REPORT No. 89/10
CASE 12.499
INADMISSIBILITY
MIGUEL WOLINIEC KROVIC AND FAMILY
PARAGUAY
July 15, 2010

I. SUMMARY

1. On December 23, 2003, the Inter-American Commission on Human Rights ("the Commission") received a petition lodged by Roberto Amendola Galeano ("the petitioner"), which alleges that Paraguay ("the State") is responsible for the actions of the Banco Central ("Central Bank") in the operations of the Banco General S.A., because it allowed the bank to operate with no controls whatsoever after having knowledge of irregularities in its management. The petition points out that the Banking Law obligated the Central Bank to inform the public about the situation regarding the assets and positions of private banks. The petitioner alleges that Mr. Miguel Woliniec Krovic, a Paraguayan citizen who was 64 years of age in December 2003, married and the father of a son, deposited his personal savings in the Banco General S.A. on May 5, 1995, and that 24 days later the Central Bank intervened and his savings were lost, to the detriment of Mr. Woliniec Krovic and his family. The petitioner alleges that the Central Bank is obliged to refund the sums that were lost, along with interest and legal costs.

2. The petitioner alleges that the State is responsible for violating the rights to judicial protection (Article 25 of the American Convention on Human Rights), ("the American Convention"); to a fair trial (Article 8 of the American Convention); Articles XVIII and XXIV of the American Declaration of the Rights and Duties of Man ("American Declaration"); the principle of equal protection (Article 24 of the American Convention); the right to property (Article 21(1) and (2) of the American Convention and Article XXIII of the American Declaration); and the obligation to adopt measures under domestic law (Article 2 of the American Convention).

3. The State, for its part, asks the Commission to declare the petition inadmissible and to file it, pursuant to Article 34, paras. (a) and (b) of its Rules of Procedure, considering that the petition does not set forth facts that constitute a violation of the rights referred to in Article 27 of the aforementioned Rules of Procedure and because it is manifestly unfounded and inadmissible. The State maintains that it has not violated any provision of the American Convention against Mr. Woliniec; on the contrary, it alleges that it provided him with all the suitable legal and procedural means to exercise his rights at the domestic level, facilitating his access to the appropriate judicial instances and guaranteeing due process, in accordance with the prevailing constitutional and legal norms.

4. After analyzing the available information, the Commission concluded that it is competent to consider the case and that it is inadmissible pursuant to Article 46 (1)(a) of the American Convention. The Commission decided to notify the present inadmissibility report to the parties, to make it public and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The Commission registered the petition as P-1127/03, in accordance with practice in effect at that time, and on January 6, 2004, it acknowledged receipt of the petition. On July 29, 2004, the Commission forwarded the pertinent parts of the petition to the State and requested it to present observations within two months, in accordance with Article 30(3) of the Rules of Procedure, in effect at that time. In a communication dated November 12, 2004, Paraguay requested a 30-day extension to submit its response, in order to gather all the relevant documentation. On December 16, 2004, the Commission granted the requested 30-day extension as of the date on which its letter was sent. In communications dated November 3, 2004, November 25, 2004, December 29, 2004, January 4, 2005, and April 18, 2005, the petitioner complained about Paraguay's failure to submit observations, bearing in mind that Article 30(3) of the Commission's Rules of Procedure prevents extensions beyond 90 days from the first request for information. In a communication dated April 12, 2005, the Commission informed Paraguay that, "[B]earing

in mind that to date no response to the aforementioned notes has been received, the Inter-American Commission, in application of Article 37(3) of its Rules of Procedure, has decided to open a case with No. 12.499 and to defer the treatment of admissibility until the discussion and decision on the merits." On April 12, 2005, the Commission informed the petitioner of the action taken in application of Article 37(3) of its Rules of Procedure, and in accordance with the provisions of Article 38(1) of the Rules of Procedure, the Commission asked the petitioner to submit any additional observations on the merits within a two-month period from the date the communication was sent. On April 29, 2005, the petitioner presented the requested observations, which were received on May 6, 2005, and were forwarded to Paraguay by letter dated May 10, 2005.

6. By means of Notes No. 320 and No. 348, dated respectively July 8 and 25, Paraguay submitted its response "on the merits with regard to the communication sent to the government by the Commission on May 10, 2005." On August 30, 2005, the Commission forwarded to the petitioner the information submitted by Paraguay, giving him one month to submit his observations. The petitioner submitted his observations on the State's response in a letter dated September 26, 2005; these were sent to the State in a communication dated February 2, 2006. In a communication dated October 5, 2006, the petitioner submitted what was described as an expansion of the complaint "with new facts and documents." On December 7, 2006, the Commission forwarded that information to Paraguay, giving it one month in which to submit observations. In Note No. 8, dated January 10, 2007, the State submitted reports prepared by the Attorney General's Office, the Central Bank, and the Supreme Court's Office of Human Rights on the case in question; these were forwarded to the petitioners on February 28, 2007. On March 15, 2007, the petitioner submitted observations considered to be timely on the information provided by the Paraguayan State regarding the amplification of the petition; these were forwarded to the Paraguayan State by letter dated May 15, 2007, with a request that it provide any relevant observations within a one-month period from the date the letter was sent.

7. On June 25, 2007, the State submitted its report ("The State's Civil Responsibility under Paraguayan Law") with regard to the information received on the part of the petitioner on May 24, 2007. On August 22, 2007, the Commission forwarded that information to the petitioner, requesting that the petitioner provide additional information within a one-month period. By means of a communication received on September 17, 2007, the petitioner submitted additional observations with respect to the information submitted by the State on June 25, 2007; which were forwarded to the State on October 16, 2007, with a one-month period in which to present observations. On November 20, 2007, the petitioner submitted additional observations to those sent on October 16, 2007; which were transmitted to the State by letter dated December 7, 2007.

8. On December 20, 2007, the State submitted Note No. 731 with a report prepared by the Attorney General's Office of the Republic of Paraguay. On January 28, 2008, the State submitted Note No. 30 with a document prepared by the Central Bank of Paraguay that included observations, a preliminary and fundamental question and a final summary of the case in question, dated January 23, 2007 (sic)[1]. On January 28, 2008, the State submitted Note No. 31, to which it attached the original note from the Attorney General's Office, PGR No. 40/08, dated January 17, 2008. By means of a communication dated February 19, 2008, the Commission forwarded the State's communications of December 20, 2007 and January 28, 2008, to the petitioner. The petitioner submitted his observations to the documents presented by the State by letter dated February 28, 2008; these were forwarded to the State on March 28, 2008. On May 20, 2008, the State submitted Note No. 261, containing government documentation that was forwarded to the petitioner on June 17, 2008. On April 24, 2008, the State submitted Note No. 200, with an original document from the Attorney General's Office dated April 16, 2008, which was forwarded to the State on May 19, 2008. In communications dated August 12, 2007, November 27, 2009, February 18, 2010, and March 22, 2010, the petitioner asked the Commission to decide the case. The Commission, in a letter dated May 6, 2010, acknowledged receipt of these communications from the petitioner.

[1] The correct date should be January 23, 2008.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

9. The petitioner alleges that the complaint originated with the case entitled "Miguel Woliniec Krovic against the Central Bank of Paraguay regarding the refunding of American dollars and compensation for damages," which was brought before the domestic court system on February 12, 1997 and concluded on August 12, 2003. The petitioner requests that the Commission declare: 1) that Paraguay, by means of the judicial system, failed to comply with its obligation to respect and guarantee the rights which are alleged to have been violated; 2) that Paraguay immediately arrange to adopt all the measures for monetary and non-monetary reparations for Mr. Miguel Woliniec Krovic and his family, with regard to the loss of his savings in the Paraguayan financial system in May of 1995, and that these should include the amount claimed in the case, the interest on that amount, and the costs of the legal proceedings carried out in Paraguay, before this Commission, and before the Inter-American Court, should it reach that body; and 3) that a ruling be issued declaring null and void the judicial decisions that are the subject of this petition.

10. The petition "maintains that if a person deposits his or her money in a local bank that appears to be operating normally, that person does so out of a belief that the bank has been legitimately authorized to receive the deposit, since it is under the oversight and control of the Central Bank of Paraguay. If that money cannot be returned at the time and in the manner agreed upon, or contracted, when it was handed over, and if it can be claimed and shown that this was not possible because the private bank was not operating due to the absence of control by the Central Bank, and for these reasons a widespread fraud against people's assets is brought about, then it is the Central Bank that ought to respond by refunding the lost sums, interest, and legal costs. The Central Bank should be required to prove that it did not fail to comply with its obligation to control the private bank and that it exercised control over the private bank because it is its responsibility to prevent fraudulent practices to the detriment of the depositors."[2]

11. The petitioner maintains that "[T]he financial crisis unleashed in Paraguay, which began in late May 1995, was solely and exclusively the result of a policy that was tolerant of abuses and fraud in banking practices, which the Central Bank authorized, allowed, and inappropriately tolerated among a number of banks and financial institutions, especially the Banco General S.A."[3]

12. Mr. Woliniec had deposited the sum of US $505,238.24 dollars, accredited by "certificates of fixed-term contracts." The petitioner maintains that the deposit was always intended to be savings and not "fixed-term contracts," a banking mechanism for early withdrawal in order to engage in another operation such as importation or similar, which Mr. Woliniec never anticipated carrying out.

13. According to the petition, the judgment at first instance (the Court was headed by Dr. Hugo Becker Candia) found for the petitioner in general terms; that is, it held the Central Bank responsible, but it recognized only 20% of the capital Mr. Woliniec had placed in savings, in other words, it illegitimately deprived him of the majority of the assets claimed.

14. According to the petition, the court of second instance, the First Chamber of the Court of Appeals, overturned the judgment of the first instance Court on every point. The petitioner is of the opinion that to overturn the decision of first instance Court, the Appeals Court established that the case was to be resolved pursuant to the emergency financial laws that were adopted subsequent to the events, the responsibility for which was at issue in the lawsuit, in violation of the legal principles regarding the non-retroactivity of laws and of acquired rights, both of which are recognized in the American Convention, in the Paraguayan Constitution, and in Paraguay's civil laws. The petition alleges that these laws cut down the

[2] Petition lodged with the Commission on December 23, 2003.

[3] *Ibid*.

rights of the depositors, including those of Mr. Woliniec, limiting the Central Bank's responsibility to certain salary amounts (at that time, some 30,000,000 Guaraníes, or about US$12,000).

15. According to the petition, the Supreme Court, without considering the merits of the case (the responsibility or not of the Central Bank), dismissed the request for nullification of the decision without explaining its grounds for doing so and refused to hear an appeal, affirming the judgment of Appeals Court. In so doing the Court committed serious procedural errors and violations of due process, in violation of Article 15 of the Paraguayan Civil Procedural Code and of rights recognized in the American Convention, to which Paraguay is party.

16. According to the petition, the illegal reasoning used as a "pretext" to absolve the Central Bank from its obligation of refunding to Mr. Woliniec the assets lost as a direct result of the serious failure to carry out its legal duties of control and oversight of the aforementioned private bank, was to find that Mr. Woliniec did not prove legal ownership and legitimacy of the documents that form the basis of the lawsuit (savings deposit certificates), even though the State never questioned the origin or legitimacy of his ownership of these documents. Thus, the Supreme Court demonstrated clear partiality in making an allegation that in fact should have been made by the defendant (the Central Bank of Paraguay).

17. The petitioner alleges that the lawsuit was filed in February 1997 before a competent judge, based on subject matter and jurisdiction; however, Final Judgment No. 762, dated August 11, 1999, was not issued until 15 months after the case was in the judgment phase, thus violating the right to have the proceedings heard within a "reasonable time." The judgment should have been issued within 40 days, in accordance with Article 162, para. (c) of the Civil Procedural Code in force in Paraguay.

18. The petitioner indicates that the same type of unjustified delay occurred when the Appeals Court failed to rule on the case until September 27, 2000, after the case had been pending for 11 months. The judgment, according to the petition, should have been issued within 60 days, pursuant to Article 162, para. (c) of the Civil Procedural Code in force in Paraguay. Subsequently, the Civil and Commercial Chamber of the Supreme Court issued a decision on May 26, 2003, that is, two years and five months after the initiation of the proceedings in this case, once again violating the legal guarantee of "reasonable time" for issuing decisions. The judgment, according to the petitioner, should have been issued within 60 days, pursuant to Article 162, para. (c) of the Civil Procedural Code in force in Paraguay.

19. With regard to the "guarantee of competent judges and natural judges," the petition indicates that the judges that made up the Supreme Court's Civil and Commercial Chamber were not competent to hear the case. A motion was filed requesting that the Court be comprised of judges sitting in the Civil and Commercial Chamber, but no response was received to either of these requests, and the Court was set up with judges whose jurisdiction was over matters foreign to those under consideration. According to the petition, the Supreme Court violated the right to competent and natural judges, set forth in the due process guarantee (Article 8(1) of the American Convention).

20. With regard to the "guarantees of independence and impartiality," according to the petition, the case openly violated these guarantees, given that the judgments of the Court of Appeals and the Civil Chamber of the Supreme Court were motivated solely by the intention not to pass judgment on the responsibility of the 1993-1998 administration of Juan Carlos Wasmosy.

21. The Court of Appeals, according to the petition, based its decision on false assertions, including that the lawsuit did not seek damages and that the legitimacy of the credit had not been established, since this should have been verified (under the provision for verification of credit in Bankruptcy Law No. 154) in the bankruptcy of the private bank that held Mr. Woliniec's deposits. According to the petition, it is obvious that the judgment was intended to render the lawsuit and the evidence in the case without merit, because there was a clear commitment not to condemn the chaotic management of banks in the country during the period from 1993 to 1998. According to the petitioner, this indicates a lack of "independence and impartiality," which conspires against the guarantees of an "independent and impartial judge."

22. In continuation, the petitioner alleges: “the deliberate intention was to render everything without merit and exonerate the Central Bank of responsibility. The guarantee of ‘impartiality and legality’ was violated, as the Court’s judgment was justified on grounds that the trial did not establish that the Central Bank, the defendant, had recognized the existence of the 'fixed-term contracts' which serve as a basis for the lawsuit and that from a strictly legal point of view, the documents filed constitute simple private papers which are not recognized and which, as is obvious, cannot create any obligation whatsoever.”

23. According to the petition, the judgment violated the “guarantee of impartiality” because it “took it upon itself to cover or remedy the failure to question the Central Bank of Paraguay regarding the documents filed as a basis for the lawsuit.” According to the complaint, the Central Bank never ruled on the legitimacy of the documents filed as a basis for the lawsuit, but instead remained silent; that is to say, it admitted them. The petitioner alleges that, from a strictly legal point of view, the Court should have applied Article 235, paragraph a), of the Civil Procedural Code in effect in Paraguay, which requires defendants to respond to the documents received with the lawsuit, and their silence can be taken as a recognition or acceptance of the documents.

24. The petitioner maintains that the “guarantee of impartiality” does not exactly characterize the legal system of Paraguay. He alleges that “the judicial and political authorities telephone each other to recommend the solution to such and such a case, as is often reported in the news media, and a recommendation could also have been made to one of the judges involved in the case from an interested sector, so that the Central Bank of Paraguay would emerge unscathed from the accusation of grave negligence and failure to fulfill its duties made against it in the lawsuit.”

25. The petitioner maintains: “[T]he judicial declaration of the Paraguayan Central Bank’s guilt would have seriously damaged the profile of an entity, the function of which is to promote the effectiveness, stability, and solvency of the financial system and turned it into an entity fraught with risk for the citizenry.” The petitioner maintains that “the admission of the lawsuit with the consequent result (…) could create a precedent of such seriousness, that it was not admitted because it would affect the political interests of the governing group in the Paraguay of that time, motives that carried enough weight that they were worth sacrificing my legal arguments.” The petitioner refers to a “Diagnostic Report” prepared by Carl-Johan Lindgren and Elizabeth Milne of the International Monetary Fund (IMF) in September 1995, “in which it is very clear that the Central Bank authorities knew about the serious problems of the Banco General S.A. and other banks that were taken over in late May of 1995 (Banco Comercial Paraguay and Banco Sur).” The IMF report states, “The interventions were carried out too late. The Superintendence of Banks had known about most of the problems for some time, but did not take the necessary measures to prevent the problems due to political considerations.”

26. The “political considerations” to which the Central Bank gave in, according to the complaint, were those that allowed the Banco General S.A. to continue defrauding the public, being left to operate with no controls whatsoever, beginning in 1994, and especially from January 1995 to May 29, 1995, when “appropriate measures” were taken to intervene the bank in question.

27. With regard to the violation of the “guarantee of due process” in the Court of Appeals decision, according to the petitioner, one vote was based on the excuse that Mr. Woliniec should have had recourse, “to save the situation,” to Law No. 797/95, No. 1186/97, and No. 1420/99. These are the “financial emergency” laws that did not enhance any rights of Mr. Woliniec, but rather ended up decreasing the sums that could be claimed, setting maximum caps. The petitioner alleges that on this point, Article 14 of the Paraguayan Constitution and Articles 1 and 2 of the Paraguayan Civil Code were violated. These provisions provide that laws are not retroactive, that they are binding for the future, and that they may not have any retroactive effect, nor may they alter rights that have been acquired, and that new laws may not invalidate or alter accomplished facts or the effects produced when prior laws were in force. According to the petition, the aforementioned laws were enacted after the events occurred which affected a massive number of depositors, and these laws modified the previous Law of Banks and Financial Entities (No. 417/73); thus it is absolutely illegal to seek to reduce the assets of citizens with new laws, even if the alternative of bankruptcy would be worse.

28. The Court of Appeals' ruling, according to the petitioner, requires Mr. Woliniec to have had a credit with the Central Bank of Paraguay. The petitioner maintains, "[I]t is not true that it was necessary to demonstrate the existence of a credit against the Central Bank of Paraguay, as the relationship between Mr. Woliniec and the Central Bank was not that of creditor but rather was based on the Central Bank of Paraguay's responsibility for having allowed the Banco General S.A. to operate with no controls whatsoever during the first five months of 1995, a period in which, relying on the bank's appearance of solvency and its offer of better rates and its being open to the public, the petitioner made his investment, with absolutely no knowledge of what was being hidden in the Central Bank's oversight of the Banco General. It is obvious that if the Central Bank had fulfilled its obligation to inform the public about the situation of the Banco General S.A., the petitioner would not have made a deposit at that bank.

29. The Court of Appeals' judgment, according to the petitioner, "only sought pretexts to not examine the case on its merits. Thus, it characterized the relationship as that of a creditor and not one based on responsibility, as it should have been:

- It did not accept the lack of observation of the documents on which the suit is based, but instead it put itself in the place of the defendant in order to make up for the lack of questioning on this point;
- It based its decision on laws enacted after the facts, violating clear provisions on acquired rights;
- It combined in one procedural representation two different institutions in the matter in question (the Central Bank and the State), in order to justify that the State was sued in the person of the Central Bank of Paraguay, when that was not the case; and
- Finally, it found that that the responsibility for oversight is generic and can apply to every action of the financial system, despite it having been shown that the irregularity that affected the plaintiff's assets extended to the entire management of the Central Bank of Paraguay with respect to the Banco General S.A., most particularly with regard to that bank."

30. According to the petition, continuing on with the alleged violation of the "due process" guarantee, the judgment reached the conclusion that there is evidence that the defendant —the Central Bank — had knowledge of the irregularity of the performance of the private bank in question — Banco General S.A.— and there is no evidence that Central Bank employees took steps that the law required them to take. The judgment states that responsibility for the facts should be imputed to employees of the Central Bank and that the employer, the Central Bank, is only secondarily responsible. The petitioner states that the judgment recognizes that Paraguayan law does not establish a law or doctrine defining the precise limits and scope of "secondary responsibility."

31. Similarly, the petitioners maintain that it was proven at trial that there were at least seven officials, including Directors, the General Manager, and the Superintendent of Banks (between January and May of 1995), who failed to fulfill their duty to maintain oversight and to take the legally established and appropriate measures to prevent greater damage to client depositors, and that there were then a few others (seven more) who assumed leadership of the Central Bank, who arrived two years later to cover for the previous failures; that is, there would be 14 high-ranking officials whom Mr. Woliniec would have to sue until they were insolvent, with the difficulty that an entire institution protects them in their failures. In his judgment, this could not be considered a "fair proceeding," a proceeding with any expectation for success, because it has no place under the rule of law but rather in a context that is closer to impunity.

32. The petitioner alleges a violation of the "right to equal protection of the law," enshrined in Article 24 of the American Convention. The petitioner says that at the same time as this lawsuit, two others were brought against the State for compensation for damages. These refer to Napoleón Ortigoza, the longest held political prisoner in Paraguay, and Escolástico Ovando, both of whom suffered the horrors of torture and of persecution under the Stroessner dictatorship. The petitioner maintains that in these two proceedings neither of the judges involved alleged that the responsibility of the official who tortured and illegally deprived them of their liberty had to be sued first and then the State, as a secondary matter, and in neither of these cases did the proceedings last more than two years.

33. On the other hand, the petitioner alleges that to deprive a citizen, as was done in this case, of his right to his property by failing to take steps to stabilize the banking system and then to submit the petitioner to a 6½-year judicial proceeding in order to find that first, he should have brought suit against twenty-some negligent and insolvent officials; and should have initiated a second, fruitless legal proceeding against a bankrupt bank, that failed because of the lack of legally mandated oversight of the Central Bank, should also be considered a violation of human rights, despite the fact that the justice system of the accused State does not consider that to be the case.

34. With regard to the alleged violation of the "right to property" enshrined in Article 21, the petitioner maintains that alongside one of the pillars of the right to property stands the pillar of legal security. The insecurity that prevailed in the Paraguayan financial system due to serious irregularities in its governmental administration from 1993 to 1998, and which is now being covered up with the rulings in question, is perfectly reflected in the previously cited September 1995 IMF report. The petitioner states that the judicial rulings called into question in this case constitute one of the ways in which Mr. Woliniec was made to lose his fortune, in a clear demonstration of facts that led to a violation of the right to property to his detriment, resorting for this purpose to the use of "puerile and incorrect pretexts far removed from the documentary evidence."

35. Regarding the alleged violation of the obligation to adopt provisions of domestic law, enshrined in Article 2 of the American Convention, the petitioner alleges that the Paraguayan State requires that litigation be brought first against the alleged employees who acted or failed in their duty to act, without there being any law establishing that requirement. The petitioner states that the employee should be responsible, but that responsibility should be determined by the employer using the legal recourse available (administrative proceeding, disciplinary system, sanctions, etc.). The petitioner indicates that nowhere does Article 106 of the Paraguayan Constitution state that the employee should be sued and his assets exhausted before recurring to the entity of public law, the employer.

36. The petitioner also alleged violations of Articles XVIII, XXIII, and XXIV of the American Declaration.

B. Position of the State

37. The State asked the Commission to declare the petition inadmissible and to file it, pursuant to Article 34, paras. (a) and (b) of its Rules of Procedure then in effect, since the petition lodged "does not set forth facts that constitute a violation of the rights referred to in Article 27 of the aforementioned Rules of Procedure and because it is manifestly unfounded and baseless."

38. The State alleges that it has not violated any provision of the American Convention against the petitioner; on the contrary, it maintains, it has provided him with all appropriate legal and procedural means to exercise his rights in domestic courts, facilitating his access to the competent judicial instances and guaranteeing due process of law, in accordance with the relevant constitutional and legal norms.

39. According to the State, Mr. Woliniec has made use of the procedures provided for in the law to assert his rights in the complaint brought initially against the Banco General S.A. and secondarily against the Central Bank. It notes that Mr. Woliniec abandoned his lawsuit against the Banco General S.A., by which "he has made it totally impossible to prove the rights he is claiming." As a consequence, the Central Bank became the only party to his suit, but the credit being claimed could not be proven by the plaintiff due to his abandonment of the lawsuit. Without proof of the credit that Mr. Woliniec had with the Banco General S.A., the suit he brought against the Central Bank could not have succeeded, and according to the plaintiff's strategy, the Central Bank went from being a secondary party to become the principal debtor for an unverified credit.

40. As regards the alleged violation of the right to judicial protection, the State maintains that Mr. Woliniec has brought lawsuits, filed appeals, and presented motions, abandoning the actions he thought it necessary to abandon; thus it can hardly be said that there was any violation by the State, through the

jurisdictional body, of the Constitution, the Law, or the Inter-American [sic] Convention on Human Rights. The State alleges that Mr. Woliniec has not been able to substantiate, with the required evidence, the veracity of the rights to which he lays claim or the institutions or persons who might have fallen short in attending to their obligations. The State affirms that it has provided the necessary guarantees for him to prove his claims. If he has not done so, due to his failure to provide the evidence required by law, the State argues, the State cannot be held responsible for a failing that is the sole and exclusive responsibility of the plaintiff in the lawsuit, since it is the one who makes the allegations who must prove them. The State maintains that it is not appropriate to turn the Inter-American Commission and potentially the Inter-American Court into a fourth instance to achieve economic gains from alleged rights that he did not know how to defend at the domestic level.

41. With regard to the alleged violation of due process guarantees, the State makes reference to the reasonable time frame mentioned by the petitioner in relation to the duration of the litigation process. It states that from the time Mr. Woliniec filed suit until the judgment, the expeditiousness of the proceedings depended solely and exclusively on the parties. A judge's impetus in moving a case forward, on his or her own initiative, does not obviate the impetus the parties should bring when it is in the interest of their rights. Pressing for urgent consideration of a case (Art. 412, C.P.C.) is one of the essential ways to bring about timely justice, and when efforts to do so do not produce the effects sought by the parties, the Civil Procedure Code provides for a Writ of Complaint for Delay of Justice (Article 412 and following of the C.P.C.)

42. With regard to the "right to be tried by a competent judge," the State argues that this does not apply either, because the petitioner attacks the composition of the Civil Chamber of the Supreme Court, forgetting the principle of *iura curia novit*. According to the State, those who issued the respective judgments in each procedural instance are natural judges of those courts. In the aforementioned proceedings, the Supreme Court's Civil and Commercial Chamber was composed in accordance with the mechanisms established in the provisions in effect, bearing in mind that as the case was proceeding before the highest court, Dr. Enrique Sosa Elizache's resignation as Minister of the Supreme Court took effect, and thus the Court incorporated a new member, Dr. Luis Lezcano Claude. The petitioner's legal representative was notified of that fact and did not seek to recuse the judge, thereby consenting to the composition of the Civil Chamber.

43. As regards the alleged violation of the "principle of equality," the State indicates that the petitioner mentions a violation of due process in terms of expeditiousness, but he only cites precedents in the cases of Obando and Ortigoza, stating that in their rulings the judges did not consider punishing first the one who committed torture and then the Paraguayan State (subjective responsibility). The State argues that the principle of equality is not based on citing precedents and comparing other rulings that do not even address the same subject as the case being litigated.

44. In reference to compensation for a violation of the "right to property," according to the State, this right must be proven at trial so that the Commission and possibly, the Court, can judge whether or not there was a violation of the right to property, but this must occur at the domestic level. The State argues that in abandoning the lawsuit against the principal defendant, that is the Banco General S.A., there is no evidence whatsoever of the credit cited by the plaintiff; thus he has eliminated any possibility of proving that the ownership of the money allegedly deposited belongs to him. It is obvious, the State maintains, that if ownership of the capital that was allegedly deposited could not be established at the domestic level, a claim could hardly be made before the Commission that the State had violated the right to property, since ownership (of the titles or money deposited) had not been proven to comprise part of the assets of the plaintiff who brought the lawsuit before the Paraguayan justice system.

45. The State maintains that it has legislative provisions in the area of civil law, civil procedural law, commercial law, banking law, etc. According to the State, Law 1814, the Pangrazio Law, was adopted to assist the depositors harmed by the bank collapse. The State affirms that the law has benefited countless depositors, who were officially counted at one time and that the State has honored their savings up to a certain amount, especially protecting small depositors. Thus there has not been, on the part of the

State, a legislative failure to protect depositors who were in the situation of creditors of banks that suffered bankruptcy or liquidation.

46. Finally, as regards the claim asking the Commission to declare the legal judgments to be null and void, the State responds that the Commission is not an appellate body for judgments of domestic courts that have the force of law and are characterized as *res judicata*, final, and unappealable, and thus this claim should be rejected by the Commission.

IV. ANALYSIS OF ADMISSIBILITY

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

47. Pursuant to the provisions of Article 44 of the American Convention, the petitioner is entitled to lodge a petition with the Commission, and the alleged victim was subject to the jurisdiction of the Paraguayan State at the time of the events cited. With respect to the State, Paraguay is a State Party to the American Convention, having duly deposited its instrument of ratification on August 24, 1989. Accordingly, the Commission has competence *ratione personae* to examine the petition that has been lodged. It also has competence *ratione materiae* because the petitioner alleges violations of rights protected by the American Convention.

48. With regard to the alleged violations of the American Declaration, the Inter-American Commission has indicated that once the American Convention enters into force for a State, the primary source of applicable law shall be that treaty and not the American Declaration,[4] as long as the petition involves the violation of substantially identical rights enshrined in both instruments[5] and that it does not imply a situation of continuing violation.[6] In the case under analysis, the subject matter of the articles of the American Declaration cited by the petitioner is incorporated in the articles of the American Convention that have been cited. In this case, the rights allegedly violated by the Paraguayan State under the Declaration are similarly protected under the Convention, and the omission that gave rise to the petitioner's claim took place after Paraguay had expressed its consent to be bound by the American Convention. Thus, the Commission will refer only to the alleged violations of the American Convention and not to those of the American Declaration.

49. The Commission has competence *ratione tempore* to consider the petition since it is based on allegations of facts that occurred since May 29, 1995. The alleged facts occurred after the State's obligations as a party to the American Convention had entered into force. In addition, given that the petition alleges violations of rights protected under the American Convention, which took place in the territory of a State Party, the Commission concludes that it has competence *ratione loci* to hear the case.

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[4] The Court has stated, "For the States Parties to the Convention, the specific source of their obligations with respect to the protection of human rights is, in principle, the Convention itself." *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion 10/89 of July 14, 1989, para. 46.

[5] *Ibid*. The Court has noted that "States cannot escape the obligations they have as members of the OAS under the Declaration, notwithstanding the fact that the Convention is the governing instrument for the States Parties thereto." I/A Court, Advisory Opinion 10/89, para. 46.

[6] The Commission has established that it has jurisdiction to examine violations of the Declaration and the Convention as long as a situation is verified involving a continuing violation of the rights protected in those instruments, such as for example a situation of denial of justice that began before the State in question ratified the Convention and continued beyond the manifestation of consent and the Convention's entry into force for that State.

B. Admissibility requirements

1. Exhaustion of domestic remedies

50. Article 46(1) of the Convention establishes, in order for a petition to be admitted, "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."[7] The Inter-American Court of Human Rights (hereinafter "the Court") as well as the Commission have repeatedly maintained that:

> The rule of prior exhaustion of domestic remedies under the international law of human rights has certain implications that are present in the Convention. Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8 (1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1). Thus, when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.[8]

51. Article 46(2) establishes exceptions to the general rule requiring the exhaustion of domestic remedies: (a) when the State's domestic legislation does not afford due process of law for the protection of the rights that have allegedly been violated; (b) when the party alleging violation has been denied access to the remedies under domestic law; or (c) when there has been an unwarranted delay in the resolution of the matter. A State that alleges non-exhaustion must indicate the domestic remedies that must be exhausted and provide proof that they are effective.[9]

52. In applying the abovementioned principles to the present case, the Commission observes that on August 11, 1999, the Civil and Commercial Chamber of the first instance court rejected the objection based on failure to act put forward by the representative of the Central Bank and found for the plaintiff in the cause of action filed by Mr. Woliniec against the Central Bank for compensation for damages, on the grounds of the Central Bank's responsibility for the irregular operations of the Banco General S.A. Accordingly, the Court of First Instance ordered the Central Bank to pay Mr. Woliniec the sum of US$101,047.65 plus interest of 1 percent per month from the time the suit was filed.

53. On appeal, the First Civil and Commercial Chamber of the Court of Appeals, on September 27, 1999, overturned the judgment and imposed costs. The Court based its ruling on the following grounds:

> "a) Having abandoned his lawsuit against the Banco General, the plaintiff had to prove the existence of a credit against the bank, by means of the recognition of the documents through the procedure established for witnesses, since from that moment on the Banco General was no longer part of the case and had became a third party. Accordingly, the documents added to the proceedings and attributed to the Banco General constituted merely unrecognized private papers that, as is obvious, are unable to produce any obligation whatsoever.
> b) With regard to the responsibility *in vigilando* attributed to the Central Bank, this cannot apply generically, but rather must be related to a particular case. It is not enough to demonstrate that officials of the Central Bank did not fulfill their duty to exercise oversight over the operations of the

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[7] "The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding." I/A Court HR, *Case of Fairén-Garbi and Solís-Corrales v. Honduras*. Judgment of March 15, 1989, para. 85.

[8] I/A Court HR, *Case of Velásquez-Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987, para. 91.

[9] *Id*., para. 88.

Banco General, but rather, in addition, it must be established that the Banco General had an obligation with respect to the plaintiff.
c) No voucher or accounting record was submitted during the proceedings as evidence to verify the alleged debt. It could be argued that a type of "in the dark" credit was involved, and that such proof would be impossible to obtain. However, the legislators enacted laws to salvage this situation, establishing mechanisms for verifying credits claimed. But the plaintiff gave up the potential that these laws provided and filed a claim directly based on the provisions of the Civil Code. Consequently, he assumed the obligation to prove the existence of a credit against the Banco General as a condition *sine qua non* to claim compensation from the Central Bank.
d) Despite the fact that this involves a lawsuit brought against the State, in the person of the Central Bank of Paraguay, no notification was made to the Attorney General of the Republic, who, in accordance with Article 246, para. (a) of the Constitution, is the legal representative and defender of the country's assets.
(e) The secondary nature of the Central Bank's responsibility for the conduct of its employees must be taken into account, as well as the obligation to pursue lawsuits against the Bank's directors, derived from Article 106 of the Constitution, without which there would be direct and not subsidiary responsibility."

54. For his part, the petitioner asked the Supreme Court to overturn the Agreement and Judgment of the Court of Appeals on the following grounds:

a) The Court of Appeals did not base the Agreement and Judgment on the Constitution and on the law, since despite the existence of the documents on which the lawsuit is based having been proved in testimony, as established by Article 307 of the Civil Procedural Code, it found that the existence of the credit against the Banco General S.A. had not been shown at trial.
b) The judgment is based on laws to reactivate and stabilize the national financial system, which were not in force at the time when the facts that gave rise to the suit occurred.
c) The judgment confuses the juridical persons of the State and the Central Bank, alleging that an error was incurred in failing to notify the Attorney General of the Republic. The Central Bank is a juridical person separate from the State, with its own budget and autonomy, and therefore the Attorney General is not its representative.
d) There is no express rule contained in any law that would obligate the injured party to first sue an employee, since that person would undoubtedly argue that his or her work was done as an employee of the State, of the autonomous, autarchic, or decentralized entity. When the law states that employees are responsible for the facts, it means that it is their employer, and not the general public, that should bring a claim against them if it had to pay or comply with something because the employee did not fulfill his obligations.
e) The direct responsibility to which the Central Bank attorneys refer is obviously the responsibility of the employee for the work performed in the service of the employer. As to who must respond for the irregular actions, it is Central Bank and not the individual affected, as is the case before us.
f) What these proceedings seek to address is the Bank's responsibility for the irregular actions of its agents. Demonstrating the culpability of its actions establishes its obligation to repair the damaging fact of not having complied with its mandate of oversight that it was legally obligated to exercise.
g) The Central Bank never impugned the documents presented in the proceedings as false, despite knowing that at times before 1995, its employees had advised management that these types of documents were given in an irregular manner to genuine depositors, and the depositors accepted them because the Bank's logo gave them confidence that they were authorized by Central Bank of Paraguay.
h) From the records of the proceedings it is clear that there was an absence of oversight on the part of the Central Bank from January to May of 1995.

55. Before the Supreme Court, the Central Bank (the State, for purposes of this case) answered the complaint filed by the petitioner, stating that:

a) It can hardly be asserted that there was an alleged culpable failure on the part of the Paraguayan Central Bank or its employees as far as not having exercised proper controls, since even if it were the case that the Central Bank had exercised routine controls, it would have been impossible to prevent the non-payment of the sum claimed by Mr. Miguel A. Woliniec Krovic, since these operations took place behind the back of such supervision.
b) The Directors of the Central Bank would be the ones directly responsible for exercising oversight − responsibility *in vigilando* − of policing and control. They are entities with separate juridical

> personalities, and there is no shared responsibility, but rather subsidiary responsibility. This is an obligation of a supplementary, accessorial, secondary nature.
> c) The lawsuit should have been filed against the Directors of the Central Bank of Paraguay and secondarily against the Central Bank of Paraguay, so that after their insolvency has been established, the Central Bank of Paraguay would have had to respond secondarily.
> d) It not having been proven in the proceedings that the plaintiff had unsuccessfully sought to bring a lawsuit against the officials directly responsible for the illegal acts described in the lawsuit, the objection based on the manifest failure to act is sustained, as the Central Bank of Paraguay lacks standing to be sued.
> e) The damage has not been established in the proceedings, since the plaintiff alleges that he deposited an important sum of money in the Banco General S.A. but he has not proven his contractual relationship with the bank, since the attached instruments are private and restricted to the parties that participated in it.

56. The Commission observes that in the present case the allegations made by the petitioner have to do with the possible responsibility of the Central Bank of Paraguay (the State) for the irregular operations of the Banco General S.A., which could lead to payment of compensation by the bank to Mr. Miguel Woliniec Krovic. The Commission believes that the same question has been put forward and considered by the various courts at the domestic level, even by the Supreme Court, the highest court in Paraguay. The Supreme Court decided not to hear the merits of the case on the grounds that Mr. Woliniec had not proven his legitimate right. Thus, the Supreme Court found that Mr. Woliniec had not proven that the operations of the Banco General S.A. had affected him, because he had allegedly not proven that he was a creditor and that he would, therefore, have a right to the compensation he was seeking. Specifically, the Court indicated that Mr. Woliniec had not proven that the documents he attributed to the Banco General S.A. were authentic, which would have allowed him to allege that he was indeed a victim of operations carried out by the bank.

57. Mr. Woliniec abandoned his lawsuit against Banco General S.A., the principal defendant and the party directly responsible for the prejudicial acts, according to the norms governing the responsibility of juridical persons under Paraguayan law.

58. Mr. Woliniec's abandonment of the lawsuit against the Banco General S.A. is decisive in this case, precisely because the claim has to do with a disputed credit. According to the Paraguayan judicial system, Mr. Woliniec did not manage to prove the existence of the credit in the context of a judicial proceeding, in conformity with the requisites of the Civil Procedure Code of Paraguay. It is in dispute because neither the Banco General S.A., nor the Central Bank, recognized the existence of the fixed term contracts which served as the basis for the lawsuit, at trial, with all the formalities of witness testimony, since Mr. Woliniec abandoned the claim against the Banco General S.A.[10], and in not recognizing it as

[10] The documents, the basis of the lawsuit, amounted to US$ 505,238.24 dollars, had not been objected to by the Central Bank of Paraguay when the case was litigated at the first instance, thereby confirming the existence and the legality of said deposits and also Mr. Miguel Woliniec Krovic, as creditor of the Banco General S.A., by the Civil and Commercial Chamber of the Court of First Instance, in its judgment of August 11, 1999. Nevertheless, the Civil and Commercial Chamber of the Court of Appeals revoked the decision of the first instance court stating that "from the time when the petitioner abandoned his lawsuit against the Banco General S.A., the latter ceased to form part of the case and must be considered as an outside third party to the suit." Having abandoned the lawsuit against the Banco General had as a consequence that the private documents that emanated from third persons, not parties to the case, had to be recognized in the manner established for witnesses testimony with the limitation set forth in the Civil Procedure Code that the procedure selected by the petitioner, of having the instruments recognized, lacked legal effect because the Banco General and its leadership had been converted into outsiders in the proceedings and therefore no legal presumptions could be applied to them such as those that specifically were established for the parties in litigation. The Supreme Court of Paraguay, in its judgment affirming the Appeals Court judgment, explains that the court of first instance, considered the credit of the Banco General S.A. with Mr. Woliniec to have been proven, "taking into account the failure of the signers of the documents to appear at the hearing where they were supposed to recognize their signatures." According to the Supreme Court of Paraguay, the failure of the signers to appear at the hearing "cannot give rise to a presumption *juris tantum* of the authenticity of the documents, because the Banco General S.A. ceased being a party" in the case. Given the failure of the signers to appear, the petitioner should have sought other means of proof, such as expert proof. The Supreme Court concluded that Mr. Woliniec, having failed to prove the authenticity of the documents could not demonstrate the right that he was invoking, that is to say, his situation of having been injured by the operations of the Banco General S.A. and his right to indemnification.

such, it denied payment of the Paraguayan State's implicit guarantee for protection of regular depositors in the national financial system, which was in effect until 1995, when the State's guarantee was reduced and limited by Law No. 797/95 and Law No. 814/96.

59. The Central Bank granted loans of more than G270,000,000,000 (two hundred seventy billion Guaraníes) to the failed Banco General S.A. This money was used by the Banco General S.A. to pay all its deposits; which is known as the implicit guarantee of the Paraguayan State. However, when the Banco General S.A. was still in operation — while it was under intervention by the Central Bank — Mr. Woliniec was unable to collect "his deposits," which could constitute an indication that there were questions that prevented his recovering his deposits. The regularity or irregularity of the credit being claimed should have been proven at trial, but Mr. Woliniec abandoned his lawsuit against the Banco General S.A., leaving aside the discussion about the legitimacy of the credit being claimed and trying to place responsibility directly on the Central Bank and, in this case, on the Paraguayan State.

60. Mr. Woliniec initiated a lawsuit in Paraguay, in accordance with the constitutional and legal norms in force, and in that sense, he had access to justice. Once he chose to sue the Central Bank and abandon his lawsuit against the Banco General S.A., he found it impossible to prove the validity of his credit against the Banco General S.A., a necessary element to prove that the right he was seeking to remedy had been affected. According to the information provided, he chose a mistaken procedural route under Paraguayan law, as was indicated by the Civil and Criminal Chamber of the Supreme Court of Paraguay.

61. As the State indicates, under Paraguayan law the abandonment of a lawsuit is one form of ending judicial proceedings, under Article 165 of Paraguay's Civil Procedural Code. The abandonment that occurred kept the facts from being proven and kept the Central Bank from defending itself. A possible decision by the Commission would imply going before a "fourth instance" — a review of questions of domestic law and court judgments that, in their status as *res judicata*, have been settled in this case at the national level.

62. By virtue of the preceding, and considering that for a petition to be admissible domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law, the Commission considers that in the present case, while the petitioner had access to the domestic remedies offered under Paraguayan law, he did not duly exhaust those remedies under the terms established in Article 46(1)(a) of the American Convention.

63. Based on the foregoing, since the matter is rendered moot, the Commission declines to examine additional admissibility requirements set forth under the American Convention.

V. CONCLUSION

64. The Commission concludes, in relation to the alleged violations of the Convention, that the petitioner did not move the case forward properly under domestic law so as to meet the requirement of exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention.

65. Based on the considerations of fact and law presented above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case inadmissible.

2. To notify the parties of this decision.

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

Done and signed in the city of Washington, D.C., on the 15th day of the month of July 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; Luz Paticia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).