which they were given:

a) Statement by José María Cantos

Mr. Cantos filed his complaint with the Supreme Court only after bringing claims in the administrative-law courts. He did so expecting to receive some redress, moral compensation above all, for the damages he sustained in the seventies when, he alleged, State agents persecuted his family and property.
He litigated personally for 10 years. He personally prepared almost everything presented to the Supreme Court. Attorneys simply signed the papers, having agreed to lend him the use of their signature, as he did not have the funds to pay the costs of legal counsel to handle the trial. Most of his briefs were rejected as improper or false.
He pointed out that the amount of relief being sought in the claim was established through a procedure done with the Treasury Solicitor's Office. The sum it established was so illusory that he decided to donate any Court-awarded damages to his province. He asked to settle accounts at the end of the case with the Supreme Court.
When he did not win his case in the Supreme Court, Mr. Cantos decided to seek legal counsel to turn to international jurisdiction and thus filed with the inter-American system.

b) Statement by María Dolores Retondo de Spaini, Mr. Cantos' attorney

The witness met Mr. Cantos in 1977, at a time when the "atmosphere in Santiago del Estero [was one of] political oppression and personal oppression." She was legal counsel to Radiodifusora de Santiago del Estero, whose majority shareholder was Mr. Cantos.
She learned of the criminal case brought against Mr. Cantos for allegedly forging the 1982 agreement. The charges were being brought by the Santiago del Estero prosecutor's office, which believed that the signature on the agreement was false. She said that she learned from the presiding judge in the case that the only side to produce evidence in that case was Mr. Cantos and that he was acquitted because the forgery was not proved; instead, experts brought by Mr. Cantos showed that the signatures on the agreement were genuine. On appeal, the ruling was reviewed by the Federal Court and vacated on the grounds that the prosecutor who tried the case did not have jurisdiction. "The government never again brought action" in this case. She testified that the agreement in question originated from a public law contract.
She learned of the Supreme Court case from comments made by attorney Cavalloti, who drafted the complaint. Drawing upon her professional experience, she testified that preliminary objections that do not result in litigation of the facts are settled before the merits of the case are taken up. Her only direct involvement in the legal case was in drafting the briefs rebutting the preliminary objections and then later in signing off on a number of briefs concerning filing fees and the benefit of litigating without prepayment of filing fees.

In her 40 years' experience as an attorney, she had never seen a case where the filing fees were so high; she also stated that when the litigious amount in a proceeding is determinable but not pre-determined, as it was in the case of Mr. Cantos by virtue of the adjustment clause of the 1982 Agreement, the plaintiff ought not to be confronted with the problem of paying a 3 percent filing fee. She added that one need not be indigent to be permitted to litigate without prepayment of the filing fees; the only requirement is lack of sufficient means to underwrite the expenses of a case. Had he been granted permission to litigate without paying costs of court in advance, the filing fees charged would have been the minimum and would have been payable at the end of the proceeding.

She explained that the filing fee is a percentage of the monetary relief the plaintiff is seeking and that in Santiago del Estero, it is a tax that goes directly to the general coffers. The fee is payable in two different ways, depending upon where the case is litigated: in the province, the entire amount must be paid upfront, when the trial begins; at the federal level, however, 50% can be paid upfront, and the other 50 % when the evidentiary phase of the proceedings gets underway. Then the costs of any evidence ordered have to be factored in, and are paid separately.

At the present time, Mr. Cantos is engaged in symbolic acts of charity for the elderly and children, and has earned accolades from various authorities.

C) EVALUATION OF THE EVIDENCE

36. This Court must point out that appendices 1 to 15 of the application and appendices 1 to 5, 9, 12, 15 to 18, 20, 22 to 52 of the response all pertain to facts that predate Argentina's acceptance of the Court's contentious jurisdiction. The other appendices, however, pertain to facts subsequent to Argentina's acceptance of the Court's jurisdiction and will therefore be weighed by the Court, given the overall bearing they might have upon the case. In this regard, although the State objected to appendices 17, 18, 32, 33, 37, and 39 to 79, the Court notes that they are subsequent to the State's acceptance of the Court's contentious jurisdiction. The Court, therefore, will evaluate them when analyzing the conduct of the Argentine authorities, not just the Supreme Court but the other authorities in general.

37. The Court will not take into consideration appendices 38, 39, 40, 41, 44, 45, 54, and 56 to 68, as they concern a case involving Radiodifusora de Santiago del Estero which has no direct bearing upon the analysis of the relevant facts in this case.

38. On November 29, 2001, the Inter-American Commission submitted a copy of the Tuesday, November 13, 2001 edition of the newspaper Nuevo Diario which mentions "the accolade that the Chamber of Deputies of the Province of Santiago del Estero bestowed upon Mr. José María Cantos in recognition of the numerous programs and works serving the province's communities and of which Mr. Cantos has been a benefactor." On January 21, 2002, the State objected to the inclusion of that document in the case file. Its argument was that it could not be used as evidence, because it was not tendered within the time periods stipulated in Article 43(1) of the Court's Rules of Procedure and on the grounds that none of the circumstances stipulated in Article 43(3) of those Rules, allowing evidence to be admitted at times other than those stipulated in Article 43(1), is being alleged or obtains.

39. The Court observes that the press clipping submitted to the Court concerns a supervening event, news of which came out subsequent to the submission of the application briefs and the brief answering the brief of preliminary objections. It is therefore admitting it pursuant to Article 43 of the Rules of Procedure. [FN15] On the subject of newspaper clippings, this Court has considered that while they are not documentary evidence per se, they may be taken into consideration when they concern public or well-known facts or statements made by State officials, or when they corroborate facts established in other documents or testimony received during the proceeding. [FN16] The Court therefore adds them to the body of evidence to be used, insofar as they are relevant and in combination with the other forms of evidence tendered, to verify the truth of the facts alleged in the case.

[FN15] Cf. Cesti Hurtado Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001. Series C No. 78, par. 29; Constitutional Court Case, supra note 8, par. 51; and Bámaca Velásquez Case, supra note 8, par. 109.
[FN16] Cf. Baena Ricardo et al. Case. Judgment of February 2, 2001. Series C No. 72, par. 78; Constitutional Court Case, supra note 8, par. 52; and Bámaca Velásquez Case, supra note 18, par. 107.

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40. In exercise of its authorities under Article 44 of the Court's Rules of Procedure, the Court is adding to the body of evidence, laws Nos. 21,839 and 24,432, which concern attorneys' fees.

41. In this case, as in others, [FN17] the Court is accepting the evidentiary value of those documents that the parties tendered at the appropriate time in these proceedings or as evidence to better decide the case, which were neither contested nor challenged and whose authenticity was not questioned.

[FN17] Las Palmeras Case, Reparations, note 5, par. 28; El Caracazo Case, Reparations, supra note 5, par. 57; and Hilaire, Constantine, and Benjamin et al. Case, supra note 5, par. 80.

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42. The Court is admitting the statements made by the alleged victim in the instant case to the extent that they are consistent with the purpose of the line of questioning proposed by the Commission. In this regard, the Court considers that because the person in question is the alleged victim and has a direct interest in this case, his statements cannot be considered in isolation, but as part of the whole body of evidence in the case. For purposes of the merits and reparations, statements made by the alleged victims are useful in that they can provide more information about the consequences of any violations that may have been perpetrated. [FN18]

[FN18] Cf. El Caracazo Case, Reparations, supra note 5, par. 59; Trujillo Oroza Case, Reparations, supra note 6, par. 52; and Bámaca Velásquez Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, par. 27.

VI. FACTS

43. The Court will turn now to the relevant facts presented to it, which does not mean that it is competent to take up those facts:

a. On July 15, 1982, Mr. Cantos and the Governor of the Province of Santiago del Estero allegedly signed an agreement wherein the latter acknowledged that Mr. Cantos was entitled to compensation for damages he and his businesses had sustained as a result of searches and seizures conducted in 1972.

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Concerning the initial proceedings before the Supreme Court and other proceedings

b. On March 24, 1986, Mr. Cantos asked the Governor of Santiago del Estero to take immediate action to honor the agreement signed with Mr. Jensen Viano. [FN19] When the Governor's Office did not respond, Mr. Cantos filed an April 14, 1986 request with the Governor of the Province of Santiago del Estero asking for "a written statement to the effect that all administrative formalities have been completed, thus paving the way for the appropriate judicial action." [FN20]

c. On July 4, 1986, Mr. Cantos filed a complaint with the Supreme Court against the Province of Santiago del Estero and the Argentine State [FN21] concerning performance of the agreement signed in 1982. On July 18, 1986, the Federal Judge of the Province of Santiago del Estero issued a note on jurisdiction and on the procedure to follow to process the complaint Mr. Cantos filed with the Supreme Court; [FN22] the latter forwarded that note to the co-respondents on August 14, 1986. [FN23]

d. Right from the start of the Supreme Court case, a number of judges requested either information or copies of the case they were hearing. [FN24] Several times the Court suspended proceedings. Two such occasions stand out: first, during the evidentiary phase of the Supreme Court proceedings, one of the experts twice petitioned the Court, the first time on August 29 and the second time on October 5, 1998, seeking extensions as he did not have available to him the originals of the 1982 Agreement and its authentication. [FN25] The Supreme Court agreed to suspend proceedings. [FN26] The second instance, between March 30, 1993 and April 25, 1994, was because the case file was on loan to the National Criminal and Correctional Court. Mr. Cantos therefore requested suspension of the proceedings, a request the Court acceded to by order of June 22, 1993. [FN27]

e. The representatives of the Province and of the State presented their briefs of objections on September 16 and 19, 1986, respectively. Their arguments were that the agreement was neither legitimate nor valid, and that the statute of limitations had expired. [FN28] Mr. Cantos answered those briefs on October 14, 1986; [FN29] then, on November 24, 1986, he asked that the State's Attorney for the Province intervene to avoid subsequent nullifications. [FN30] However, the Supreme Court denied that request on the grounds that it was time-barred. [FN31]

f. The Province and the State answered the complaint on November 11 and 14, 1986, respectively. [FN32] On December 4, 1986, the Supreme Court joined the preliminary objections

to the merits [FN33] in order to determine whether the agreement was valid and on that basis apply the proper rules on statute of limitations. On February 20, 1987, Mr. Carlos Alberto Jensen Viano joined the case, bringing background information related to the searches [FN34] (supra 7, b and c). On March 18 of that year, the Supreme Court effected the necessary transmissions to the opposing sides. Once their respective replies were received, on April 28, 1987, the Supreme Court admitted the new fact [FN35] relative to the background and details of the searches conducted in 1972.g. On February 12, 1987, Mr. Cantos petitioned the Supreme Court to begin the evidentiary phase. [FN36] On March 2, 1987, the Supreme Court gave the State and the Province a period of 40 days to tender their evidence. [FN37] On May 28, 1987, Mr. Cantos asked that any evidence that the State and the Province might introduce be disallowed inasmuch as the time period that the Court had established for them to tender evidence had expired. [FN38] The next day, the Supreme Court advised Mr. Cantos that the deadline for tendering evidence had been suspended because of the new fact that the Court had admitted [FN39] (supra 43.f). In June 1987, the parties tendered their evidence to refute the opposing side's arguments. [FN40] Between October 1987 and October 1990, arguments centered on the various pieces of evidence tendered by the parties, [FN41] chief among them the expert evidence. [FN42] On November 9, 1989, the Supreme Court received the findings of the expert analysis. [FN43] From then until October 1990, Mr. Cantos filed motions to have the expert study on the validity of the agreement thrown out [FN44] and asked to produce that evidence (supra 43.b). The Supreme Court denied his request. [FN45]

[FN19] March 24, 1986: Claim addressed to the Governor of Santiago del Estero, Carlos A. Juárez, in case 280-C-1974, requesting performance of the 1982 agreement, appendix 17 of the complaint; and April 14, 1986: Note from Mr. Cantos to the Governor of the Province reporting that all administrative procedures had been completed, "thus paving the way for the appropriate judicial action," appendix 18 of the complaint..

[FN20] Supreme Court Case File C-1099, Volume I, f. 109.

[FN21] Statement made by Mr. José María Cantos before the Inter-American Court of Human Rights, June 17, 2002; Court File C-1099, processed with the Supreme Court, Volume I, at 120 et seq.; July 4, 1986 complaint filed with the Supreme Court of Argentina, against the Province of Santiago del Estero and the Argentine State seeking payment of amounts owed. Case C-1099, appendix 19 of the complaint.

[FN22] Supreme Court case File C-1099, Volume I, f. 139.

[FN23] Supreme Court case File C-1099, Volume I, f. 143.

[FN24] Testimony by Mrs. María Dolores Spaini de Retondo before the Inter-American Court of Human Rights, June 17, 2002; Supreme Court case file C-1099, at 149 et seq., 152 et seq., 156, 158, 182 et seq., 184, Volume I, at 278, 345-346, Volume II; Judgment of 28 November 1989, San Miguel de Tucumán Federal Appeals Court. Case 769/86. "Federal Prosecutor's Office against José María Cantos for alleged forgery to the detriment of the Province," appendix 11 of the rebuttal. On August 21, 1986, the representatives for the Province of Santiago del Estero sent copies of the case before the Supreme Court of the Nation (at 149 et seq., Volume I); Judgment of November 28, 1989, San Miguel de Tucumán Federal Appeals Court. Case 769/86. "Federal Prosecutor's Office against José María Cantos for alleged forgery of a document, to the detriment of the Province of Santiago del Estero," Appendix 11 of the rebuttal.

[FN25] Supreme Court Case File C-1099, Vol. XI, f. 2030, and Volume VIII, f. 1422.

[FN26] Supreme Court Case File C-1099, Vol. XI, f. 2030 reverse side.
[FN27] Supreme Court Case File C-1099, f. 2030, Volume II, f. 633, Volume IV.
[FN28] Testimony of María Dolores Spaini de Retondo before the Inter-American Court of Human Rights, June 17, 2002; Supreme Court case file C-1099, fs. 162 and 174 et seq., Volume I; Rebuttal of the objections entered by the Province of Santiago del Estero in 1986, appendix 20 of the complaint; and Rebuttal of the objections brought by the Argentine State on September 19, 1986, appendix 21 of the complaint.
[FN29] Supreme Court Case File C-1099, Volume I, f. 188; Answer from Mr. Jose M. Cantos to the objections submitted by the defendants on November 18, 1986, appendix 23 of the complaint.
[FN30] Supreme Court Case File C-1099, Volume II, f. 226.
[FN31] Supreme Court Case File C-1099, Volume II, f. 228.
[FN32] Supreme Court Case File C-1099, f. 195 et seq., Volume I, 212 et seq., Volume II; answer filed by the Province of Santiago del Estero on November 11, 1986, and answer of the State, November 14, 1986, appendix 22 of the complaint.
[FN33] Supreme Court Case File C-1099, Volume II, f. 227.
[FN34] Supreme Court Case File C-1099, Volume II, f. 237 et seq.
[FN35] Supreme Court Case File C-1099, Volume II, f. 250 et seq., 255 et seq.
[FN36] Supreme Court Case File C-1099, Volume II, f. 229.
[FN37] Supreme Court Case File C-1099, Volume II, fs. 234 and 234 reverse side.
[FN38] Supreme Court Case File C-1099, Volume II, f. 263.
[FN39] Supreme Court Case File C-1099, Volume II, f. 264.
[FN40] Supreme Court Case File C-1099, Volume IV, f. 692 et seq., 695, 697, Volume IX, fs. 1591 and 1592 reverse side, and Volume IX, fs. 1594 to 1598.
[FN41] Supreme Court Case File C-1099, Volume XII, f. 2189 reverse side, 2190 reverse side, 2196 and 2193; Written communication of October 21, 1987, requesting that the administrative-law claims be forwarded to the Supreme Court, appendix 24 of the complaint; Response to the communication, sent through the Secretary General of the Office of the Governor of the Province of Santiago del Estero, Luis María Peña, dated November 9, 1987, appendix 25 of the complaint; Report of the Banco de la Provincia de Santiago del Estero, dated November 17, 1987, in response to a request from the Supreme Court, appendix 26 of the complaint; Memorandum from the Secretary of the Office of the Superintendent of the Santiago del Estero Superior Court, dated November 18, 1987, appendix 27 of the complaint; Testimony given before the Santiago del Estero Federal Court (March/May 1988) by order of the Supreme Court in Case File C-1099, appendix 28 of the complaint; Testimony given by Carim Nassif Neme before the Supreme Court on September 21, 1987, in Case C-1099, appendix 28 a) of the complaint; Written communication dated October 21, 1987, sent to the Santiago del Estero Provincial Police and its reply in Supreme Court Case C-1099, appendix 28 b) of the complaint; and December 7, 1988: copies of the records made by the Criminal and Correctional Examining Judge, 3rd Rotation, Province of Santiago del Estero, Dr. Roberto Osvaldo Encalada and by the Court's Secretary, Gloria Cárdenas, documenting the search for a Case File titled: "Complaint brought by Dr. Carim Nassif Neme v/ Luis María Juan José Peña for the alleged crime of abuse of authority and violation of the duties of public office" and also documenting the fact that the case file in question could not be located, appendix 30 of the complaint; and 1986/1989, Prosecutor Dr. David Beltrán files a complaint against J. M. Cantos for falsification of a public document, before the Santiago del Estero Criminal and Correctional Examining Court, 2nd Rotation. On

July 10, 1989, Mr. Cantos was acquitted in case No. 1757, Judge M. A. Zurita de González. -1982 Agreement-, appendix 31 of the complaint.
[FN42] Supreme Court Case File C-1099, Volume IV, fs. 708, 740 et seq., 753, 756, 788, 1303, Volume VIII, fs. 1445, 1446, 1447, 1448, 1449, 1450 and 1452 Volume VIII, f. 1460, Volume XI, f. 2089 et seq., 2030, 2092, 2095, 2097 et seq., 2108, 2108 reverse side, 2122.
[FN43] Supreme Court Case File C-1099, Volume XI, f.. 2177.
[FN44] Supreme Court Case File C-1099, Volume VIII, f. 1452.
[FN45] Supreme Court Case File C-1099, Volume VIII, f. 1452.

Concerning the opinion on an alleged negotiated agreement

h. On June 1 and 2, 1989, 15 Senators wrote to the Treasury Solicitor of the Nation requesting that he take charge of the matter and find a solution to Mr. Cantos' request for an out-of-court settlement. [FN46] On September 10, 1990, the Office of the Treasury Solicitor authorized an effort to find a negotiated settlement between Mr. Cantos and the Ministry of the Interior. [FN47] In cases such as this one, the law [FN48] provides that "in such cases, all court proceedings will have to be suspended." [FN49]

i. On June 6, 1991, Mr. Cantos filed a brief with the Supreme Court alluding to the negotiated settlement process. He attached relevant documents and requested that they be kept in a safe. He also requested certified copies of those documents. [FN50] That same day, the Supreme Court sent the documents to the co-respondents for five days. [FN51] On July 4, 1991, the Office of the State's Attorney for the Province answered, alleging the procedural impropriety of the measure claimed by Mr. Cantos inasmuch as it was time-barred and proper procedure was not followed. [FN52] The following day, the Ministry of the Interior denied that any such negotiated settlement existed and stated that no State authority had signed such an agreement. [FN53]

j. On June 15, 1992, the Office of the Treasury Solicitor ordered the Director of the Legal Opinions Office and the Secretary of the National Settlements Commission of the Solicitor's Office to "report on the existence of the opinion that the agency issued mentioning or analyzing the legal suit that Mr. José María Cantos had brought against the Argentine State or the Province of Santiago del Estero." [FN54] The following day, the Deputy Director General of Coordination of the State Attorneys Corps told the National Director of the Office of Legal Opinions that no clearance had been given for a negotiated agreement with Mr. Cantos. [FN55] On July 2, 1992, the National Treasury Solicitor spoke with the former solicitor, who denied the authenticity of the opinions from the National Treasury Solicitor's Office that bore his signature and that were introduced as evidence in the case. [FN56] On July 7, 1992, the Solicitor requested the intervention of the Office of the Solicitor General, to bring this background information to the Supreme Court's attention. [FN57] On September 24, 1992, Mr. Cantos filed an appeal with the Supreme Court asking it to reverse its decision of September 17, 1992, whereby it agreed to admit the statements signed by the former solicitor wherein he states that the documents tendered by Mr. Cantos are fakes. [FN58] The Deputy Solicitor from the Office of the Solicitor General of the Nation filed a complaint against Mr. Cantos with Criminal and Correctional Judge No. 3, Carlos Liporaci. The latter, after taking testimony and expert opinions, decided to acquit Mr. Cantos on October 17, 1994, reasoning that "defendant can hardly be blamed for problems inside the Advisory Commission [of the Treasury Solicitor's Office] and, as the expert analysis

showed, cannot be convicted of an alleged forgery and/or fraud against the opposing party by means of mutilation, substitution, or secretion of court papers, or by similar procedural deceit." [FN59]

[FN46] Letters from lawmakers to the Treasury Solicitor of the Nation, supporting the out-of-court settlement allowed under the law to settle the dispute pending from 1989, appendix 32 of the complaint.
[FN47] Supreme Court Case File C-1099, Volume III, at 487 to 504; and Opinion of the Treasury Solicitor of the Nation, September 12, 1990, appendix 35 of the complaint.
[FN48] Law No. 23,696 and its regulatory decree No. 1105/89 (Article 55, paragraph g).
[FN49] Supreme Court Case File C-1099, Volume III, f. 477 to 486.
[FN50] Supreme Court Case File C-1099, Volume II, f. 382 et seq.
[FN51] Supreme Court Case File C-1099, Volume II, f. 383 reverse side.
[FN52] Supreme Court Case File C-1099, Volume II, f. 392 et seq.
[FN53] Supreme Court Case File C-1099, Volume II, f. 394 et seq.
[FN54] Supreme Court Case File C-1099, Volume III, f. 440.
[FN55] Supreme Court Case File C-1099, Volume III, f. 444.
[FN56] Supreme Court Case File C-1099, Volume III, f. 462.
[FN57] Supreme Court Case File C-1099, Volume III, f. 540.
[FN58] Supreme Court Case File C-1099, Volume III, f. 557 et seq.
[FN59] Supreme Court Case File C-1099, Volume IV, f. 655 et seq.

Concerning the litigation fees and the amount of relief plaintiff was seeking

k. On August 31, 1987, Mr. Cantos showed proof of having paid the minimum filing fee, since the amount he was seeking in his suit was undetermined. He also requested permission to litigate without paying court fees in advance, which the law allows. [FN60] On September 1, 1987, the Supreme Court stated that it had examined the estimate done by Mr. Cantos. That estimate stated

That under sections 2 and 3 –titled COMMITMENT TO PAY and INDEXING PLUS INTEREST- of the aforesaid agreement, which is the basis of the present ordinary legal action, the amount of relief being sought and the sum claimed by the undersigned in the introduction to this complaint, was arrived at by updating the 130,245,739.30 (the peso amount, under Law 18,188, of the administrative claim filed on May 23, 1974) from its value as of May 23, 1974 to its value as of December 31, 1984, based on the exchange rate of the United States dollar, plus a ONE percent daily interest rate. From December 31, 1984 and thereafter, a punitive interest rate of TWO percent is owed until payment is made.

l. On September 3, 1987, the Supreme Court ordered Mr. Cantos to pay the filing fees within the next five days, as the amount of relief sought in the complaint had been calculated and certified by the Treasury representative. [FN61] On February 12, 1991, the State requested suspension of the case in the Supreme Court so long as Mr. Cantos did not pay the filing fees. [FN62] The Court agreed to suspend the case on February 18, 1991. [FN63] On May 21, 1991, after an appeal and the corresponding transmissions, Mr. Cantos showed that he had paid the minimum filing fee, inasmuch as the amount of relief being sought would be unspecified. [FN64]

m. On June 6, 1991, the National Treasury asked that Mr. Cantos revise the amount of relief being sought to bring it current. [FN65] On July 30, 1991, the Supreme Court ordered the National Treasury to determine the rate for the proceeding. [FN66] Mr. Cantos objected to the measure twice [FN67] and then finally, on December 17, 1991, the Supreme Court denied the petition filed. [FN68] On February 28, 1992, the State's Attorney asked the Supreme Court to order Mr. Cantos to specify the amount he was seeking in order to be able to continue the case. [FN69] On April 6, 1992, the Supreme Court again ordered Mr. Cantos to specify the amount of relief he was claiming. [FN70] On April 13, 1992, Mr. Cantos objected and appealed the decision that ordered him to set a specific amount of relief. [FN71] His appeals were denied on July 7, 1992. [FN72] On August 3, 1992, Mr. Cantos left "it up to the judgment of the Court to determine the amount of relief being claimed." [FN73] (supra 43 h, i, j)

n. On March 23, 1993, the Court asked Mr. Cantos to pay a filing fee of 83,400,059 pesos, and warned that the fine for failure to pay the fee within the next five days would be 50 percent of the fee amount and suspension of the proceeding [FN74] (supra 43, k, l, m). On April 25, 1994, the Court resumed the court proceedings, [FN75] after a one-year suspension caused by the fact that the Supreme Court's case file was on loan to the criminal court. On October 13, 1994, the Supreme Court ordered Mr. Cantos to pay the filing fees and fined him. [FN76]

[FN60] Supreme Court Case File C-1099, Volume II, f. 266.
[FN61] Supreme Court Case File C-1099, Volume II, fs. 266 and 267.
[FN62] Supreme Court Case File C-1099, Volume II, f. 353.
[FN63] Supreme Court Case File C-1099, Volume II, f. 353 reverse side.
[FN64] Supreme Court Case File C-1099, Volume II, f. 380.
[FN65] Supreme Court Case File C-1099, Volume II, f. 381.
[FN66] Supreme Court Case File C-1099, Volume II, f. 401.
[FN67] Supreme Court Case File C-1099, Volume III, fs. 409 and 411.
[FN68] Supreme Court Case File C-1099, Volume III, f. 415.
[FN69] Supreme Court Case File C-1099, Volume III, f. 428.
[FN70] Supreme Court Case File C-1099, Volume III, f. 429.
[FN71] Supreme Court Case File C-1099, Volume III, f. 430 et seq.
[FN72] Supreme Court Case File C-1099, Volume III, f. 432.
[FN73] Supreme Court Case File C-1099, Volume III, f. 436.
[FN74] Supreme Court Case File C-1099, Volume IV, f. 604; and regulation of the filing fees in Case File C-1099, dated March 23, 1993, Appendix 36 of the application.
[FN75] Supreme Court Case File C-1099, Volume IV, f. 635.
[FN76] Supreme Court Case File C-1099, Volume IV, f. 646.

Concerning the conciliation hearing and the judgment

o. On December 13, 1994, Mr. Cantos requested a ruling or, failing that, a conciliation hearing. [FN77] The following day, the Supreme Court denied the request for a ruling on the grounds that no judgment was possible given the stage of the proceedings. It decided to consider the possibility of holding the public hearing. [FN78] On December 21, 1994, Mr. Cantos waived

the evidence he had not yet introduced and asked that a judgment be delivered in the case. [FN79]

p. On May 12 and 19, 1995, the State's Attorney for the Province and the Federal State, respectively, presented arguments on the merits of the body of evidence compiled [FN80] and asked that the Supreme Court dismiss the complaint in all its parts. On June 2, 1995, Mr. Cantos requested a conciliation hearing. [FN81] On August 17, 1995, after two postponements, [FN82] the Supreme Court closed the evidentiary phase prior to issuing its decision. [FN83] On September 3, 1996, the Supreme Court handed down its final ruling wherein it found that the respondent province could not be sued for the agreement signed in 1982 and invoked the statute of limitations given the extra-contractual nature of the obligation alleged. [FN84]

[FN77] Testimony of José María Cantos before the Inter-American Court of Human Rights, June 17, 2002; and Supreme Court Case File C-1099, Volume IV, f. 667.

[FN78] Supreme Court Case File C-1099, Volume IV, f. 668.

[FN79] Supreme Court Case File C-1099, Volume VIII, f. 1468.

[FN80] Supreme Court Case File C-1099, Volume XII, fs. 2236 to 2243 reverse side, 2253 to 2268.

[FN81] Supreme Court Case File C-1099, Volume XII, f. 2272.

[FN82] The first hearing had been set for June 15, 1995. That same day, however, the parties requested that a new date be set for the hearing. The hearing was rescheduled for July 20, 1995. Supreme Court Case File C-1099, Volume XII, f. 2280. With regard to that hearing, the court-appointed experts Osvaldo Cristóbal Marum and Juan Bautista Viegas were opposed to any settlement until any outstanding honoraria were paid, at 2274 Volume XII. Later, on July 13, 1995, José Maria Cantos petitioned the court to reschedule the hearing set for July 20, 1995, and based his request on the fact that the Province of Santiago del Estero had appointed a new State's Attorney who had not yet taken over his post and therefore had not had enough time to familiarize himself with the case, Supreme Court Case File C-1099, Volume XII, f. 2281.

[FN83] Supreme Court Case File C-1099, Volume XII, f. 2287.

[FN84] Supreme Court Case File C-1099, Volume XII, fs. 2288 to 2297; and (Argentine) Supreme Court Ruling of September 3, 1996 in the case "Cantos, José María v/ Santiago del Estero, Province of and/Argentine State for payment of amounts owed," Case C-1099, appendix 69 of the complaint.

Concerning attorneys' and experts' fees

q. Under Argentine law, attorneys' fees are a pre-set percentage of the amount of relief being claimed. [FN85] In this specific case, the attorneys' fees came to a total of 6,454,185.00 pesos (six million four hundred fifty-four thousand one hundred eighty-five pesos, the equivalent of as many United States dollars).

r. On October 4, 1994, the Supreme Court issued its decision wherein it set the fees of the attorneys for the parties (Francisco Alberto Cavallotti, Walter Omar Peralta Rondano, Santiago Bargalló Beade, Jorge Alberto Jáuregui, Raul Diego Huidobro, Horacio Ángel Lamas and Claudia Graciela Reston) and of the only two court-appointed experts (Osvaldo C. Marum and Juan Bautista Viegas) for their work on the main case and on a number of motions, including

those that concerned evidence and authorization to litigate without paying fees in advance of litigation. [FN86] On October 13, 1994, Mr. Cantos requested clarification of the court order concerning honoraria [FN87] and on December 7, 1994, asked that incidental proceedings be instituted for the question of the filing fee and the attorneys' and experts' fees, to avoid further delay in the continuation of the case. [FN88]

s. On December 12, 1994, the Court refused to institute incidental proceedings for the question of attorneys' and experts' fees and advised that proceedings on the matter of the filing fee had been instituted on October 13. [FN89] Finally, on December 17, 1996, the Supreme Court decided the matter of attorneys' and experts' fees on the basis of law 21,839, which establishes the percentages that must go toward these fees on the basis of the amounts involved in the case. The Court set the fees of the intervening attorneys (Horacio Ángel Lamas, Claudia Graciela Reston, Estanislao González Bergez, Edgardo Daniel Migro, Norma Mabel Vicente Soutullo, César David Graziani, Carlos Raúl Ambrosio, Guillermo Adolfo Heisinger, María Eugenia Galindez, José Osvaldo D'Alessio, Mario Jaime Kestelboim, Manuel Luis de Palacios, Julio C. Gónzalez, María Josefina Zavala, Washington Inca Cardoso and Alejandro Cáceres Llamosas) and of the State's technical consultant (Néstor Ramón Zubielqui). [FN90]In that same decision, the Court also determined that the figure of 6,948,835.00 (six million nine hundred forty-eight thousand eight hundred thirty-five Argentine pesos, equivalent to the same amount in United States dollars), which an October 4, 1994 ruling had provisionally set as the fees owed to the intervening attorneys and the two court-appointed experts (supra 43.r), would be the definitive figure. On September 8, 1997, the corresponding Federal Court acquitted Mr. Cantos of the charges against him. [FN91]On April 14, 1997, nine of the professionals for whom fees had been ordered [FN92] requested combined advanced attachment of any amount that Mr. José María Cantos might be entitled to receive "from the complaint he filed with the OAS' Inter-American Commission on Human Rights and/or anything else that might be his." The Supreme Court acceded to the request and so ordered that very same day. On November 27, 1997, the Court ordered attachment on behalf of Dr. Raul Diego Huidobro as well.

[FN85] Article 7 of Law No. 21,893.

[FN86] Testimony of María Dolores Spaini de Retondo before the Inter-American Court of Human Rights, June 17, 2002; Supreme Court Case File C-1099 Volume IV, f. 642 et seq.; Law No. 21,839 of July 20, 1978; October 4, 1994 Supreme Court decision provisionally setting the fees for the attorneys and experts who participated in Case C-1099; and Supreme Court decision of August 29, 1995, agreeing to precautionary measures to encumber Radiodifusora de Santiago del Estero S.A., appendix 38 of the complaint.

[FN87] Testimony of María Dolores Spaini de Retondo before the Inter-American Court of Human Rights, June 17, 2002; Supreme Court Case File C-1099, Volume IV, f. 645.

[FN88] Supreme Court Case File C-1099, Volume IV, f. 665.

[FN89] Supreme Court Case File C-1099, Volume IV, f. 666 reverse side.

[FN90] Supreme Court Case File C-1099, Volume XII, fs. 2328 to 2336.

[FN91] Criminal complaint dated December 29, 1972, brought by the attorney for Mr. And Mrs. Cantos --Dr. C. N. Neme—alleging usury and improper withholding of a private document, Criminal and Correctional Court, First Rotation. Court ruling ordering that the Governor be stripped of his authorities and that the proceedings be sent up to the Federal Judge, Appendix 10 of the reply.

[FN92] Osvaldo Cristóbal Marum, Juan Bautista Viegas, César David Graziani, Santiago Bargalló Beade, Norma Mabel Vicente Soutullo, Claudia Graciela Reston, Jorge Alberto Jáuregui, Estanislao González Bergez and Edgardo Daniel Migro.

Consequences of the proceeding before the Supreme Court

t. Because of his failure to pay the judicial fee and the attorneys' and experts' fees, a "general restraining order" was issued against Mr. Cantos, preventing him from engaging in his business activities. [FN93]

u. Mr. Cantos and his attorneys incurred expenses and costs in pursuing the various domestic and international proceedings. [FN94]

[FN93] Decision, dated October 9, 1996, of the National Court of First Instance for Administrative Litigation, No. 2-SEC. No. 4. "National Treasury v. José María Cantos for nonpayment of court filing fees and fine," Case File No. 24,136, appendix 75 of the complaint.

[FN94] Declaration given by Mr. José María Cantos before the Inter-American Court of Human Rights, June 17, 2002.

VII. VIOLATIONS OF ARTICLES 8 AND 25 (RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION) IN RELATION TO THE ARTICLE 1(1) OBLIGATION

THE PROCEEDINGS BEFORE THE SUPREME COURT

The Commission's arguments

44. With regard to the violations of Articles 8, 25 and 1(1) of the Convention, the Commission argued that on July 4, 1986, Mr. Cantos filed a complaint with the Supreme Court for "payment of amounts owed." The respondents were the Province of Santiago del Estero and the Argentine State. Mr. Cantos' suit was seeking acknowledgment of amounts owed to him under an agreement signed in 1982. This legal action ended with a judgment that "rejected the complaint and ordered payment of costs on September 3, 1996." The Commission argues the following with regard to the proceedings conducted in the suit seeking collection of amounts owed:

a. From the standpoint of a "global analysis of the procedure" in the administrative and court proceedings, taken together the latter constituted a violation of the reasonable time principle (Article 8 of the American Convention). The judicial proceedings started with a suit brought by Mr. José María Cantos in 1986 and ended in September 1996 with a Supreme Court ruling dismissing the suit. By the standards set in the case law of the Inter-American Court, this constitutes an unwarranted delay in rendering a final judgment for the following reasons:

- The complexity of the case. Given the complexity of the case and because of the number of experts called, almost ten years was spent compiling the body of evidence.However, in its ruling the Supreme Court confined itself to stating that the "suit is time-barred and, therefore,

denied." It did not examine the large body of evidence. The respondents entered objections two months after the suit was brought (September 1986) having to do with the admissibility of the suit, namely: lack of active and passive legitimation and time-barring. But "in an attempt at procedural economy," the Supreme Court failed to comply with its duty to "immediately serve notice that the prerequisite has not been met";

- Procedural activity of the plaintiff. "The fact that a postponement occurred during the proceedings so that the Treasury Solicitor might attempt an out-of-court settlement did not relieve the Argentine court of its obligation to ensure compliance with the Convention's requirements in the matter of the principle of reasonable time. The rejoinder added that Mr. Cantos worked strenuously and relentlessly on his legal suit and that in the period 1990-1994 was facing criminal charges because of the "State's refusal to recognize the opinion of the Nation's Treasury Solicitor."
- Conduct of the competent authorities. The ten years that elapsed between the time the suit was filed and the decision delivered by the Supreme Court is not a reasonable time. The Commission also pointed out that for one year the case file was outside the Supreme Court and that the latter delayed another year in delivering its decision on the last petition for permission to litigate without paying filing fees. In the meantime, it issued the decision closing the evidentiary phase and delivered its decision one year later.

b. Although Mr. Cantos petitioned the Supreme Court to be permitted to litigate without paying filing fees in advance, which is his right under Article 8 of the Convention, court authorities denied his petition five times and instead ordered him to pay filing fees and the fees of the attorneys and experts who participated in the proceeding for a total of US$145.528.568.50 (one hundred forty-five million five hundred twenty-eight thousand, dollars and fifty cents). With that, "Mr. Cantos was left shouldering an unfair and disproportionate burden attributable to the State because of the expenses it incurred by its needless prosecution of the proceedings" and "the costs incurred in compiling an extensive body of evidence that the Supreme Court […] never even cited when delivering its ruling," which was a violation of the right to a recourse to a court of law, protected under Article 25 of the American Convention.

c. The ruling delivered by the Supreme Court violated substantive principles of due process recognized in Articles 8 and 25 of the American Convention, all in relation to Article 1(1) thereof, because it denied the legal efficacy of the agreement that the de facto Governor had signed with Mr. Cantos; its invocation of the statute of limitations was unreasonable because it failed to establish the existence of "the elements of that procedural legal instrument and […] to determine the point in time at which the clock started to run" for purposes of time-barring; in general, the ruling was the arbitrary culmination of "a series of events that began in 1972 and that, taken together, depict a legal quagmire in which justice was denied." The Supreme Court ruling failed to take into account relevant and decisive evidence and arguments, thereby putting the objective truth out of reach. It failed to examine abuses committed by public officials in the various criminal cases brought against the victim and of which he was ultimately acquitted. The Supreme Court's September 3, 1996 ruling was arbitrary because it failed to examine carefully all the elements related to the 1982 agreement negotiated between the Governor of the Province of Santiago del Estero and Mr. Cantos, whose signatures signify consent to be bound by the agreement. The latter was never annulled, under either criminal or civil law, on the grounds that the signatures were forged and Mr. Cantos was never convicted of forging the agreement. Mr. Jensen Viano signed the agreement as Governor of the Province and not simply as a private citizen signing a private contract.The debate over whether this public official was acting as an

authority for the province or as federally-appointed de facto governor [interventor] is irrelevant, as is the issue of whether the Province of Santiago del Estero was bound by the agreement. The Convention violations being alleged before this Court can, in international jurisdiction, only be attributable to the federal State, even if they had been committed by a provincial government. Irrespective of the legal validity or efficacy of the agreement in the domestic courts, its purpose is to acknowledge the State's responsibility for the damages caused to Mr. Cantos.

45. In its submissions, the Inter-American Commission requested that the Court find that there had been a violation of Article XVIII (right to a fair trial) and Article XXIV (right of petition) of the American Declaration of the Rights and Duties of Man, and Articles 8, 25, 21 and 1(1) of the American Convention.

The State's arguments

46. The State denies that Articles 8, 25 and 1(1) were violated in the Supreme Court case, and supports its contention with the following arguments:

a. The actions that Mr. Cantos undertook to claim sums of money were in the form of an ordinary civil action proceeding; in such actions, it is the plaintiff that prosecutes the suit or engages in the activity that will move the case forward. From December 11, 1989 until February 28, 1995, Mr. Cantos "did nothing to move the case forward." Hence, there has been no violation of the reasonable time principle contemplated in Article 8(1) of the American Convention. In fact, "given the dimensions and complexity of case C-1099, the time taken to hear the suit in the domestic courts was anything but unreasonable; the case took approximately five years. The other five years can be blamed entirely on the plaintiff's failure to take action to move his case forward";

b. The Commission acknowledged the complexity of this case. However, the Commission's contention was that the complexity of the case was due to the fact that the Supreme Court had to delve into an examination of the evidence compiled in order to determine whether the agreement claimed by Mr. Cantos was a valid one and thus determine which statute of limitations (two-year or ten-year) applied in this case. As for the plaintiff's procedural activity, the State argued that "[…] Mr. Cantos […] did not move the proceedings forward as was his duty in a case governed by dispositive principle and […] that the only procedural activity in which he engaged can best be described as delaying tactics." It added that from December 11, 1989 to February 28, 1995, the plaintiff "did nothing to move the case forward." The State argued that the Supreme Court acted "diligently and efficiently on every one of Mr. Cantos' petitions, no matter how out of order and dilatory they may have been." The plaintiff never filed a complaint challenging the rulings on his petitions, nor did he demand that they be quickly dispatched.

c. As for the injustice of the withholding of the documents, the State contends that the application ignores "the Commission's own doctrine in that it clearly does not have competence to hear claims alleging that a judicial decision is unjust." The label "unjust" is brandished because the Supreme Court's ruling did not recognize the validity of an agreement concluded on July 15, 1982 and subsequently authenticated by the Minister of Government, but not because domestic law was used to circumvent international obligations. The State reasoned that "both the agreement and the authentication are absolutely null and void because the object of the agreement is prohibited and […] because they do not have the essentials of an administrative

act." This, the State contends, is the reason why it "denies the extrinsic and intrinsic authenticity, legal validity, legal efficacy and effectiveness of this agreement."The September 3, 1996 Supreme Court ruling is just, because it "decided the litis on the basis of the claims made by the parties, working from the principle of conformity, weighing the evidence to arrive at a decision." It cannot be said that the Supreme Court took ten years to decide on the extinction of the obligation due to the running of the statute of limitations, since the basis of the judgment delivered goes to the question of the validity of the agreement that it was being asked to enforce." The legal validity of the agreement had to be examined, because Mr. Cantos' suit was premised upon "the existence and validity of an agreement that the respondents contested;" were this a valid contract, the statute of limitations would be longer than it would be on a non-contractual responsibility. Once the agreement was declared invalid, the statute of limitations became two years. Therefore, the statute of limitations had already run by the rime the case was presented to the Supreme Court. The State, therefore, denies the attribution of international responsibility for violation of Article 8 of the American Convention;

d. Argentine law provides that "the filing fee shall be the costs of trial and shall ultimately be paid by the parties, at rates that the law shall dictate", so that the "filing fee shall be figured as a percentage of the amount of relief being claimed." It is the plaintiff that makes the calculation. This is an objective figure and does not constitute a restriction on access to the courts; it is a tax for someone who "loses the trial." Despite having turned down the plaintiff's request to be allowed to litigate without paying filing fees, "Mr. Cantos persisted in petitioning the court until by the time the final judgment was delivered, he had paid nothing in the way of filing fees." The State contends that "Mr. Cantos "was never denied access to the courts, and the denial of the benefit of litigating without paying filing fees did not affect delivery of the final judgment in case C-1099." The State therefore requested that the allegation of a violation of Articles 8 and 25 of the American Convention be rejected; and

e. The law provides that professional fees are to be percentages of the amount of relief being claimed. Therefore, the total amount is because of the large amount of relief that plaintiff was claiming and is a product of the number of motions that the plaintiff himself lost with court costs." Although Mr. Cantos lost and was ordered to pay costs, the State had to pay 50 percent of the costs incurred for the court-appointed experts, because "they are entitled to claim up to 50 percent from the party who has not lost the case and not been ordered to pay costs [...], and can claim the other 50 percent from the party who lost the case."

47. In its submissions, the Argentine State argued that the Court does not have competence, ratione materiae, to interpret or apply the American Declaration of the Rights and Duties of Man in a contentious case, and asked the Court to deny the Inter-American Commission's petition that the State be held responsible for violation of the right to a fair trial (Article XVIII) and the right of petition (Article XXIV) protected under the American Declaration.

The Court's observations

48. Before turning to the issue of the applicability of Articles 8 and 25 of the Convention, this Court must point out that at the time the judgment on preliminary objections was delivered, no reference was made to any alleged violations of articles of the American Declaration, as the alleged violations involved events that predated Argentina's acceptance of the Court's

contentious jurisdiction (supra 25). Therefore, in this chapter the Court will only consider and apply the American Convention.

A) PROCEDURAL ISSUES

49. The Inter-American Court has held that within the general obligations of States is a positive duty to guarantee the rights of all individuals within their jurisdiction. This includes the duty:

to take all necessary measures to remove any impediments which might exist that would prevent individuals from enjoying the rights the Convention guarantees. Any state which tolerates circumstances or conditions that prevent individuals from having recourse to the legal remedies designed to protect their rights is consequently in violation of Article 1(1) of the Convention […] [FN95].

[FN95] Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 151; Exceptions to the exhaustion of domestic remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, par. 34.

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50. Under Article 8(1) of the Convention:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

This provision of the Convention upholds the right of access to the courts. It follows from this provision that States shall not obstruct persons who turn to judges or the courts to have their rights determined or protected. Any domestic law or measure that imposes costs or in any other way obstructs individuals' access to the courts and that is not warranted by what is reasonably needed for the administration of justice must be regarded as contrary to Article 8(1) of the Convention.

51. Article 25 of the Convention states the following:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

52. Article 25 of the Convention also upholds the right of access to the courts. When examining Article 25 of the Convention, the Court has written that it establishes the obligation of the States to offer, to all persons under their jurisdiction, effective legal remedy against acts that violate their fundamental rights. It also establishes that the right protected therein applies not

only to rights included in the Convention, but also to those recognized by the Constitution or the law. [FN96] Moreover, time and time again the Court has held that the guarantee of an effective remedy "constitutes one of the basic pillars, not only of the American Convention, but also of the Rule of Law in a democratic society as per the Convention" [FN97] and that for the State to be in compliance with the provisions of Article 25 of the Convention, it is not enough that the recourses exist formally, but that they must be effective; [FN98] in other words, the persons must be offered the real possibility of filing a simple and prompt recourse. [FN99] Any law or measure that obstructs or prevents persons from availing themselves of the recourse in question is a violation of the right of access to the courts, in the manner upheld in Article 25 of the American Convention.

[FN96] Cf. Mayagna (Sumo) Awas Tingni Community Case. Judgment of August 31, 2001. Series C No. 79, par. 111; Constitutional Court Case, supra note 8, par. 89; and Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, par. 23.

[FN97] Cantoral Benavides Case. Judgment of August 18, 2000. Series C No. 69, par. 163. Cf. Hilaire, Constantine and Benjamin Case, supra note 5, par. 163; Durand and Ugarte Case. Judgment of August 16, 2000. Series C No. 68, par. 101; and The "Street Children" Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, par. 234.

[FN98] Cf., Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 186; Mayagna (Sumo) Awas Tingni Community Case, supra note 96, paragraphs 111-113; and Constitutional Court Case, supra note 8, par. 90.

[FN99] Cf. Mayagna (Sumo) Awas Tingni Community Case, supra note 96, par. 112; Ivcher Bronstein Case. Judgment of February 6, 2001. Series C No. 74, par. 134; and Constitutional Court Case. Judgment of January 31, 2001. Series C No. 71, par. 90. See also, European Court of Human Rights, Keenan v. the United Kingdom, Judgment of 3 April 2001, paragraphs 122 and 131.

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53. The claim that Mr. Cantos filed with Argentina's Supreme Court totaled 2,780,015,303.44 pesos (two billion, seven hundred eighty million, fifteen thousand and three hundred three pesos and forty-four cents), the equivalent of the same amount in United States dollars. Under Argentine law, the fee at time of filing was three percent (3%) of the total amount of relief being claimed. The filing fee is the sum of money that every person filing suit in court must pay to have access to the courts. Under Argentine law, the filing fee is a flat percentage, and there is no maximum filing fee. In the case sub judice, that three percent (3%) represents 83,400,459.10 pesos (eighty-three million, four hundred thousand, four hundred fifty-nine pesos and ten cents), or the equivalent of the same amount in United States dollars. This sum of money has not been paid thus far. But Mr. Cantos owes still more; he also owes the fine levied against him for failure to pay the filing fee. Because the filing fee was not paid within five days, that fine is fifty percent (50%) of the filing fee, or 41,700,229.50 (forty-one million seven hundred thousand two hundred twenty-nine dollars and fifty cents), the equivalent of the same figure in United States dollars. (supra 43.n).

54. The question this Court must decide in the case sub judice is whether the application of the law and the resulting determination of a filing fee of 83,400,459.10 (eighty-three million, four hundred thousand four hundred fifty-nine pesos and ten centavos, equivalent to the same amount in United States dollars) are in keeping with Articles 8 and 25 of the American Convention, concerning the right of access to the courts and the right to a simple and prompt recourse. The State's arguments on this point are that the amount fixed is the amount prescribed by law, a law whose purpose is to discourage reckless lawsuits; that the amount is proportional to the amount of relief sought in the claim, that it is not a confiscatory percentage, and that Mr. Cantos never challenged the fee in the domestic courts. [FN100]But it must be said that the amount set in the form of filing fees and the corresponding fine are, in the view of this Court, an obstruction to access to the courts. They are unreasonable, even though in mathematical terms they do represent three percent of the amount of relief being claimed. This Court considers that while the right of access to a court is not an absolute and therefore may be subject to certain discretional limitations set by the State, the fact remains that the means used must be proportional to the aim sought. The right of access to a court of law cannot be denied because of filing fees. [FN101] Consequently, with the amount charged in the case sub judice, there is no relationship of proportionality between the means employed and the aim being sought by Argentine law. Said amount patently obstructs Mr. Cantos' access to the court and thereby violates Articles 8 and 25 of the Convention.

[FN100] Cf. El Caracazo Case, Reparations, supra note 5, par. 77; Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 203 and Trujillo Oroza Case, Reparations, supra note 6, par. 61. See also Greco-Bulgarian "Communities", Advisory Opinion, 1930, P.C.I.J., Series B, No. 17, pp. 32; Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 44, p. 24; Free Zones of Upper Savoy and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46, p. 167; I.C.J. Applicability of the Obligation to Arbitrate under the United Nations Headquarters Agreement. (Case of the PLO Mission) (1988) 12, at 31-2, par. 47.

[FN101] In this regard, see also European Court of Human Rights, Osman v. the United Kingdom, Judgment of 28 October 1998, Reports 1998-VIII, paragraphs 147, 148, 152.

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55. The fact that a proceeding concludes with a definitive court ruling is not sufficient to satisfy the right of access to the courts. Those participating in the proceeding must be able to do so without fear of being forced to pay disproportionate or excessive sums because they turned to the courts. The problem of excessive or disproportionate filing fees is compounded when, in order to force payment, the authorities attach the debtor's property or deny him the opportunity to do business.

56. The Supreme Court has also enforced a domestic law that uses the amount of relief being claimed in a suit as the basis for determining the fees of the intervening attorneys (Mr. Cantos' attorneys, the attorneys for the State and those for the Province of Santiago del Estero), the fees of the State's technical consultant and of the experts (supra 43 q.r.s). Based on the same reasoning given in the preceding paragraphs, the Court considers that calculating regulated professional fees based on the amount of the litis, as done in this particular case, places a

disproportionate burden on the plaintiff. Ultimately, such fees become an obstruction to effective administration of justice. The Court must point out that the fees of which this paragraph speaks are regulated by law, not negotiated between the party and the corresponding attorneys.

57. The other issue debated in this case concerning the Argentine Supreme Court's proceedings is whether the latter conformed to Articles 8 and 25 of the American Convention in the sense of guaranteeing the right to a response from the court authority within a reasonable period of time. This Court observes in this regard that in principle, the ten years that elapsed between the time Mr. Cantos filed his complaint with the Supreme Court and the time the latter delivered its ruling that ended the case in the domestic courts, would mean that the State violated the reasonable time principle. However, upon careful examination of the history of the case, one finds that both the State and the plaintiff engaged in behaviors that, either by action or omission, served to prolong the proceedings in the domestic courts. If the plaintiff's own conduct somehow helped to prolong the proceedings, then it is hard to make the case that it is the State that has violated the "reasonable time" clause. [FN102] In all events, considering, inter alia, the complexity of the case and the plaintiff's failure to take action to move the case forward, the overall duration of the litigious proceedings would not be significant enough for a finding that the articles that protect access to the courts and judicial guarantees have been violated. This Court therefore finds that it does not have the elements it would need to find that the Argentine State has violated, in the instant case, Articles 8 and 25 of the American Convention as regards a person's rights to obtain a response, within a reasonable time, to claims and petitions presented to the judicial authorities.

[FN102] Cour Eur. D.H., Affaire Guichon c. France, Arrêt du 21 mars 2000, par. 24, and European Court of Human Rights, Stoidis v. Greece, Judgment of 17 May 2001, par. 19; and European Court of Human Rights, Case of Glaser v. the United Kingdom, Judgment of 19 September 2000, paragraphs 96 and 97.

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58. The Court considers that even though the Inter-American Commission did not expressly allege in Mr. Cantos' case a failure to apply Article 2 of the American Convention with regard to the enforcement of laws No. 23,898 on filing fees, and No. 24,432 and No. 21,839, on professional fees, the Court is not precluded from examining this matter by virtue of a general principle of law, iura novit curia, "on which international jurisprudence has repeatedly relied and under which a court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them." [FN103]

[FN103] Godínez Cruz Case, Judgment of January 20, 1989. Series C No. 5, par. 172. Cf. Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 107; Durand and Ugarte Case, supra note 97, par. 76, and Castillo Petruzzi et al.Case. Judgment of May 30, 1999. Series C No. 52, par. 166.

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59. In international law, customary law establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure the proper compliance with the obligations it has assumed. [FN104]In earlier judgments the Court has held that this provision imposes upon the States parties the general obligation to bring their domestic laws into compliance with the norms of the Convention in order to guarantee the rights set out therein. The provisions of domestic law that are adopted must be effective (principle of effet utile). That is to say, the State has the obligation to adopt and to integrate into its domestic legal system such measures as are necessary to allow the provisions of the Convention to be effectively complied with and put into actual practice. [FN105]

[FN104] Cf. "The Last Temptation of Christ" Case (Olmedo Bustos et al.). Judgment of February 5, 2001. Series C No. 73, par. 87. Ekmedjian, Miguel Angel c/Sofovich, Gerardo y otros, Supreme Court of Argentina, Case No. E.64.XXIII, Judgment of 7 July 1992.
[FN105] Cf. Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 112; and "The Last Temptation of Christ" Case, (Olmedo Bustos et al.), supra note 104, par. 87.

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60. The Court observes that in the case sub judice, application of the filing fee and the professional fees strictly according to the letter of the law meant that exorbitant amounts were charged, with the effect of obstructing Mr. Cantos' access to the court, as indicated elsewhere in this Judgment (supra 54, 55 and 56). The judicial authorities should have taken appropriate steps to prevent this situation from materializing and to ensure effective access to the court and effective observance and exercise of the right to judicial guarantees and judicial protection.

61. It is important to emphasize that:

[t]he general duty of Article 2 of the American Convention implies the adoption of measures in two ways. On the one hand, derogation of rules and practices of any kind that imply the violation of guarantees in the Convention. On the other hand, the issuance of rules and the development of practices leading to an effective enforcement of said guarantees. [FN106]

[FN106] Cf. Durand and Ugarte Case, supra note 97, par.137.

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62. The foregoing notwithstanding, the Court also observes that: Argentina has domestic laws that require payment of exorbitant amounts in the form of filing fees and fees for attorneys and experts, fees that far exceed the amount that would reasonably be needed to cover the court costs and expenses of the administration of justice and equitable remuneration for qualified professional services. But Argentina also has laws on the books that authorize judges to reduce the figure for filing fees and professional fees to amounts that make them reasonable and fair. The Inter-American Court knows for a fact that Argentina's Supreme Court has invoked the possibility of applying the provisions of international treaties in domestic court cases, which has meant that in a number of proceedings, the judges have applied the provisions of the American Convention directly, modifying, wherever necessary, the scope of the domestic laws. [FN107]

This being the case, this Court finds no reason to conclude that the State has failed to comply with Article 2 of the Convention because. taken as a whole, its legal system does not necessarily obstruct the right of access to the courts.All the same, the State should expunge from its legal system those provisions that could in any way serve as the basis for levying filing fees and figuring professional fees that, being disproportionate and excessive, obstruct full access to the courts. At the same time, it should adopt a series of measures so that the filing fee and professional fees do not become obstacles to effective observance and exercise of the rights to judicial guarantees and to judicial protection, both protected under the American Convention.

[FN107] Ekmedjian, Miguel Angel c/Sofovich, Gerardo y otros, Supreme Court of Argentina, Case No. E.64.XXIII, Judgment of 7 July 1992.

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B) SUBSTANTIVE MATTERS

63. It is difficult to determine whether the judgment the Supreme Court of Argentina delivered on September 7, 1996, constitutes per se a violation of the Convention. This would be true only if the judgment itself were arbitrary. In general, a judgment must be the reasoned derivation of the law, based on the facts of the case. But a judgment may be a reasoned derivation of the law and still be arbitrary. An arbitrary ruling would observe all the formalities of a court ruling, but its flaws would be so serious as to vitiate it as a jurisdictional act.In the instant case, the judgment delivered by the Argentine Supreme Court is based upon the norms governing the validity and nullity of legal acts, mainly on the analysis of the 1982 agreement and on the extinction of an obligation due to the running of the statute of limitations that should apply if that agreement is invalid. In this Court's view, the judgment delivered by the Argentine Supreme Court cannot be regarded as an arbitrary ruling.

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64. Based on the Court's decisions in the Judgment on preliminary objections in the instant case and on paragraphs 57 and 63 of this Judgment, the Court believes that the other claims made by the Inter-American Commission and the representatives of the victim (supra 24) are inadmissible.

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65. For all the above reasons, the Court considers that the State violated Articles 8 and 25, in relation to Article 1(1) of the Convention, to the detriment of Mr. José María Cantos.

VIII. APPLICATION OF ARTICLE 63(1)

66. Based on the facts explained in the preceding chapters, the Court has determined that Articles 8 and 25 of the American Convention were violated, all in relation to Article 1(1)

thereof and to the detriment of José María Cantos. The jurisprudence constante of this Court has been that it is a principle of international law that any violation of an international obligation that has caused some damage carries with it the duty to make adequate reparations. [FN108] The Court has relied on Article 63(1) of the American Convention, which provides that:

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[FN108] Cf. El Caracazo Case, Reparations, supra note 5, par. 76; Trujillo Oroza Case, Reparations, supra note 6, par. 60; and Bámaca Velásquez Case, Reparations, supra note 18, par. 38.

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67. As the Court has written, Article 63(1) contains a rule of customary law that is one of the fundamental principles of contemporary international law as regards State responsibility. Thus, when an unlawful act is imputed to a State, that State immediately incurs responsibility for violation of the international norm in question and the consequent duty to make reparations and put an end to the consequences of that violation. [FN109]

[FN109] Cf. El Caracazo Case, Reparations, supra note 5, par. 76; Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 202; and Trujillo Oroza Case, Reparations, supra note 6, par. 60.

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68. As the term implies, reparations are measures intended to erase the effects of the violations committed. Their nature and their amount depend on the damage caused, at both the pecuniary and non-pecuniary levels. Reparations are not meant to enrich or impoverish the victim or his next of kin. [FN110] Every aspect of the obligation to make reparation (scope, nature, modalities, and determination of beneficiaries) is governed by international law, none of which the respondent State may alter or decline to perform by relying on the provisions of its own domestic laws. [FN111]

[FN110] Cf. El Caracazo Case, Reparations, supra note 5, par. 78; Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 205; and Trujillo Oroza Case, Reparations, supra note 6, par. 63.

[FN111] Cf. El Caracazo Case, Reparations, supra note 5, par. 77; Hilaire, Constantine and Benjamin et al. Case, supra note 5, par. 203; and Trujillo Oroza Case, Reparations, supra note 6, par. 61.

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69. What follows is a brief summation of the arguments made by the Inter-American Commission and by the victims' representatives on the question of reparations:

The Commission's arguments

In its submissions, the Commission made the following petitions regarding reparations, court costs and expenses:

a) In the case of material damages, it reiterated that the Argentine Republic violated the right to due process in the Supreme Court proceedings that ended in the September 3, 1996 judgment by frustrating Mr. Cantos expectation that the Court would order performance of the agreement signed with the then Governor of Santiago del Estero; but it also violated his right to due process by ordering that Mr. Cantos pay court costs totaling approximately US$140.000.000,00 (one hundred forty million United States dollars); it also ordered a general attachment on Mr. Cantos' assets and other encumbrances in exercise of the right of jurisdiction. Therefore, the State should "pay any and all fees ordered for experts [and] attorneys and pay the filing fee." By reason of the foregoing, the Commission petitioned the Court to set the amount corresponding to material damages based on equity considerations.

b) The Commission stated that the nonmaterial damages should factor in the mental anguish that Mr. José María Cantos and his family suffered. It should also consider "the repeated trips that [Mr.] Cantos made to Buenos Aires from Santiago del Estero, struggling with judicial and police harassment [and] with the consequences of having to leave the family home continually," depriving him of his "family life plan." The Commission also stated that "[t]he abuse of administrative as well as judicial complaints, all calculated to obstruct the original plaintiff, to secure fail-safe measures that would hurt him not just in terms of his assets but also in terms of his family, social and cultural life, necessarily translates into violations of the Convention" and, in particular, frustrated the life plan of Mr. Cantos and his family. Therefore, it considers US$100,000.00 (one hundred thousand United States dollars) to be an equitable sum.

c) As for other forms of reparation, the Commission petitioned the Court to redress the consequences of the violations of Articles 8, 21 and 25 by ordering that any attachments or other encumbrances temporarily ordered against the property of Mr. Cantos be lifted, and that all personal information on Mr. Cantos on file with the corresponding public agencies be expunged so that no inaccurate or offending information should attach to the good name and honor of Mr. José María Cantos.

d) As for costs and expenses, the Commission asked the Court to set the appropriate sum as reimbursement for the travel expenses of José María Cantos, Susana J. Albanese, Germán J. Bidart Campos, Emilio Weinschelbaum and the individuals offered as witnesses, including their accommodations, for the period from May 1996 to the year 2002, for the trips they made to attend the hearings with the Inter-American Commission and the Inter-American Court. The figure should be arrived at on the basis of equity considerations, as the airplane and hotel vouchers associated with the trips were not preserved. The Commission petitioned the Court to determine, according to its own criterion and the case law that has been the basis of its decisions, the fees for Mr. Cantos' attorneys, based on considerations of equity. It asked that the Court take into account that Susana J. Albanese, Germán J. Bidart Campos and Emilio Weinschelbaum began working on the case in May 1996, when the original complaint was filed with the

Commission; it also asked the Court to consider the complexity of the case and the fact that the proceedings before the Court followed directly on the Commission's own proceedings.

e) As to the manner of compliance, application of Convention Article 68 notwithstanding, the Commission asked the Court not to order that the case be returned to the domestic courts for determination of compensatory damages. Its petition was based on the fact one of two situations was possible were the matter to be sent back to the domestic courts:

1. Proceedings in the case would begin in a federal lower court, continue in a federal appeals court and ultimately end up in the Supreme Court; or
2. the proceedings could begin to follow the normal course, but then move directly to the Supreme Court by virtue of an appeal per saltum.

In the first scenario, they argue that the life cycle of the case would outlive Mr. Cantos, especially when one considers that, acting as court of first instance, the Supreme Court took ten years to discover that the statute of limitations had run and that the action was, therefore, "time barred"; in the second scenario, it is highly likely that the bench of the Supreme Court will be exactly the same bench that delivered the 1996 ruling, there being no guarantee of that Court's eventual recusal. They argue, further, that there are two systems for the per saltum procedure in law: one praetorian and the other legal for private situations, and that with either one the tendency is for the Supreme Court to pick and choose cases selectively.

Allegations of the victim's representatives

On the issue of reparations, costs and expenses, the victim's representatives made the following points:

a) The material damages were those corresponding to the consequences of the "loss that Mr. Cantos sustained when he did not win pecuniary damages for the alleged violations of the right to due process, the right to judicial protection and, both as a consequence of and by reason of the circumstances of the case, the right to property. They also pointed out that their client "will leave the amount of the material damages entirely to the Court's judgment, based on equity considerations." The representatives alleged that the material damages that Mr. Cantos sustained were a consequence of "the arbitrary judgment [of the Supreme Court of Justice in 1986, which] stripped him of […] his right to bring an action." They argued that the right to bring a civil action is different from the right to a fair trial in that a civil action can be measured by a sum of money and can even be foregone. The representatives also pointed out that the 1982 agreement "set very clear guidelines as to the amounts in question", which was itself a public official's acknowledgment of the losses that Mr. Cantos had sustained.

b) On the subject of nonmaterial damages, they pointed out that Mr. Cantos had been the target of repeated instances of "judicial and police persecution" that fall within the Court's contentious jurisdiction. They also pointed out that in persecution cases of this kind, nonmaterial damages need not be proved because they are a consequence of human nature. They cited the Court's own case law to support their argument. The representatives also pointed out that Mr. Cantos had not received any compensation in Argentina for these damages.They observed that Mr. Cantos has been "deprived of the right to a family life plan." Given all these factors, the

representatives of the alleged victim estimated nonmaterial damages at US$100,000.00 (one hundred thousand United States dollars).

c) Concerning other forms of reparation, they petitioned the Court to order the State to nullify all after-effects of the domestic proceedings. Specifically, they asked that the attachments and general property encumbrances be lifted and, consequently, that all personal information on Mr. Cantos on file with the corresponding public agencies be expunged so that "no inaccurate or offending information" should attach to the good name and honor of Mr. José María Cantos.

d) As for costs and expenses, during the public hearing reference was made to four trips made in connection with the case, for which records were attached to the brief of reparations submitted. They estimated that the expenses incurred with these trips totaled US$17,000.00 (seventeen thousand United States dollars) and petitioned the Court to set their fees based on equity considerations.

e) As for the manner of compliance, the victim's representatives requested that the State be ordered to make any payment exempt from existing or future taxes. They again expressly petitioned the Court not to send the case back to the domestic courts to determine the damages owed, as the case could end up going directly to the Supreme Court through the per saltum system. As for the time period for compliance, the representatives asked the Court to order the State to pay the corresponding sums within no more than six months and to pay delinquency interest in the event of nonpayment.

The State's arguments

In its various interventions during the process, the State made the following points:

a) With regard to material damages, the State's contention was that Mr. José María Cantos was "duly heard in a proceeding that he instituted for that very purposes, and the ruling obtained was based on law." It argued further that in Argentina filing fees are a percentage of the amount of relief the plaintiff is seeking. It argued that the State did not violate Mr. Cantos' right to property when it ordered him to pay costs in his case before the Supreme Court. It also pointed that that as the 1982 agreement was nullified in the Supreme Court's September 3, 1996 ruling, its clauses do not constitute an acknowledgment by public officials of a debt owed; quite the contrary, this allegation is an attempt to "include within the jurisdiction of the Inter-American Court facts for which the Court itself declared it did not have jurisdiction." The State reasoned, therefore, that no material damages were owed. It also alleged that every disruption of the proceedings before the Supreme Court was the fault of Mr. Cantos, as it was he who brought a claim that had no basis in law and in which he was seeking an exorbitant amount. He was the one in charge of moving the case forward. Therefore, any damages that the judicial proceedings he instituted are alleged to have occasioned were not caused and should not be paid by the State. The State argued that based on the allegations on the merits, the Argentine State bears no responsibility; therefore, no reparations should be ordered in the instant case.

b) Concerning the nonmaterial damages, the State held that the Government had rebutted the allegations of police harassment against Mr. José María Cantos and his family. It was the Government's position that "Mr. Cantos' family is not party to this case" and that "these facts cannot be litigated inasmuch as they occurred prior to September 5, 1984."As to the allegations of harassment by the courts, the State contends that the record shows that no such harassment occurred. On the issue of Mr. Cantos' life plan, it reasoned that "there is nothing to suggest that

Mr. Cantos did not have one or that the State was responsible for his absence from the family home." Therefore, as no suffering has been shown, the State argued that it would be improper for the Court to estimate moral damages, "not even the kind of token damages that the representatives of the plaintiff suggest."

c) As to other forms of reparation, the State again brought up the problems with the 1982 agreement and the rectitude of the Supreme Court's decision. It recalled that Mr. Cantos had access to the proceedings, in accordance with the rules of due process, which is not to say that the proceedings had to turn out in his favor.

d) As for costs and expenses, the State's position was that "it would be unwise to enter into any discussion of the amounts that the representatives of the alleged victim list" as costs. No judgment has as yet been delivered finding the Argentine Republic responsible or ordering it to pay costs.It asked the Court to evaluate carefully the specific scope of the costs, and to consider whether those costs had been duly shown and the circumstances of the specific case, on an equitable and reasonable basis.

The Court's observations

70. The Court found that the State violated Articles 8 and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. José María Cantos, by virtue of the fact that he was ordered to pay approximately 140,000,000.00 pesos (one hundred forty million pesos, equal to the same amount in United States dollars) as a filing fee, a fine for nonpayment of the filing fee, attorneys fees, fees for the participating experts, as well as interest, all as a consequence of the suit litigated before the Supreme Court. In application of Article 63(1) of the Convention, the State shall:

a. Refrain from charging Mr. José María Cantos the filing fee and the fine levied for failure to pay the filing fee on time.

b. Set a reasonable amount for the regulated honoraria in Argentine Supreme Court case C-1099, as stipulated in paragraph 74.

c. Pay the fees and costs of all the experts and attorneys representing the State and the Province of Santiago del Estero, under the terms established in the preceding point.

d. Lift the attachments, general encumbrances and other measures that, in order to guarantee payment of the filing fee and the regulated honoraria were ordered against the property and business activities of Mr. José María Cantos.

71. In keeping with the jurisprudence constante of international courts, the Inter-American Court considers that a judgment in the victim's favor at the end of a process that in some measure upholds that victim's claims is itself a type of satisfaction. [FN112] The Court believes that this Judgment is a type of satisfaction. The preceding paragraphs in particular constitute per se moral reparation. Indeed, the entire Judgment represents moral reparation.

[FN112] Cf. Trujillo Oroza Case, Reparations, supra note 6, par. 83; Bámaca Velásquez Case, Reparations, supra note 18, par. 60; Cantoral Benavides Case, Reparations (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001. Series C No. 88, par. 57; Mayagna (Sumo) Awas Tingni Community Case, supra note 96 par. 166; Cesti Hurtado Case,

Reparations, supra note 15, par. 59; The "Street Children" Case (Villagrán Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, par. 88; The Panel Blanca Case (Paniagua Morales et al.). Reparations (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, par. 105; Ivcher Bronstein Case. Judgment of February 6, 2001. Series C No. 74, par. 183; "The Last Temptation of Christ" Case (Olmedo Bustos y otros), supra note 104, par. 99; Baena Ricardo et al. Case, supra note 16, par. 206; Constitutional Court Case, supra note 8, par. 122; Blake Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, par. 55; Suárez Rosero Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, par. 72; Castillo Páez Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, par. 84; Neira Alegría et al. Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, par. 56; and El Amparo Case. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, par. 62.

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72. Concerning the reimbursement of costs and expenses, this Court must evaluate their scope with prudence. This evaluation may be made based on the principle of equity and take into account the expenses indicated by the parties, provided that the quantum is reasonable. [FN113]

[FN113] Cf. El Caracazo Case, Reparations, supra note 5, par. 130; Constitutional Court Case, supra note 8, par. 125, and Suárez Rosero Case, Reparations, supra note 112, paragraphs 92 and 97.

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73. The Court believes that the representatives of the victim must be reimbursed the sum of US$15,000.00 (fifteen thousand United States dollars) or the equivalent in Argentine currency at the time payment is made, as compensation for the expenses they incurred in international jurisdiction. The payment is to be exempt from any current or future tax or charge.

74. To comply with the present Judgment, the State shall adopt the reparations measures indicated in paragraph 70 and pay to the victim's representatives the expenses therein indicated. The State shall fulfill both obligations within six months of the date of notification.

75. Should the State fail to pay the amounts for expenses incurred (supra 73) within the time period provided for in the preceding paragraph, it shall be delinquent and must pay interest on the amount owed at the interest rate that Argentine banks charge for delinquent debts. If for any reason the representatives of the victim do not appear to claim the amount owed to them for expenses caused to them, the State shall place the amounts in question in a bank account or certificate of deposit in their names, with a solvent financial institution and at the most favorable terms. If at the end of 10 years the sum is not claimed, it shall be returned to the State, with any interest earned.

76. In keeping with this Court's jurisprudence constante, the Court reserves the authority to monitor for full compliance with the present Judgment. The process shall be considered concluded once the State has fully complied with the provisions of the present Judgment.

IX. OPERATIVE PARAGRAPHS

77. Now therefore,

THE COURT

unanimously

declares that:

the State violated the right of access to the courts protected under Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mr. José María Cantos, as set forth in paragraphs 54, 55 and 56 of the present Judgment..

And, therefore, unanimously

decides that:

1. The State shall refrain from charging Mr. José María Cantos the filing fee and fine levied for failure to pay the filing fee on time.
2. The State shall set in a reasonable sum the fees regulated in Argentine Supreme Court case C-1099, as stipulated in paragraphs 70(b) and 74.
3. The State shall pay the fees and expenses of all experts and attorneys engaged by the State and the Province of Santiago del Estero, under the conditions set forth in the preceding point.
4. The State shall lift the attachments, general property encumbrances and other measures that were ordered against the properties and business assets of Mr. José María Cantos in order to guarantee payment of the court filing fee and the professional fees.
5. The State shall pay the victim's representatives the sum of US$ 15,000.00 (fifteen thousand United States dollars) for expenses caused in the international proceedings before the inter-American system for the protection of human rights, pursuant to paragraphs 73 and 74 of this Judgment.
6. The other claims of the application are dismissed as unfounded.
7. The State shall submit a report to the Inter-American Court of Human Rights every six months from the date of notification of this Judgment, recounting the measures it has taken to comply with said Judgment.
8. The Court will oversee compliance with this Judgment and will regard the present case closed once the State has fully carried out the terms of this Judgment.

Judge Barberis informed the Court of his Opinion, which will accompany this Judgment.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, the 28th day of November 2002.

Antônio A. Cançado Trindade
President

Alirio Abreu-Burelli
Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
Oliver Jackman
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

OPINION OF JUDGE JULIO A. BARBERIS

1. This judgment finds that the Argentine State violated Articles 8 and 25 of the American Convention on Human Rights, a finding supported by an analysis of the facts and of the law set out therein. However, rather than directly stating that Argentina violated those articles, it uses a peculiar expression to the effect that the State violated the articles in question "in relation to Article 1(1)" of the Convention. The Court uses this expression in the title to Chapter VII of the Judgment, in the conclusion of that same chapter, and in the final decision. In the body of the Judgment, the Court speaks simply of the violation of Articles 8 and 25, without adding the reference to Article 1(1). What does it mean that a State has violated certain articles of the Convention "in relation" to another article of the same text? For an answer, one has to turn to the Court's own case law.

2. Article 1, paragraph 1, of the American Convention on Human Rights reads as follows:

"The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

This provision requires States parties to respect the human rights recognized in the Convention without discrimination of any kind.

This provision can apply to any right protected under the Convention, such as the prohibition against slavery, the right to judicial guarantees, or freedom of association. A domestic law that denies a racial minority recourse to the court of last instance or that allows servitude when the persons involved are certain foreign-born nationals would be a violation of this provision of the Convention. While, as we see it, the obligation established in Article 1, paragraph 1, is that of nondiscrimination, the Court has its own interpretation of Article 1(1).

3. The Court has had occasion to interpret and apply Article 1(1) in its advisory opinions, its judgments and its decisions ordering provisional measures. The first time the Court examined this particular provision was in Advisory Opinion OC-4 of January 19, 1984.There the Court wrote the following:

"Article 1(1) of the Convention, a rule general in scope which applies to all the provisions of the treaty, imposes on the States Parties the obligation to respect and guarantee the free and full exercise of the rights and freedoms recognized therein 'without any discrimination'. In other words, regardless of its origin or the form it may assume, any treatment that can be considered to be discriminatory with regard to the exercise of any of the rights guaranteed under the Convention is per se incompatible with that instrument." [FN1].

By the Court's interpretation, States parties are obligated to respect the rights and guarantees enumerated in the Convention, without making distinctions of any kind. For example, a law that guarantees freedom of expression but that prohibits publication of magazines in a given language would be in violation of Article 1(1) of the American Convention, as this provision upholds the obligation not to discriminate.

[FN1] IACtHR, Series A, N° 4, par. 30.

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4. In its July 29, 1988 Judgment in the Velásquez Rodríguez case, the Court laid out a new interpretation of Article 1(1) that would shape the Court's jurisprudence thereafter. It is interesting to examine the Court's reasoning in this judgment.

The Inter-American Commission on Human Rights had filed an application against Honduras, for the abduction and disappearance of Angel Manfredo Velásquez Rodríguez. In the application, Honduras was accused of having violated articles 7 (the right to personal liberty), 5 (the right to humane treatment), and 4 (the right to life) of the Convention.

After citing the text of Article 1(1) of the Convention, the Court wrote the following:

"This article specifies the obligation assumed by the States Parties in relation to each of the rights protected. Each claim alleging that one of those rights has been infringed necessarily implies that Article 1 (1) of the Convention has also been violated." [FN2].

The Court pointed out that while the Commission had not accused Honduras of having violated Article 1(1) of the American Convention, that did not preclude the Court from applying it by the principle iura novit curia.

Later in the judgment the Court spells out what obligations Article 1(1) of the American Convention imposes upon a State party, and writes that:

"The first obligation assumed by the States Parties under Article 1 (1) is 'to respect the rights and freedoms' recognized by the Convention ... The second obligation of the States Parties is to 'ensure' the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation." [FN3]

Reasoning thus and from the evidence produced, the Court concluded that Honduras had violated, in the case of Angel Manfredo Velásquez Rodríguez, the obligations to respect and to ensure the rights recognized in Articles 7, 5 and 4 of the American Convention, "read in conjunction with Article 1 (1) thereof."[FN4]

[FN2] IACtHR, Series C, N° 4, pp. 66-67, par. 162.
[FN3] IACtHR, Series C, N° 4, pp. 67-69, paragraphs 165 and 166.
[FN4] IACtHR, Series C, N° 4, pp. 79 and 80, par. 194.

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5. In Chapter II (Articles 3 through 25), the American Convention enumerates the civil and political rights that States undertake to respect and ensure. Article 2, for its part, establishes the States parties' obligation to adopt into their legal systems such legislative measures as may be necessary to give effect to those rights and freedoms. Article 1(1) provides that the rights and guarantees recognized in the Convention shall be respected without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

6. Whereas in Advisory Opinion OC-4, the Inter-American Court interpreted Article 1(1) of the Convention as the obligation not to discriminate, since then –primarily since the Velásquez Rodríguez case- it has adopted a different interpretation and held that the provision establishes a generic obligation to comply with each and every one of the Convention's provisions. In its

judgments in the Velásquez Rodríguez and Godínez Cruz cases, the Court wrote that Article 1(1) of the American Convention

"specifies the obligation assumed by the States Parties in relation to each of the rights protected. Each claim alleging that one of those rights has been infringed necessarily implies that Article 1 (1) of the Convention has also been violated" [FN5].

In its January 19, 1995 Judgment in the Neira Alegría case, the Court cited the above-quoted text and added that Article 1(1) is a general provision and its violation is always related to the violation of a provision that establishes a specific human right. [FN6] In other words, by the Court's interpretation, every time a right or guarantee protected under the Convention is violated, so, too, is its Article 1(1).

Article 1(1) is something of a paradox: it is an obligation that, by itself, can be neither violated nor fulfilled. In effect, Article 1(1) can only be violated if another article of the Convention is violated, and is not observed unless the Convention is being fully observed.

[FN5] IACtHR, Series C, N° 4, pp. 66-67; Series C, N° 5, p. 70.
[FN6] IACtHR, Series C, N° 20, p. 34.

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7. The Court's interpretation of Article 1(1) means that the Convention contains a provision making the Convention mandatory; in other words, a clause wherein the Convention declares itself to be binding.

Let us take some examples to better understand the situation. Let us suppose that a country enacts a penal code in which each article describes the "offense," i.e. the prohibited human behavior and the penalty that goes with it. Under Article 20 of this penal code, for example, burglary carries a penalty of one month to two years in prison; under Article 62, arson carries a penalty of one to four years' imprisonment. Let us also suppose, for the sake of argument, that this penal code has an article 1 stating that "every inhabitant of the country shall be bound by this Code." In such a situation, it could happen that when a person steals a chicken, the judge convicts him of violating Articles 1 and 20 of the penal code. Another person is accused of setting fire to his neighbor's house; once the facts are proved, the judge convicts him of violating Articles 1 and 62 of the penal code. As one can clearly tell, the article 1 of our example would only be violated if another article of the code has been violated. By itself, the article prescribes nothing, and does not have the sense of a norm. All that it establishes is that the penal code is binding upon everyone. Such a provision might make sense in the country's constitution, as it is understandable that a constitution would provide that laws are binding. However, what can be said in "constitutional" language cannot be said in "legislative" language because it is not normative in nature.

As a rule, civil codes contain a provision to the effect that validly negotiated contracts are binding upon the contracting parties. The rule is perfectly understandable. But if two people sign a contract to state that the contracts are binding upon them, this provision will seem superfluous

and even meaningless. The rule that has one meaning in “legislative” language does not have the same meaning in “contractual” language. The obligation to perform the contracts cannot be expressed in “contractual” language; but if it is, it does not carry the meaning of a rule.At best, it will be a clause wherein the two parties declare that the contracts are binding upon them.

In general, in domestic legal systems a norm of superior rank can dictate that a norm of lesser rank is binding. Thus, a constitution can stipulate that a law is binding, and a law, in turn, can stipulate that contracts are binding. But a norm cannot stipulate to its own binding nature because such a clause is not normative.

8. An analogous situation occurs in international law. Let us take the example of Article 26 of the Vienna Convention on the Law of Treaties. The first part of that article states that “[E]very treaty in force is binding upon the parties to it”. A clause of a convention stating that treaties are binding is not normative in nature; it is simply recognition of a norm that exists on another plane. The clause "every treaty is binding upon the parties to it” may carry the meaning of a norm in the realm of “customary” language; however, such a clause does not carry normative meaning in “treaty” language.

9. The inference here is that Article 1(1) of the American Convention should be interpreted as the Court interpreted it in its Advisory Opinion OC-4, that is to say as an obligation not to discriminate. The interpretation of Article 1(1) as a rule imposing a generic obligation to abide by the Convention robs that provision of any normative meaning. Therefore, as it has no normative meaning, I have had no difficulty contributing my vote to make this Judgment of the Court unanimous. However, because I believe that everything said should have meaning, I wanted to add this explanation. To say that “the State violated the right of access to the courts recognized in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof” means the same as “the State violated the right of access to the courts recognized in Articles 8(1) and 25 of the American Convention on Human Rights.”

Julio A. Barberis
Judge ad hoc

Manuel E. Ventura-Robles
Secretary