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| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 3/01; Case 11.670 |
| Title/Style of Cause: | Amilcar Menendez, Martha Beatriz Abiuso, Mario Jorge Alfaro, Ernesto Alvarez, Alfredo Raul Amada, Oscar Angotti, Carmen Bernardez, Wilson Jorge Calvo, Hector Carballo, Hector Alfredo Castaneda, Ramadam Daruich, Ladislao Dabrowski, De Carli, de Onoratelli, Juan Carlos Falvo, Valeria Gagni, Rosa Helena Grabowski, Ana Maria Linero, Ramona Angelita Luduena, Maria Moreno Bosque, Roberto Nieto, Omar Bautista Olivero, Juan Pandis, Fulvio Enzo Poggi, Manuel Jose Ramovecchi, Galileo Eduardo Rodriguez, Juan Manuel Rodriguez, Beatriz Alicia Scarpa, Abel Villarino, Carlos Cecilio Villares, Marina Volant, Maria Beatriz Vouillat, Daniel Acevedo, Eduardo Agro, Jose Heribe Agrofolio, Pedro S. Ambrossetti, Enrique Domingo Amodeo, Roberto Balciunas, Juan Manuel Caride, Antonio Carmona, Angel Amadeo Chanaha, Vittorio Orsi, Angela Otero, Amancio Modesto Pafundi, Pascual Piscitelli, Eduardo A. Arias Rodriguez, Maria Elena Solari and Enrique Jose Tudor v. Argentina |
| Doc. Type: | Decision |
| Decided by: | Chairman: Helio Bicudo;<br>First Vice-Chairman: Claudio Grossman;<br>Second Vice-Chairman: Juan Mendez;<br>Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo<br>In compliance with Article 19(2) of the IACHR Rules of Procedure, Second Vice-President, Juan E. Méndez, of Argentine nationality, did not take part in the discussion of this case or in the ruling. |
| Dated: | 19 January 2001 |
| Citation: | Menendez v. Argentina, Case 11.670, Inter-Am. C.H.R., Report No. 3/01, OEA/Ser.L/V/II.111, doc. 20. rev. (2000) |

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## I. SUMMARY

1. Between 27 December 1995 and 30 September 1999, the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "IACHR") received petitions from various individuals–on their own behalf or on behalf of a third person, lodged by themselves or by legal counsel–and non-governmental organizations (individually and collectively hereinafter the "petitioners") on behalf of 47 alleged victims. The petitions claim violation of the rights to judicial guarantees (Article 8), property (Article 21) equal protection of the law (Article 24) and effective remedy (Article 25(2)(c)), and of the obligation of States to respect rights (Article 1(1)) and to give effect to those rights (Article 2), all rights and obligations enshrined in the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention").

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They also claim that the Republic of Argentina (hereinafter the “State,” “Argentine State,” or “Argentina”) has violated the rights to the preservation of health and well-being (Article XI) and to social security, in relation to the obligation to work and contribute to social security (Articles XVI, XXXV and XXXVII) as enshrined in the American Declaration on the Rights and Duties of Man (hereinafter the “Declaration”).

2. As the facts are similar and the subject substantially the same, the IACHR combined and processed the petitions in question as a single file, in accordance with Article 40(2) of its Rules of Procedure. The names of the petitioners[FN1] and of the alleged victims[FN2], along with the dates on which petitions were lodged, are presented in the following table.

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[FN1] The IACHR has previously pointed out that Article 26 of its Rules of Procedure in conjunction with Article 44 of the Convention establishes that a petitioner may present a petition "on its own behalf"–identifying itself with the person of the victim–or "on behalf of third persons"–being a third party in relation to the victim and without there necessarily existing any personal relationship between the two. See IACHR Annual Report for 1998. Report No. 39/99, Mevopal S.A., paragraph 13.
[FN2] The Commission has previously stated that it holds the term "victim" to be every person protected by the Convention as established generically in Article 1(1) in accordance with the regulations establishing the rights and freedoms specifically recognized therein. See Annual Report for 1998, Report No. 39/99, Mevopal, S.A. paragraph 16.

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Table 1

| Nº | Alleged Victim | Petitioner(s) | Date Lodged dd/mm/yy |
|---|---|---|---|
| 1. | Abiuso, Martha Beatriz | *Idem* | 09/01/98 |
| 2. | Acevedo, Daniel | *Idem* | 09/01/98 |
| 3. | Agro, Eduardo | Agro, Eduardo; CEJIL; CELS; Sergio Bobrovsky; Horacio González and Pablo Knopoff. [FN3] | 08/08/97 |
| 4. | Agrofoglio, José Heribe | Agrofoglio, José Heribe and Graciela Barrera | 17/04/97 |
| 5. | Alfaro, Mario Jorge | Alfaro, Mario Jorge and Graciela Barrera | 08/08/97 |
| 6. | Alvarez, Ernesto | Alvarez, Ernesto and Graciela Barrera | 08/08/97 |
| 7. | Amada, Alfredo Raúl | Idem | 13/03/97 |
| 8. | Ambrosetti, Pedro S. | *Idem* | 17/04/97 |
| 9. | Amodeo, Enrique Domingo | Amodeo, Enrique Domingo and Graciela Barrera | 08/08/97 |
| 10. | Angotti, Oscar | Idem | 09/01/98 |
| 11. | Balciunas, Roberto (67) | *Idem* | 11/07/96 |
| 12. | Bernardez, Carmen | *Idem* | 17/04/97 |
| 13. | Calvo, Wilson Jorge (78) | *Idem* | 22/08/96 |
| 14. | Carballo, Héctor | *Idem* | 09/01/98 |
| 15. | Caride, Juan Manuel, widow of [FN4] | Caride, Juan Manuel, widow of; CEJIL; CELS; Sergio Bobrovsky; Horacio González and Pablo Knopoff | 27/12/95 |
| 16. | Carmona, Antonio, [FN5] Angelica Cuevas de | Lidia Angélica Carmona (heir); CEJIL; CELS; Sergio Bobrovsky; Horacio González and Pablo Knopoff | 30/09/99 |

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|---|---|---|---|
| | Carmona, Lidia Angélica Carmona (heir) | | |
| 17. | Castañeda, Héctor Alfredo | Idem | 09/01/98 |
| 18. | Chañaha, Angel Amadeo (68) | Chañaha, Angel Amadeo; CEJIL; CELS; Sergio Bobrovsky; Horacio González and Pablo Knopoff. [FN6] | 14/10/97 |
| 19. | Dabrowski, Ladislao | Idem | 19/05/97 |
| 20. | Daruich, Ramadan | *Idem* | 11/04/97 |
| 21. | De Carli, De Onoratelli | *Idem* | 09/01/98 |
| 22. | Falvo, Juan Carlos | Falvo, Juan Carlos and Graciela Barrera | 08/08/97 |
| 23. | Grabowski, Rosa Helena | Idem | 09/01/98 |
| 24. | Gagni, Valeria | *Idem* | 01/08/97 |
| 25. | Linero, Ana María | *Idem* | 09/01/98 |
| 26. | Ludueña, Ramona Angelita | *Idem* | 25/11/97 |
| 27. | Menéndez, Amilcar, widow of [FN7] | Menéndez, Amilcar, widow of; CEJIL; CELS; Sergio Bobrovsky; Horacio González and Pablo Knopoff | 27/12/95 |
| 28. | Moreno de Bosque, María | Idem | 25/11/96 |
| 29. | Nieto, Roberto | *Idem* | 09/01/98 |
| 30. | Olivero, Omar Bautista | *Idem* | 02/10/96 |
| 31. | Orsi, Vittorio | Orsi, Vittorio and Baker & Hostetler | 06/05/96 |
| 32. | Otero, Angela | Otero, Angela y Graciela Barrera | 08/08/97 |
| 33. | Pafundi, Amancio Modesto, widow of [FN8] | Pafundi, Amancio Modesto, widow of; CEJIL; CELS; Sergio Bobrovsky; Horacio González and Pablo Knopoff. [FN9] | --/03/95 |
| 34. | Pandis, Juan | Idem | 29/10/96 |
| 35. | Piscitelli, Pascual | *Idem* | 27/05/97 |
| 36. | Poggi, Fulvio Enzo | *Idem* | 09/01/98 |
| 37. | Ramovecchi, Manuel José | *Idem* | 09/01/98 |
| 38. | Rodríguez Arias, Eduardo A. | *Idem* | 25/11/96 |
| 39. | Rodriguez, Galileo Eduardo | Rodriguez, Galileo Eduardo and Rodríguez,Joaquín Eduardo | 14/10/97 |
| 40. | Rodríguez, Juan Manuel (80) | Idem | 12/11/96 |
| 41. | Scarpa, Beatríz Alicia | *Idem* | 09/01/98 |
| 42. | Solari, María Elena | *Idem* | 09/01/98 |
| 43. | Tudor, Enrique José (72) | Tudor, Enrique José; CEJIL; CELS; Sergio Bobrovsky, Horacio González and Pablo Knopoff | 30/11/99 |
| 44. | Villares, Carlos Cecilio | Idem | 14/08/97 |
| 45. | Villarino, Abel | *Idem* | 25/11/96 |
| 46. | Volant, Marina | *Idem* | 29/03/97 |
| 47. | Vouillat, María Beatriz | *Idem* | 09/01/98 |

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[FN3] They became legal representatives on 30 September 1999.

[FN4] Deceased as of 5 December 1999. His widow is the beneficiary of his pension and succeeds him in his welfare rights. She is pursuing the petition to the IACHR.

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[FN5] Mrs. Cuevas de Carmona inherited the pension when Antonio Carmona died on 9 February 1995 and his wife died thereafter. Currently the daughter is pursuing the mother's petition to the IACHR.
[FN6] They became legal representatives on 30 September 1999.
[FN7] Mr. Menendez died on 8 August 1998. His widow was named beneficiary of his pension and succeeds him in his welfare rights. She is pursuing the petition to the IACHR.
[FN8] Mr. Pafundi died on 20 March 1999. His widow was named beneficiary of his pension and succeeds him in his welfare rights. She is pursuing the petition to the IACHR.
[FN9] They became legal representatives on 30 September 1999.
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Acronyms: CEJIL – Centro por la Justicia y el Derecho Internacional
(Center for Justice and International Law)

CELS–Centro de Estudios Legales y Sociales, Argentina
(Center for Legal and Social Studies, Argentina)

3. All petitioners have filed claims before the Argentine National Social Security Administration (hereinafter ANSES) with the aim of getting an adjustment to their retirement or pension payment or in its calculation (social security income). The petitioners claim that the fundamental rights protected by Articles 8 and 25 of the Convention have been violated by delays in securing final judgments determining the rights of the alleged victims and any adjustment to or calculation of their social security income. They also cite postponement of enforcement of judgments, as well as inappropriate enforcement of the same that resulted in confiscation of property and forced them to exhaust other resources in their attempts to secure what is owed to them. They also cite violation of their rights to judicial guarantees and effective judicial protection. In this regard they say that Articles 5, 7, 16, 22 and 23 of Law 24.463 on Social Security Solidarity allowed for postponement of the enforcement of court judgments favorable to them on the basis of insufficient budgetary resources, and that the obligation to make the above-mentioned rights effective was violated. They also maintain that the facts as outlined have led to the violation of other rights, including the rights to property, equality, health and well being, social security and life.

4. That State maintains that the case is inadmissible because nothing the petitioners argue constitutes a violation of the Convention. The State does not deny that there have been delays in judicial proceedings and enforcement of judgments. They claim, however, that said delays were justified, citing the collapse of the social security system due to excess litigation and a lack of resources, among other reasons. The State is only responsible for injecting as much as is available into the common pension system and is not a guarantor of the system. It contributes just enough to cover the normal and ongoing payments stipulated by law. The State adds that acquired rights cannot be placed above the laws on public order, and that the integrity of pensions has not been affected, as current benefits are comparable to past benefits and that adjustments made according to law do not have their origin in the constitution. In regard to whether the provisions of Law 24.463 are compatible with the Convention, the State holds that the temporary limitation was born of necessity and was in the public interest.

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5. The State does not debate the tight situation faced by retirees in the minimum bracket, but does say that they receive additional welfare benefits. The State adds that, within limits established objectively by economic growth, it has promoted measures to make effective all the rights recognized in Article 26 of the Convention and that the complaints under consideration reflect isolated cases and not the general situation in the country. In regard to the requirements for admissibility, the State has responded to each petition individually, variously citing failure to exhaust domestic remedies, pointing out the date on which remedies were exhausted or that it had cancelled pension payments, or not saying anything at all.

6. In processing this case, the IACHR has noted that the petitions of: Abiuso, Martha Beatriz; Alfaro, Mario Jorge; Alvarez, Ernesto; Amada, Alfredo Raúl; Angotti, Oscar; Bernardez, Carmen; Calvo, Wilson Jorge; Carballo, Héctor; Castañeda, Hector Alfredo; Daruich, Ramadam; Dabrowski, Ladislao; De Carli, de Onoratelli; Falvo, Juan Carlos; Gagni, Valeria; Grabowski, Rosa Helena; Linero, Ana María; Ludueña, Ramona Angelita; Moreno Bosque, María; Nieto, Roberto; Olivero, Omar Bautista; Pandis, Juan; Poggi, Fulvio Enzo; Ramovecchi, Manuel José; Rodríguez, Galileo Eduardo; Rodríguez, Juan Manuel; Scarpa, Beatriz Alicia; Villarino, Abel; Villares, Carlos Cecilio; Volant, Marina; and Vouillat, María Beatriz did not contain sufficient information, either in regard to exhaustion of domestic remedies or to the relationship with the facts put forward in the arguments. Some did not contain enough information to establish the legitimacy of the petition. As a result, on 21 December 2000, the IACHR decided to separate these petitions from this case and combine them in Case 11.670A with the purpose of requesting more information from the parties and making a decision on them at a later date.

7. In regard to the remaining petitions, namely those of: Acevedo, Daniel; Agro, Eduardo; Agrofolio, José Heribe; Ambrossetti, Pedro S.; Amodeo, Enrique Domingo; Balciunas, Roberto; Caride Juan Manuel; Carmona, Antonio; Chañaha, Angel Amadeo; Menéndez, Amilcar; Orsi Vittorio; Otero, Angela; Pafundi, Amancio Modesto; Piscitelli, Pascual; Rodríguez Arias, Eduardo A.; Solari, María Elena; and Tudor, Enrique José, the Commission has examined them as reflected in this report and has deemed them admissible as they comply with the requirements set forth in Articles 46 and 47 of the Convention.

## II. PROCEEDINGS BEFORE THE COMMISSION

8. After receiving the original petitions of Amilcar Menéndez and Juan Manuel Caride in 1995 (hereinafter the "original petitioners"), the IACHR sent the State a request for information on 13 February 1996 and later granted it an extension of 45 days for response. The State's response was received on 29 August 1996 and forwarded to the petitioners on 3 September 1996. The case was numbered 11.670. Over time the other petitions listed in Table 1 were received. They were joined to case 11.670 and each petitioner was informed of that fact. In the IACHR's view, the related subject matter provides grounds for combining them in a single case. The Commission would like to once again point out that article 40 of the Rules of Procedure[FN10] does not require that the facts, alleged victims and violations mentioned in petitions strictly coincide in time and place for the petitions to be combined and processed in a single file. To the contrary, the IACHR believes that petitions can be combined and processed together when the subject matter and legal questions involved are adequately connected.[FN11]

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[FN10] Article 40 of the Rules of Procedure of the IACHR establishes criteria for the separation and combination of files. Its two paragraphs read as follows: "1. Any petition that states different facts that concern more than one person, and that could constitute various violations that are unrelated in time and place shall be separated and processed as separate cases, provided the requirements set forth in Article 32 are met. 2. When two petitions deal with the same facts and persons, they shall be combined and processed in a single file."
[FN11] IACHR Annual Report for 1996. Case No. 11.227, 12 March 1997, Colombia, paragraphs 40 and 48. Paragraph 40 states that "The Commission has not interpreted this provision to require that the facts, alleged victims and violations set forth in a petition strictly coincide in time and place in order to allow processing as a single case." Paragraph 48 adds, "The Commission possesses and has exercised the competence to consider numerous individual claims in a single case so long as the claims are adequately connected. There exists no provision in the Convention, in the Statute of the Inter-American Commission on Human Rights or in the Regulations of the Commission which limits the number of individual claims or alleged victims which may be considered in this manner." Other cases in which the IACHR has combined petitions are: Report No. 42/82 (Chile), 8 March 1982, IACHR Annual Report for 1981-82, OEA/Ser.L/V/II.547, Doc.6, rev.1, 20 September 1982 (on violation of the human rights of 50 individuals who were deported from Chile on the basis of special emergency legislation); Report No. 18/98, Case 11.285 (Edson Damiao Calixto) and Case 11.290 (Roselandio Borges Serrano), Brazil, 21 February 1998, p. 113, paragraphs 57 & 58. It is also common practice for the Commission to combine cases when drafting a report. Thus we see Report No. 40/00, Case 10.588 (Isabela Velázquez and Francisco Velázquez), Case 10.608 Ronal Homero Mota et al., Case 10.796 (Eleodoro Polanco Arevalo), Case 10.856 (Adolfo René and Luis Pacheco Del Cid), and Case 10.921 (Nicolás Matoj et al.), Guatemala and Report No. 39/00, Case 10.586 ET AL. (Extrajudicial Executions), Guatemala. Both decisions are dated 13 April 2000 and contained in the IACHR Annual Report for 1999.
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9. On 9 October 1996, during its 93rd Regular Session, the Commission held a hearing with the original petitioners and the State. On 4 November 1996 an extension of 30 days was granted to the petitioners, who then submitted their comments on 16 January 1997. On 27 January 1997, a submission was received from the State and sent on to the original petitioners on 3 February 1997. On 2 February and 14 April 1997 respectively 30-day extensions were given to the State. On 9 July 1997 the petitioners were granted an extension. The response of the original petitioners was sent to the State in 19 August 1997. On 23 September and 15 December respectively, 30-day extensions were granted to the State.

10. The State's response was received on 23 January 1998 and sent to the petitioners on 9 February 1998. The petitioners requested an extension on 14 April 1998 and were granted one of 30 days. On 26 August 1998, the original petitioners submitted additional information. On 12 November 1998, the IACHR sent to the State the full list of petitioners combined in the case so that it could submit comments on any and all of the alleged victims listed in Table 1. On 4 November 1998, the Commission received another submission from the original petitioners.

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11. On 26 April 1999, the IACHR received a response from the State. On 21 May 1999, the original petitioners' comments were sent to the State. The original petitioners submitted further comments on 6 July 1999 and the State sent in comments on 16 September of the same year. The Commission then had a hearing with the parties on 30 September 1999. On 28 October, the original petitioners were granted a 30-day extension. On 29 October the State submitted further comments. On 30 November the original petitioners submitted their comments.

12. Entering 2000, the original petitioners submitted further information on 14 January. On 2 February, 9 March, 11 April and 22 May, the State requested consecutive extensions, which were granted for 30, 15 and 60 days respectively. On 3 August 2000 the original petitioners submitted additional information. On 12 October the Commission held a hearing with the original petitioners and the State during its 108th Regular Session. At that time the Commission gave the parties 30 days in which to try to reach a friendly settlement and inform the Commission. Upon completion of said period, the Commission had received no information on a friendly settlement.

13. In processing this case, the IACHR has noted that the petitions of: Abiuso, Martha Beatriz; Alfaro, Mario Jorge; Alvarez, Ernesto; Amada, Alfredo Raúl; Angotti, Oscar; Bernardez, Carmen; Calvo, Wilson Jorge; Carballo, Héctor; Castañeda, Hector Alfredo; Daruich, Ramadam; Dabrowski, Ladislao; De Carli, de Onoratelli; Falvo, Juan Carlos; Gagni, Valeria; Grabowski, Rosa Helena; Linero, Ana María; Ludueña, Ramona Angelita; Moreno Bosque, María; Nieto, Roberto; Olivero, Omar Bautista; Pandis, Juan; Poggi, Fulvio Enzo; Ramovecchi, Manuel José; Rodríguez, Galileo Eduardo; Rodríguez, Juan Manuel; Scarpa, Beatriz Alicia; Villarino, Abel; Villiares, Carlos Cecilio; Volant, Marina; and Vouillat, María Beatriz did not contain sufficient information, either in regard to exhaustion of domestic remedies or to the relationship with the facts put forward in the arguments. Some did not contain enough information to establish the legitimacy of the petition. As a result, on 21 December 2000, the IACHR decided to separate these petitions from this case and combine them in Case No. 11.670A with the purpose of requesting more information from the parties and making a decision on them at a later date.

## III. POSITIONS OF THE PARTIES

### A. Facts

14. The petitioners are retirees who have demanded an adjustment to their pensions by ANSES, which is a decentralized body of the Ministry of Labor and Social Security under the executive branch of the national government {previously known as the National Social Security Fund (Caja Nacional de Previsión Social)}. Starting in 1992, ANSES began to express disagreement with judgments regarding the percentage to be applied in readjusting pensions that were the result of special appeals to the Supreme Court (Corte Suprema de Justicia de la Nación, hereinafter the "CSJN"). When Law 24.463 entered into effect on 30 March 1995, a new system was instituted. However, a grace period was granted exceptionally to the administrative body to help it make the transition. Once the grace period was over, it would be subject to the time limits for summary proceedings. The Federal Courts of First Instance of the Social Security System established by Law 24.463 did not begin to function until February 1997.

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15. During the proceedings of this case, the parties have given the Commission information on the dates when cases were initiated and judgments rendered, on whether or not judgments have been enforced and if not, if any appeal has been filed and judged. In this section, the Commission will explain the position of the petitioners and that of the State insofar as it is the same as that of the petitioners.

16. The alleged victims listed in Table 2 claim to have filed an administrative complaint with ANSES. In the face of silence or of a decision with which they did not agree, they filed an appeal before the corresponding court demanding readjustment to or calculation of their pension payment. These appeals have still not run their course. In some cases, a judgment favorable to them was rendered by the Chamber for Social Security (hereinafter the "CSS"), but then ANSES filed a special appeal to the CSJN, which has not yet pronounced final judgment.

Table 2:Cases awaiting judgment

| Nº | Alleged Victim | Date of Administrative Claim before **ANSES** | Date of appeal to the CSS | **Date of final judgment or notification** | **Appeal to the CSJN** | **Court delay without final judgment** |
|---|---|---|---|---|---|---|
| 1. | Agro, Eduardo | No info | No info | No info | -/09/94 [FN12] | More than 6 years |
| 2. | Agrofoglio, José Heribe | No info | 01/09/97 | Pending | | More than 3 years |
| 3. | Ambrosetti, Pedro S. | No info | 1995 | Pending | | More than 5 years |
| 4. | Amodeo,Enrique Domingo | No info | 04/09/98 | Pending | | More than 2 years |
| 5. | Pafundi, Amancio Modesto [FN13] | 29/09/95 | 05/11/97 | Pending | | More than 5 years |

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[FN12] The petitioner informed the Commission that the case has been awaiting final judgment from the CSJN since September 1994. The case before the CSJN covers Mr. Agro and 124 other retired pilots.

[FN13] Deceased as of 20 March 1999.

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17. The alleged victims listed in Table 3 maintain unwarranted delays occurred from the time the administrative complaint was made up to the time that they received a favorable decision. They also maintain that enforcement of the judgment was postponed indefinitely, through a priority order, until such time as the State would have sufficient funds to pay their pensions. The State pointed out that in determining any order for payment of benefits conferred or that may be conferred for a calendar year, it established priorities when various claims to the same funds exist.[FN14] In some cases the petitioners have exhausted domestic remedies for enforce execution of the judgment.

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[FN14] Article 22 of Law 24.463 states, "Judgments against the National Social Security Administration shall meet with compliance within a period of 90 days of notification, until

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budgetary resources allocated to that end for the fiscal year in which that last day of that period falls are exhausted. Once such funds are exhausted, compliance with all other awards pending payment shall be suspended. Calculation of the time period allotted for compliance shall begin anew at the beginning of the next fiscal year in which budgetary funds are allocated for compliance with court awards and stop again once those funds are exhausted. For compliance purposes, the Argentine National Social Security Administration must absolutely respect the chronological order of the final judgments, except when compliance is passed on to the following fiscal year, in which case priority shall be given to the oldest beneficiaries. Laws 23.982 and 24.130 shall apply, with supplemental application of Law 3952."

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Table 3:Cases with a final judgment that has not yet been enforced due to the existence of a priority list

| Nº | Alleged Victim | **Date of Administrative Claim** | **Date of appeal to the CSS** | **Date of final judgment or notification** | **ANSES special appeal to CSJN** | **Delay in rendering judgment and its enforcement due to inclusion on a priority list** |
|---|---|---|---|---|---|---|
| 1. | Acevedo, Daniel | No info | Made. No info on date | 23/02/99 | No info | More than 1 year awaiting enforcement |
| 2. | Chañaha, Angel Amadeo | 12/07/93* | 18/05/94 | 23/09/94 | Rejected by CSJN | More than 6 years awaiting enforcement [FN15] |
| 3. | Menéndez, Amilcar [FN16] | 21/11/88* | 04/02/91 | 07/05/92 | No info | More than 3 years awaiting judgment and more than 8 awaiting enforcement |
| 4. | Orsi, Vittorio | 27/11/92* | No info | 25/02/94 | 05/03/99 | More than 6 years awaiting judgment and more than 5 awaiting enforcement |
| 5. | Otero, Angela | No info | No info | 25/07/94 | 01/03/99 | More than 4 years awaiting judgment and more than 5 awaiting enforcement |
| 6. | Piscitelli, Pascual | No info | Made. No info on date | 27/09/94 | 08/03/99 | More than 4 years awaiting judgment and more than 5 awaiting enforcement |

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| 7. | Rodriguez Arias,<br><br>Eduardo A | 1991 | March 1993 | 27/09/93 | 13/10/98 | More than 7 years awaiting judgment and more than 7 awaiting enforcement [FN17] |
|---|---|---|---|---|---|---|
| 8. | Solari, María Elena | No info | Made. No date given | 28/06/99 | No info | More than 1 year awaiting enforcement |

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[FN15] The petitioner pointed out that in 1998 he approached ANSES but nothing came of it.
[FN16] Deceased as of 8 August 1998 after waiting 8 years for the judgement to be enforced.
[FN17] The State said that when it calculated what was due him, it was no more than what he was already receiving. The petitioner thus considers that the sentence was not enforced.
* Requested "immediate dispatch" and/or amparo based on "delay of the administration"
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18. The alleged victims listed in Table 4 claim to have a final court judgment and to have finished all court procedures. Nonetheless, they claim that there were procedural delays from the beginning of their cases until final judgment was rendered.

Table 4: Cases in which final court judgment was rendered but with delays

| Nº | Alleged Victim | **Date of administra-tive complaint** | **Date of appeal to the CSS** | **Date of Final Judgment or notification** | **Date of judgment of special appeal to CSJN** | **Delay in Rendering Final Judgment** |
|---|---|---|---|---|---|---|
| 1. | Caride, Juan Manuel | 27/05/88 * | 17/09/90 | 03/08/92 | 28/06/94 | More than 6 years |
| 2. | Carmona, Antonio and Cuevas de Carmona, A. | 18/04/86 * | 17/09/91 | 21/03/94 | No appeal | More than 7 years |
| 3. | Tudor, Enrique José | 08/11/90 * | 14/09/92 | 27/10/93 | 23/12/97 [FN18] | More than 7 years |

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[FN18] He filed an appeal for reversal of the CSJN decision for failure to consider evidence presented on 27/02/97 and rejected on 23/12/97.
* Requested "immediate dispatch" and/or amparo based on "delay of the administration"
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19. The alleged victims listed in Table 5 claim that the courts have rendered a final judgment and that they have finished all court procedures (this list thus includes the names listed in Table 4 above). However, they claim that the judgments have been inappropriately enforced by ANSES. In some cases, the petitioners have exhausted the other domestic remedies available to them in an effort to see the sentence enforced according to the stipulations contained in it.

Table 5: Cases in which the judgment has been enforced with delay or inappropriately

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| | Alleged Victim | **Date of final judgment & enforcement by ANSES** | **Other remedies tried due to inappropriate enforcement** | **Complaints regarding enforcement** |
|---|---|---|---|---|
| 1. | Balciunas, Roberto | 1993 & Aug/Sept1999 | Administrative appeal, still pending decision | More than 6 years awaiting enforcement<br><br>They did not make any adjustment beyond 2 years |
| 2. | Caride, Juan Manuel | 28/06/94 &<br><br>April 1998 | Judicial appeal, still pending decision | More than 6 years awaiting enforcement<br><br>Asking for pertinent adjustments for the period 01/04/91 al 30/03/95. |
| 3. | Carmona, Antonio y Cuevas de Carmona, Angélica. | 21/03/94 &<br><br>December 1994 | Initiated *amparo* proceedings for incomplete payment on 10/02/97. Ruling in their favor on 06/05/98 | More than 10 years awaiting enforcement<br><br>Enforcement suspended because the file is now before a criminal court for possible action against ANSES authorities |
| 4. | Rodríguez, Juan Manuel | 22/08/86 & 1990 | Administrative appeal – rejected | More than 4 years awaiting enforcement<br><br>He was not paid what the judgment stipulated |
| 5. | Tudor, Enrique José | 1997 & March 1999 | Administrative appeal rejected – filed judicial appeal [FN19] | More than 3 years awaiting enforcement<br><br>He was not paid what the judgment stipulated and is still awaiting a decision on his appeal |

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[FN19] On 2/09/99 he filed an amparo action to requests that the maximum levels be applied and that all differences for the period from 03/08/87 to September 1992 be paid.

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B. LAW

a. Changes in the situation during the processing of the case

20. The aspects of the case covered upon continuation were brought up by the petitioners when they initiated the case with the IACHR. Nonetheless, the parties have reported that new decisions changed the situation even while the case was being processed. First of all, in their initial petitions the petitioners claimed that their right to effective remedy had been violated as a direct result of Law 24.463, which denied them access to the courts. On 27 January 1997, the State informed the Commission that the CSJN had rendered judgment in favor of the retirees, declaring Article 24 of the above-mentioned law unconstitutional because it violated the right to free access to the courts of those persons who had initiated cases before the law was passed.[FN20] Secondly, in their initial petition the petitioners had pointed out that Article 19 of Law 24.463 created a third instance whose purpose was to endlessly delay the cases under

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consideration by forcing them to first go through an administrative procedure and then recur to the courts. During the hearings of 30 September 1999, the petitioners reported that this regulation had been declared unconstitutional.[FN21]

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[FN20] The State did not indicate which case was being cited.
[FN21] Article 19 states, "A final judgement rendered by the Chamber for Social Security can be appealed to the Supreme Court before enforcement whatever the amount of the award. Supreme Court decisions must be followed by all lower court justices when ruling on similar cases." The Second Bench of the CSS declared this article unconstitutional because it exceeded the powers of the legislative and executive branches of government and interfered in the powers reserved to the judicial branch (González Herminia del Carmen v. ANSES, 20 November 1998, Law 1998-E-759).

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21. Thirdly, the initial petitions pointed out that ANSES was not respecting court decisions when proceeding with enforcement. As a result, violations of the right to property occurred, mainly for 2 reasons: (1) different guidelines were set for updating and/or adjusting pensions, and (2) differences were present in applying limits when calculating pensions.[FN22]

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[FN22] In comments dated 19 May 1997, the State claimed that the limits in place cannot be considered confiscatory. The State, citing the Chocobar case (no date indicated), claimed that Law 24.463 was constitutional. Although the judgement cited does not make specific reference to each and every article of the law, the constitutionality of the same is made clear in the line of argument. The State also maintained that this same decision confirms the constitutionality of the limits established by Article 55 of law 18.037 and Law 24.463, claiming that any accusation of confiscation must be examined individually on the basis of facts and evidence presented.

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22. In regard to guidelines for updating or adjusting pensions, in the hearings of 12 October 2000 during the Commission's 108th Regular Session, the petitioners claimed that ANSES had altered its criteria. In the Angel Amadeo Chañaha case, payment had been made but not in the way that the judgment had provided for. Rather, it was made in accordance with an internal order of ANSES instituted by Resolution 917/98, which resulted in the amount due being cut in half. This resolution was later modified on 4 October 2000 when Resolution 951 was passed, which indicated that judgments must be complied with in the terms established in the court decision itself (res judicata), and not on the basis of different guidelines for updating or adjusting pensions set by Resolution 917 of 17 December 1998.[FN23]

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[FN23] Resolution 951 states, "The routines and procedures for settlement, payment and validation as set out in ANSES Resolution 917 of 17 December 1998, …… are not an obstacle to compliance with court judgments that clearly establish different guidelines for updating and/or adjusting pensions than those provided for by the referred to resolution. Judgments must be complied with in accordance with the terms set out in the decision, conveyed as res judicata."

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23. The petitioners also hold that ANSES changed its criteria on maximum limits in its 5 October 2000 decision on the Oscar Alberto Amaus case. Here ANSES decided that when settling an account, the precedent set by the Actis Corporale case should be followed, with no need for a court declaration, as the great difference between pensions set by court judgments and those set under the limits established in Article 55 of Law 18.037 was manifest. It adds that the percentage of cases litigated would thus be reduced and that in a state of law there exists the unavoidable duty to guarantee full compliance with court decisions conveyed as res judicata.[FN24]

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[FN24] Opinion 15177 states, "In cases such as this one, in which the judgment does not set the percentage to be used in deciding whether it is confiscatory, and when at the time of settlement it comes clear that the limit to be applied produces a loss of more than 15%, the Supreme Court instructions contained in the Actis Caporale decision should be followed, if the person affected so agrees."

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b. Conflicting aspects

The Petitioners

24. The petitioners hold that the fundamental violations involved are against the provisions of Articles 8 and 25 of the Convention stemming from delay in securing final judgments determining the rights of the alleged victims, deferred enforcement of judgments and inappropriate enforcement of the same. In regard to establishing a reasonable time period, they maintain that the period should be calculated from the time that administrative procedures are begun to the time that the final judgment is made effective through enforcement or compliance– and not simply to the time that it is rendered. Thus the necessity of resorting to other instances to obtain compliance with a court decision must be taken into account to the extent that the results obtained affect the ultimate success of litigation.[FN25]

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[FN25] The petitioners cite, inter alia, the European Court of Human Rights, Ruíz Mateos v. Spain, 23 June 1993, A262.

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25. They also maintain that in examining the reasonableness of the duration of cases, the fact that the matter under discussion is social security should also be taken into consideration.[FN26] Given their age, retirees and/or pensioners comprise one of society's most vulnerable groups, which intensifies their reliance on public assistance. If proceedings are unduly long and judicial remedies not effective, it may be impossible for them to enjoy the rights to social security, health, and physical and mental integrity. Courts should be all the more diligent when dealing with social security, as any delay may render the proceedings futile.

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[FN26] The petitioners cite, inter alia, the European Court of Human Rights, Deumeland v. Federal Republic of Germany, 29 May 1986.

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26. The petitioners hold that many court judgments have gone unenforced since Law 24.463 took effect, and that actions of ANSES aim to prolong legal proceedings indefinitely.[FN27] The petitioners maintain that certain provisions of Law 24.463 are incompatible with Articles 8 and 25 of the Convention. They state that Articles 5 and 7 of that law have led to a system with an unchanging level of benefits, which have been frozen since 1 April 1991 with the one exception of a 3.28% increase granted in September 1993. They also claim that Articles 16 and 17 grant the State powers and procedural prerogatives such as the capacity to allege a limitation on monies and to use expert testimony prepared by the Office of the Auditor General, something no other debtor in Argentina can do to become exempt from complying with a court order. They point out that these special powers can even be used to impede progress in adjustment of pension levels.[FN28] Articles 16 and 22 taken together allow for postponement in compliance with or enforcement of court judgments providing for adjustments to the benefits of retirees on the basis of a lack of budgetary resources.[FN29]

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[FN27] The petitioners have attached a copy of Report No. 198, 23 November 1999, issued by the Chamber of Social Security (CSS) of Argentina.

[FN28] Article 16 of Law 24.463 states, "The National Social Security Administration may cite in its defense limitation of the funds to be distributed and the resulting incapacity to cover the greater expenses resulting from attending to the demands of the individual and later application to analogous cases." Article 17 states, " Only documentary evidence, oral and expert testimony, reports and other evidence that the court deems necessary shall be admitted, unless the National Social Security Administration alleges limitation of resources in the funds to be distributed, in which case corresponding expert testimony will be submitted by the corps of experts and civil servants of the Office of the Auditor General in accordance with the rules and regulations of that office."

[FN29] The petitioners have attached a copy of comments on the matters taken up in the case made by the UN Committee on Economic, Social and Cultural Rights. In paragraph 18, the Committee states that it "Notes with concern the scope of the privatization of the pension program. Of special concern is Article 16 of Law 24.463 which allows the government to reduce pensions or to simply not pay them by invoking economic hardship." It recommended that the State "Assure that its social security program guarantees workers an adequate minimum pension, which should not be unilaterally reduced or deferred, especially in times of economic hardship. Thus, (we) recommend (…) that Article 16 of Law 24.463 of 31 March 1995 be revoked in order to guarantee full payment of all pensions." (Original in English – Spanish translation provided by the petitioner. They also attach the Summary record of the first part of the 36th meeting: Argentina 25/11/99.E/C.12/1999/SR.36

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27. They add that Articles 22 and 23 of Law 24.464 proscribe enforcement, fines and other sanctions against civil servants who do not comply with court orders, as well as any other action

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that could compel the state to comply with judgments. Moreover, these articles keep judges from setting deadlines for compliance with the judgment.[FN30] Specifically, Article 23 deprives judges of the capacity to make their own judgments effective. This goes against the balance of powers and the stability of court actions. This also explains why there are unreasonable delays in total or partial compliance with final court judgments, obligating everyone involved to litigate ad infinitum

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[FN30] Article 22 states, " Judgments against the National Social Security Administration shall meet with compliance within a period of 90 days of notification, until budgetary resources allocated to that end for the fiscal year in which that last day of that period falls are exhausted. Once such funds are exhausted, compliance with all other awards pending payment shall be suspended. Calculation of the time period allotted for compliance shall begin anew at the beginning of the next fiscal year in which budgetary funds are allocated for compliance with court awards and stop again once those funds are exhausted. For compliance purposes, the Argentine National Social Security Administration must absolutely respect the chronological order of the final judgments, except when compliance is passed on to the following fiscal year, in which case priority shall be given to the oldest beneficiaries. Laws 23.982 and 24.130 shall apply, with supplemental application of Law 3952." Article 23 states, "In no case shall a judge set a different time period for compliance or impose pecuniary, compulsory or comminatory sanctions on the respective bodies or competent officials, except in cases of amparo for delay. Any measures of this kind that may be taken or adopted shall have no legal effect. Attachment of the assets and accounts of the National Social Security Administration shall not be possible. The competent administrative authorities shall immediately take steps to stop or lift any compulsory, precautionary or executory measures ordered before the enactment of this law, including those regarding the assets of the Social Security Administration."

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28. The petitioners maintain that Law 3.952 of 1902, whose application is supplemental, stipulates that any judgments against the state shall be merely declarative in nature and limited to the recognition of the right in question. The petitioners argue that the doctrine of the Rule of Law supersedes such discretionary criteria typical of state absolutism. The judicial is the only branch of government that the constitution recognizes as having the power to interpret law and determine if emergency measures taken to limit compliance with court judgments regarding adjustment to benefits due retirees and pensioners are reasonable or not. Neither the legislative nor the executive branch is empowered to prohibit judges from establishing deadlines for compliance with their judgments, and all the more so when the goal is not good administration but eternal delay in compliance with decisions favorable to retirees and pensioners. They hold that budgetary limitations are being used as an obstacle to truly effective remedy,[FN31] and therefore violation of Article 25 of the Convention is more closely linked to enforcement of judgments than to determination of rights.

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[FN31] The petitioners cite the Pietranera case of 1962 in which the Supreme Court of Argentina ruled that a decision affecting the national budget could not be executed in the same fiscal year in which the judgement was rendered as the budgetary consequences could not have been

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foreseen when the budget had been drawn up. But if compliance is not taken into account for the following budget, it is due to negligence or the will not to pay, and thus the decision is enforceable.

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29. They claim that the State cannot claim a "state of emergency in the pension system" with the objective of restricting the rights of retirees, especially when they give no specific explanation of the economic crisis, the gravity of the emergency, the means being used to resolve it, or the time the exceptions will remain in effect (as required by Article 27 of the Convention). Nor has the State informed the other States Parties of the suspension of rights due to an alleged emergency. Even if one proceeds on the supposition that the arguments of the State are acceptable, still the full effectiveness of legal guarantees and of remedies must be maintained as such rights cannot be suspended or restricted.[FN32]

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[FN32] The petitioners cite the Inter-American Court of Human Rights, Advisory Opinion OC-9/87, Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights), Series A, No. 9, paragraphs 20-22-24. "From Article 27(1), moreover, comes the general requirement that in any state of emergency there be appropriate means to control the measures taken, so that they are proportionate to need and do not exceed the strict limits imposed by the Convention or derived from it." And the petitioners explained that:"the guaranties are aimed to protect, insure and enforce the exercise of rights. The States parties are binding to respect the human rights and to enforce them with their respectively guaranties (Article 1(1), it means, with the adecuate mechanisms to make them effective in any situation."

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30. The petitioners also claim that the right to social security was violated in its relation to the duty to work and contribute to the social security system. All the petitioning retirees contributed to the system for years and Article 14(bis) of the Argentine Constitution guarantees an economically and financially independent retirement system with adjustable pensions. At various time the petitioners have stressed that "The intention is not to question the policies adopted by the State or to debate the measures it has implemented. The petitioners are not asking the Commission to set the amount of pensions or comment on the system's structure or the general situation of retirees."[FN33]

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[FN33] Letter from the petitioners dated 16 October 2000.

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31. In regard to the other rights mentioned, the petitioners maintain that a pension is part of one's property and thus covered by the right to property. They say that pensions have dwindled to the point of becoming meaningless, due to their growing outdatedness[FN34] and unwarranted delays in enforcing judgments recognizing this right. Moreover, the retirement system violates the right to equal protection of the law since certain groups of retirees, such as former legislators, judges, members of the armed forces and ministers can be considered privileged.[FN35] They also mention "pensions of privilege" and "pensions to be thankful for." The petitioners hold that

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their rights to health, well-being and life are being affected, as their only source of income–and thus of purchasing food and surviving–is being threatened. And since most of them do not have access to any other source of income, they cannot afford basic services and needed medicine. They go on to point out that since the implementation of the economic plan in 1991, the mortality rate of the elderly has been on the rise.

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[FN34] Some of the petitioners have submitted receipts.
[FN35] The petitioners have submitted press articles and Executive Decrees that show that military personal has been paid monies owed them.
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The State

32. The State has argued that the IACHR should declare the case inadmissible for the reasons outlined upon continuation. The State claims that pension levels "Can be considered reasonable when compared to average income in the country." It counters arguments that retirees are being left defenseless and that they are being denied access to the courts. The State also defends the procedural system put in place by law, saying that ANSES was previously rendered defenseless and that the situation created by awards contained in judgments had put the system "in a virtual state of collapse." The system in place before the 1995 reforms provided for appeal to the corresponding judicial body in the case of an administrative claim being rejected, in accordance with Articles 8 and 9 of Law 24.473. The Law on Social Solidarity does not provide for an initial administrative stage to be regulated by the Law on Administrative Procedures (Law 19.549). The beneficiary is only required to file a claim and the administrating body then has to say whether it admits it totally, in part or not at all.[FN36]

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[FN36] Information submitted by the State on 27 January 1997.
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33. The State maintains that the measures in question are measures of public order, as they were born of necessity and instituted for the public good. It cites CSJN jurisprudence that establishes that no one can possess an acquired right that goes against public order. Moreover, it cites the reservation Argentina placed in Article 21 when it ratified the Convention.[FN37]

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[FN37] This reservation states: "The Government of Argentina hereby stipulates that questions inherent to the economic policy of the government shall not be subject to review by an international tribunal. Also, whatever domestic courts declare to be in the public good or of social interest shall be beyond review, as will the courts' determinations of just compensation."
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34. The State refers to CSJN jurisprudence and doctrine, maintaining that Law 24.463 is constitutional. The time limit stipulated in Article 22 is based on situations outside the control of the State and all increases in pension payments are subject to an increase in the system's

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resources. The State's actions were and are aimed at insuring the continuation of the right to a pension in direct relation to the economic resources generated in Argentina within the framework of general economic stability and the principles of collective solidarity governing any social security system. Within limits established impartially by economic recovery and growth, the State promoted measures to achieve the full realization of human rights, in line with Article 26 of the Convention.

35. The onset of hyperinflation in 1989 brought the social security system to the brink of collapse. Later on the State was taken unawares by the great number of judgments with which it was simply impossible to comply and which, along with other cases, tore up standing law. That is the background to a social security emergency being declared in the early 1990s. An effort was made to strike a balance in the distribution of scarce resources with the goal of guaranteeing the right to social security in line with available resources. This is why judgments against the State are not immediately enforceable. Instead, they convey an order to the Legislature to include the credit in the annual budget. The basis of this is a universal public law principle, namely the unenforceability of judgments, which was incorporated into Argentine law early last century through Law 3.952, making such judgments merely declarative. The State maintains that the pension system is a major element of its economic policy, as shown by the fact that social security represents 40% of national budgetary expenditures.

36. The State maintains that the right to property is not affected by its actions. To the contrary, it claims to have preserved property on behalf of all beneficiaries and to have assured that they will continue to be paid. The State holds that it has not gone against the public order, as it is not a direct debtor without limits on what it owes within the system. It is the administrator and as such it tries to assure that the right to social security is conserved and maintained effective, and it can decide to postpone judgments that affect the fund until the financial situation has improved. Awards made to litigants have not been cancelled, but only suspended for the reasons explained. The State supports social services with additional income from privatizations, taxes and Treasury contributions. By establishing a list indicating in what order awards will be paid, it lends a legal order to the situation and sets priorities for settling equally valid claims on the same funds. In regard to paying with bonds, the State claims that it has not discriminated against retirees. To the contrary, it holds that it has granted them exemptions that other creditors have not received and that the debt to suppliers was paid in the same way as the debt to pensioners.

37. The legal battles afflicting the Social Security system have occurred in a context marked by an economic and social crisis and the State's efforts to respond to it. Certain by-products of this situation were not understood by a number of pensioners, who instigated thousands of cases, overloading the labor courts charged with hearing them. In response, Law 23.473 of 25 March 1987 created the Social Security courts, organized through the Appeals Chambers, which until March 1995 acted as courts of review for the administrative decisions of ANSES. The procedure was unilateral and excluded the administration from participating, thereby eliminating the constitutional right to a defense in court. It made it easy to formulate claims rooted in theory only, which were then validated in judgments. But no attention was given to the financial health of the system as a whole, possible socio-economic repercussions, or the specific circumstances related to the aims of the plaintiff. Nine members comprise the CSJN. A small support staff is

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in charge of the numerous requests its receives for information in its diverse areas of competence. In 1995, the pensioners involved in such legal cases initiated proceedings to have Law 24.463 declared unconstitutional. These proceedings, begun in May 1995, lasted more than a year. Taking this into account, the State cannot be said to have delayed matters deliberately.

38. The State maintains that guarantees in the realm of social security are related to a program and are not based on regulations.[FN38] The automatic adjustment mechanism is not rooted in the constitution and must take into account the financial health of the system, which is something the legislature must take under study. It is necessary to try to balance the interests of the majority of pensioners who do not litigate (90%) with those of the minority who do (10%). The overall health of the system has been given priority because nontransferable and irrecusable rights to the same patrimony are involved. The State does not cast doubt on the tight situation of pensioners receiving the minimum, but that situation was not brought about by the government. Rather it is the result of an unfair system based on a corporatist way of thinking that the State is trying to overcome. But change will require time, resources and deep cultural transformation. The State believes that complainants' objections are clearly ideological in nature and that the complaints before the IACHR are but isolated acts and not a reflection of the general situation in Argentina. In its last submission, the State describes the current state of affairs of the administrative complaints and court cases involving petitioners. It holds that in no case is there a violation. If there were delays previously, that was due to a severe crisis in granting and carrying out hearings. Currently, the State maintains, this is but an abstract question outside the Commission's competence.

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[FN38] The State cites Article 14(bis) of the Constitution.
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## IV. ANALYSIS

### A. Ratione loci, ratione personae, ratione temporis and ratione materiae competence of the Commission

39. The Commission has competence to examine the case. The State is a party to the Convention and deposited its instrument of ratification with the General Secretariat of the Organization of American States on 5 September 1984. Events related to the petitioners' complaints occurred after said ratification with prejudice to the persons identified in Table I above, as required by Article 44 of the Convention in combination with Article 1(2) of the same. The petition was lodged by the petitioners identified in Table I above, and in accordance with Article 44 of the Convention, they are persons qualified to lodge petitions with the Commission.

40. In regard to ratione materiae, the IACHR notes that the original petitioners maintained that the State violated their rights to a fair trial (Article 8), to property (Article 21) and to effective remedy (Article 25(2)(c), and that it also violated the obligation to respect the rights recognized in the Convention (Article 1(1) and to take measures to give them effect (Article 2). They also held that the State violated the following rights recognized in the American Declaration: to life (Article I), to the preservation of health and to well-being (Article XI), to a

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fair trial (Article XVIII), to property (Article XXIII) and to social security in relation with the duty to work and contribute to social security (Articles XVI, XXXV and XXXVII). Subsequent petitions joined to this case (see Paragraph 7 above) fundamentally laid claim to the same rights as the original petitioners, while in some no article of the Convention was invoked. Thus the Commission deems it correct and appropriate to examine all the petitions in light of the rights claimed by the original petitioners.

41. The Commission deems that once the Convention has entered into force in a State, it and not the Declaration becomes the specific source of law to be applied by the Commission,[FN39] as long as the petition alleges violation of substantially identical rights set forth in both instruments[FN40] and a continuing situation is not involved.[FN41] In the case under consideration, the parts of the Declaration and the Convention invoked by the petitions treat similar matters. The rights to a fair trial (Article XVIII) and to private property (Article XXIII) enshrined in the Declaration are subsumed in the provisions of Articles 8 and 21 of the Convention. Thus, the Commission will refer only to the norms of the Convention when addressing the above-mentioned violations of the Declaration. In regard to the rights of equal protection of the law (Article 24) and to effective remedy (Article 25(2)(c)), and to the obligation of the State to respect rights (Article 1(1)) and to adopt measures to give them effect (Article 2), the petitioners did not cite any parallel rule contained in the Declaration.

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[FN39] The Inter-American Court of Human Rights has pointed out that "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." Advisory Opinion OC-10/89 July 14, 1989. Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, paragraph 46.
[FN40] The Inter-American Court of Human Rights has said, "These 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. Advisory Opinion OC-10/89 July 14, 1989. Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, paragraph 46.
[FN41] The IACHR has established that it has competence to examine violations of the Declaration and the Convention as long as ongoing violation of the rights protected in both instruments is verified, such as would be the case, for example, of denial of justice that originated before the State in question had ratified the Convention and continued after the State's acceptance of the Convention and its entry into effect for that State. See IACHR Annual Report for 1987-88, Resolution 28/88, Case 10.190, Argentina, and IACHR Annual Report for 1998, Report 38/99, Argentina, paragraph 13.

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42. The rights to the preservation of health and to well-being (Article XI) and to social security in relation with the duty to work and contribute to social security (Articles XVI, XXXV and XXXVII) contained in the Declaration are not specifically protected by the Convention. Nonetheless, the Commission esteems that this circumstance doe not exclude its competence over the subject matter, as Article 29(d) provides that "(No provision of this Convention shall be

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interpreted…) as excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have." Thus the Commission will also examine the petitioners' allegations on violations of the Declaration.

B. Other Admissibility Requirements

a. Exhaustion of domestic remedies

43. Article 46(1)(a) of the Convention establishes that admission of a petition shall be subject to the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." In this case, the IACHR esteems that the petitioners have charged that violations of Articles 1, 2, 21 and 24 of the Convention and of Articles XI, XVI, XXXV, and XXXVII of the Declaration are ancillary to violation of Articles 8 and 25 of the Convention. The situations set out by the various petitioners will now be examined.

i. Petitions with procedural delays still awaiting final judgment

44. In regard to the exhaustion of domestic remedies, the petitioners listed in Table 2 above claim that there were unwarranted delays on the part of the competent bodies in rendering final judgment on the rights and obligations involved in their cases. Eduardo Agro points to a delay of more than six years before the CSJN. José Heribe Agrofolio explains that his case has been before the CSS for more than three years. Pedro S. Ambrosetti indicates that his case has been before the CSS for more than five years. Enrique Domingo Amodeo points out that his case has been before the CSS for more than four years. And Amancio Modesto Pafundi indicates that more than five years have gone by since he initiated his administrative complaint.

45. In accordance with Article 46(2)(c) of the Convention, the rule on exhaustion of domestic remedies contained in Article 46(1)(a) shall not be applied when "There has been unwarranted delay in rendering a final judgment under the aforementioned remedies." The petitioners claim that the date the administrative complaint was lodged should serve as the starting point for measuring delay. The State has said that the system in place before the 1995 reforms, in accordance with Articles 8 and 9 of Law 23.473, provided for appeal to the corresponding judicial body in the case of the administrative complaint being rejected. In the procedures it sets out, the Law on Social Solidarity does not provide for an initial administrative stage regulated by the Law on Administrative Procedures (Law No. 19.549). The beneficiary is simply required to lodge a claim and without further ado the administrating body is supposed to say if it will admit it fully, partially or not at all.[FN42]

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[FN42] Information provided by the State in its submission of 27 January 1997.
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46. The Commission agrees with the petitioners that when examining the exception to the rule on exhaustion of domestic remedies set out in Article 46(2)(c), the date to be used as a starting point should be the date the administrative complaint was lodged. According to the

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notion of an overall analysis of the procedure,[FN43] a case on rights, be it civil or administrative in nature, may be examined in the first instance by a body that is not a court, as long as the case can be presented in a reasonable period of time before a court with competence to try it in regard to both facts and law.[FN44] In this case the IACHR notes that the State has pointed to the fact that it was mandatory to lodge the complaint with the administrative body, both under the system in place before the 1995 reform of Law 24.463 and after. Once the administrative body has determined if payment is in order and, if so, how much is to be paid, the petitioners could contest the decision before the corresponding chambers, which without a doubt are courts in the sense set out in Article 8(1) of the Convention. Thus the Commission concludes that in this case the administrative stage of proceeding shall also be taken into account when calculating the time period.[FN45]

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[FN43] In regard to calculating the period, the Inter-American Court of Human Rights has applied the notion of a "overall analysis of the procedure" according to which a determination of reasonability should include consideration of delays at all stages of the process. Seethe Genie Lacayo case, 29 January 1997, paragraph 81.

[FN44] See IACHR Report Nº 31/99, Case 11.763, Masacre de Plan de Sánchez, Guatemala, 11 March 1999, paragraph 28. There the Commission affirmed that the remedies referred to in Article 46 are, in principle, judicial remedies and therefore it rejected the State's claims that the procedures carried out by the CEH were appropriate to the rule on the exhaustion of domestic remedies. The IACHR confirmed that said procedures did not attribute responsibility to any individual and that its report and recommendations did not leave any judicial effect. Also see Inter-American Court of Human Rights, Velásquez Rodriguez Case, Preliminary Exceptions, paragraph 91; Velásquez Rodríguez Case, Merits, paragraph 66, and the Godinez Cruz Case, Merits, Paragraph 69.

[FN45] In regard to calculating what is a reasonable period of time, the European Commission esteemed "That the administrative and judicial procedures, which are the subject of the petitioner's complaint, come under Article 6(1) of the Convention." Allenet de Ribemont v. France, Application No. 15175/89, 8 February 1993.

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47. The State has not denied that there have been delays; it has only brought forth various reasons why the delays have been reasonable. Neither does the State say that domestic remedies have not been exhausted. In consequence, the Commission considers that the State has tacitly renounced use of the rule provided for in Article 46(1)(a) of the Convention.[FN46] As a consequence, it is not up to the petitioners to show that available remedies have been exhausted or that one or more of the exceptions provided for in Article 46(2) are applicable.[FN47] Although not all petitioners have indicated the date on which they originally lodged their complaint, the IACHR esteems that the delays pointed to in various stages of the proceedings can be considered sufficient to show that delay has been unwarranted, as required in Article 46(2)(c) of the Convention.

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[FN46] The Inter-American Court has said, "For the exception of non-exhaustion of domestic remedies to be considered timely, it must be brought up in the initial stages of the procedure. If it

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is not, it can be presumed that the State concerned is tacitly renouncing its use." See Velásquez Rodríguez Case, Preliminary Exceptions, 26 June 1987, Series C No.1, paragraph 88; Fairén Garbi y Solís Corrales Case, Preliminary Exceptions, 26 June 1987, Series C No. 2, paragraph 87; Godínez Cruz Case, Preliminary Exceptions, 26 June 1987, Series C No. 3, paragraph 90; Gangaram Panday Case, Preliminary Exceptions, 4 December 1991, Series C No.12, paragraph 38; Neira Alegría et al. Case, Preliminary Exceptions, 11 December 1991, Series C No.13, paragraph 30; Castillo Páez Case, Preliminary Exceptions, 30 January 1996, Series C No. 24, paragraph 40; Loayza Tamayo Case, Preliminary Exceptions, 31 January 1996, Series C No. 25, paragraph 40.
[FN47] To the contrary, the Inter-American Court has repeatedly held that "A State that maintains non-exhaustion must point to the domestic remedies that should be exhausted and show that they are effective." Velásquez Rodríguez Case, Preliminary Exceptions, 26 June 1987, Series C No. 1, paragraph 88. The Court also says that "If a State maintaining non-exhaustion shows the existence of domestic remedies that should have been used, then it shall be up to the petitioners to show that such remedies were exhausted or that the exceptions provided for in Article 46(2) are applicable." Velásquez Rodríguez Case, Merits, Final Judgement, 29 July 1988, Series C No.1, paragraph 60.
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48. Without detriment to what has just been stated, the Commission notes that in the cases referred to, delays have been from approximately three to six years without a final decision being rendered. The Commission esteems that this constitutes prima facie an unwarranted delay. In consequence, the exception provided for in Article 46(2)(c) of the Convention is applicable and the requirement to exhaust domestic remedies set out in Article 46(1)(a) shall not be applied.

ii. Cases for which a final judgment was rendered but only after delay

49. Some of the petitioners listed in Table 3 above maintained that that they faced unwarranted delays in the processing of their cases before eventually obtaining a final judgment. Vittorio Orsi said that six years passed from the time he lodged an administrative complaint in 1992 until the CSJN pronounced judgment in 1999. Amilcar Menéndez cited a delay of more than 3 years from the beginning of his administrative complaint in 1988 until the CSS rendered a final judgment on it in 1992. Angela Otero pointed to a delay of four years from the time the CSS pronounced judgment in 1994 until the CSJN handed down its final judgment in 1999. Pascual Piscitelli reported a four-year delay from the time of the CSS judgment in 1994 until the CSJN judgment of 1999. Eduardo A. Rodriguez Arias cited a 7-year delay from the time he lodged an administrative complaint in 1991 until the CSJN rendered final judgment in 1998.

50. The petitioners listed in Table 4 claim to have faced the same circumstances. Juan Manuel Caride waited six years for the CSJN to issue a decision after initiating an administrative complaint in 1988. Antonio Carmona waited 7 years from the time he lodged an administrative complaint in 1986 until the CSS rendered judgment in 1994. And Enrique José Tudor waited seven years from the time he initiated an administrative complaint in 1990 until the CSJN issued its judgment in 1997.

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51. The Commission notes that here the State does not claim non-exhaustion of domestic remedies. In order to see if domestic remedies have indeed been exhausted in these cases, the principles formulated above (see paragraph 46) must be followed. The IACHR considers that the requirements of Article 46(1)(a) of the Convention have been satisfied, both in regard to claims of delay in the determination of their rights in conformity with the provisions of Article 8(1) and to final judgment. All internal remedies related to the other rights invoked by the petitioners have been exhausted.

iii. Cases for which a final judgment exists but has not been enforced due to a priority list

52. The petitioners listed in Table 3 above have said that, in spite of having received a final judgment in their favor, enforcement has been delayed because their cases have been placed on a priority list. Daniel Acevedo maintains that a final judgment was issued in his case in February 1999, 1 year and 10 months ago. Amilcar Menéndez cites a delay of 8 years since he got a final judgment in 1992. Angel Amadeo Chañaha says his final judgment was rendered in 1994, more than six years ago. Pascual Piscitelli, Vittorio Orsi, Angela Otero and María Elena Solari all cite delays of more than a year as their judgments were pronounced in 1999. And Eduardo A. Rodriguez Arias' judgment was issued in 1998 and has not yet been enforced.

53. The Commission notes that here the State does not claim non-exhaustion of domestic remedies in regard to the petitioners under consideration. The IACHR here reiterates the principles enunciated in Paragraph 46 above. The IACHR esteems that with the rendering of final judgments determining their rights and obligations, the petitioners have satisfied the requirements of Article 46(1)(a) of the Convention. In regard to delays in enforcement of the judgments, the IACHR notes that the petitioners complained about, inter alia, the application of Law 24.463 that limits the power of judges to enforce judgments in this area (see Paragraph 26 above). The State does not deny that enforcement has been postponed. It only mentions considerations of timing and reasonableness.

54. Here the Commission must confirm its doctrine that "Failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention."[FN48] Article 46(2)(a) of the Convention establishes an exception to non-exhaustion of domestic remedies when "The domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated." The Commission thus concludes that in regard to the petitioners listed in Table 3 above, the rule on exhaustion of domestic remedies shall not be applied in relation to violation of Article 25 of the Convention.

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[FN48] IACHR Annual Report for 1999, Cabrejos Bernuy Case, Report Nº 75/99, Case 11.800 (Peru), paragraph 22. Here the Commission stated, "Without prejudging the merits of the case, the Commission must add that failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention, which sets forth the right to effective judicial protection."

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iv. Cases in which the judgment has been enforced but with delay or inappropriately

55. The petitioners listed in Table 5 above stated that their judgments had been enforced, but only after delays. Moreover, they maintain that the judgments were effectively a confiscation of their property and as a result they have initiated further proceedings in Argentina. Roberto Balciunas stated that judgment on his case was pronounced in 1993, but enforced only six years later in 1999. Moreover, it was inappropriately enforced forcing him to lodge an administrative appeal that is still pending judgment. Juan Manuel Rodríguez pointed to a wait of more than four years from the time judgment was pronounced on his case in 1986 until it was enforced in 1990. Moreover, it was inappropriately enforced causing him to lodge an administrative appeal that was rejected. Juan Manuel Caride complained of a delay of more than four years from the time his case was judged in 1994 until that judgment was enforced in 1998. He also alleges that enforcement was inappropriate. He again went before the courts in an attempt to obtain the full amount indicated in the judgment. A decision is still pending. Enrique José Tudor complained of a delay of more than two years from the time judgment was pronounced in 1997 until it was enforced in 1999. He adds that enforcement was inappropriate and as a result he filed another suit demanding the full amount stipulated in the judgment. That case is still pending. Antonio Carmona complained that his judgment was inappropriately enforced in 1994. He filed for amparo in 1997 and was granted it on 6 May 1998, but no action to correct the situation has been taken.

56. The petitioners have pointed out that they have had to go before other instances to seek proper enforcement of the judgments obtained before ANSES, the administrative body charged with payment. These appeals must also be taken into account to the extent that their outcome influences the success of litigation pursued before ordinary jurisdictions. The proceeding and appeals that the petitioners have had to pursue before ANSES determine the amount they will receive and when they will receive it. The State has not claimed non-exhaustion of domestic remedies. Rather it has stated that the delays are justified in the context of the emergency facing the social security system, with no reference made to any of the specific cases lodged by the petitioners. Here the IACHR again esteems that the principles set forth in Paragraph 46 above are applicable.

57. With no detriment to the above, in regard to cases in which the petitioner has made an administrative or judicial appeal based on the way the judgment was enforced and on which judgment has been pronounced, such as the cases of Juan Manuel Rodríguez and Antonio Carmona, the rule on exhaustion of domestic remedies as provided for in Article 46(1)(a) of the Convention shall be applied. The IACHR esteems that in these cases the principle set forth in Paragraph 54, that "Failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention," is applicable. In the Roberto Malciunas, Juan Manuel Caride and Enrique José Tudor cases, the exception to said rule as provided for in Article 46(2)(c) shall be applied, as there is prima facie indication of unwarranted delay in rendering judgment on the appeals.

b. Timeliness

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58. Article 46(1)(b) of the Convention stipulates that for a petition to be admissible it must be "Lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment." This six-month rule is always applied when a final judgment has been rendered. According to Article 46(2)(c), the time period requirement shall not be applied when "There has been unwarranted delay in rendering a final judgment under the aforementioned remedies."

59. In regard to the petitioners listed in Table 2, the Commission has reached the conclusion that the exception provided for in Article 46(2)(c) is relevant as there is prima facie indication of unwarranted delay in rendering final judgment (see Paragraph 47 above). Given the circumstances studied and in accordance with the provisions of Article 46(2)(c) of the Convention, the rule on the period for filing is not applicable.

60. The petitioners listed in Table 3 state that final judgment has been rendered in their cases. The State has not claimed non-compliance with the rule on the deadline for lodging a complaint. In regard to these petitioners, the IACHR has reached the conclusion that the exception to the rule on exhaustion of domestic remedies as provided for in Article 46(1)(a) of the Convention (see paragraphs 53 and 54 above) is applicable. The Commission thus ratifies its doctrine that "Failure to enforce a final judgment is an on-going violation by States that persists as an infraction of Article 25 of the Convention. Therefore, in such cases, the requirement regarding the deadline for lodging a petition, set forth in Article 46(1)(b) of the American Convention, is not applicable."[FN49] Thus, the requirement on the deadline for lodging a petition is not applicable in this instance, in which the IACHR has been asked to consider on-going non-compliance with judgments rendered by competent judicial bodies.

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[FN49] IACHR Annual Report for 1999, Cabrejos Bernuy Case, Report Nº 75/99, Case 11.800 (Peru), paragraph 22.

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61. In the cases listed in Table 5, the petitioners did exhaust domestic remedies. They appealed the way in which judgments were enforced. Final judgment has been rendered in some cases and in others it has not (see Paragraph 57 above). The State has not claimed non-compliance with the rule on the deadline for lodging a complaint.[FN50] Given the specific circumstances under consideration in this instance, the Commission esteems that for those cases in which a final judgment has been rendered, the deadline as provided for in Article 46(1)(b) has been met. For those cases in which no final judgment has been rendered, the exception provided for in Article 46(2)(c) of the Convention is applicable.

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[FN50] On the State not invoking the rule on the deadline for lodging a petition, the Inter-American Court has pointed out: "This deadline depends on the exhaustion of remedies (and) it is the government that should argue non-compliance with it before the Commission. But here again, what the Court affirmed regarding the exception to the rule on non-exhaustion of domestic remedies is valid: generally recognized principles of international law indicate that first of all, we are dealing with a rule the use of which can be either tacitly or expressly renounced by the State,

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which has the right to invoke it, as previously recognized by the Court (see the Vivian Gallardo et al. Case, 13 November 1981, No. G 101/81, Series A, paragraph 26).” Inter-American Court of Human Rights, Neira Alegría et al. Case, Preliminary Exceptions, 11 December 1991, Series C No. 13, paragraph 30.
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c. Duplication of procedures and res judicata

62. Article 46(1)(c) of the Convention, taken in conjunction with Article 39(2) of the IACHR Rules of Procedure and Article 47(d) of the Convention, establishes that a petition is admissible only if the subject of the petition or communication is not pending in another international proceeding for settlement and that it is not substantially the same as one previously studied by the Commission or by another international organization. The Commission notes that the petitioners have presented final comments of the UN Economic, Social and Cultural Rights Committee that are related to the subject of this case. Those comments include the opinion that “Law 24.463… allows the government to reduce and even not pay pensions by invoking economic hardship.”[FN51] The State has said nothing regarding these comments and whether they emanate from an “international proceeding for settlement”.

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[FN51] Summary record of the first part of the 36th meeting: Argentina, 25/11/99.
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63. The IACHR notes that the above-mentioned committee made its comments in the framework of periodic reports given by Argentina regarding compliance with the provisions of the International Covenant of Economic, Social and Cultural Rights. No examination of individual cases was made for purposes of judgment. The Commission deems that Article 47(d) and “Article 46(1)(c) impl(y) the actual existence of a mechanism whereby the violation denounced can be effectively resolved between the petitioner and the authorities of the State or, failing that, the proceeding instituted can lead to a decision that ends the litigation and/or gives other bodies jurisdiction.”[FN52] Along these same lines, “The procedure in question must be equivalent to that set forth for the processing of individual petitions in the inter-American system.”[FN53]

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[FN52] Report Nº 30/00, Case 12.095, Mariela Barreto Riofano, Peru, March 23, 2000, paragraph 24, and Report Nº 54/98, Case 11.756, Leonor La Rosa Bustamante, Peru, December 8, 1998, paragraphs 15 and following.
[FN53] Report Nº 33/98, Case 10.545, Clemente Ayala Torres et al., Mexico, May 5, 1998, Paragraph 43.
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64. On the basis of these principles, the IACHR deems that the subject of each and every of the petitions herein considered has not been examined in the framework of “another international proceeding for settlement” in the sense meant in Article 47(d) of the Convention.[FN54] Moreover, the Commission has not received any information indicating that

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the subject of this petition is pending in another international procedure for settlement. Therefore, the Commission deems that the requirements set out in Articles 46(1)(c) and 47(d) of the Convention have been satisfied and the petition is admissible.

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[FN54] Article 39(2) of IACHR Rules of Procedure establishes that "The Commission shall not refrain from taking up and examining a petition in cases provided for in paragraph 1 when: (a) the procedure followed before the other organization or agency is one limited to an examination of the general situation on human rights in the state in question and there has been no decision on the specific facts that are the subject of the petition submitted to the Commission, or is one that will not lead to an effective settlement of the violation denounced."
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d. Grounds of the Petitions

65. Article 41(c) of the Commission's Rules of Procedure stipulates that the Commission shall declare inadmissible any petition that is manifestly groundless on the basis of the statement by the petitioner himself or the government. Article 47(b) of the Convention establishes that any petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention" shall be declared inadmissible. In the case under consideration, the petitioners claim that their rights to judicial guarantees and to effective judicial remedy as provided for in Articles 8 and 25(2)(c) of the Convention have been directly violated. From that fact flows the subsidiary violation of the other rights and obligations they mention–the rights to private property and to equal protection before the law (Articles 21 and 24 of the Convention), and to health and well-being and to social security, in relation to the obligation to work and contribute to social security (Articles XI, XVI, XXXV and XXXVII of the Declaration); the obligation of states to respect rights and to adopt measures to give effect to those rights (Articles 1(1) and 2 of the Convention. Having examined the information provided by the parties, the Commission deems that the allegations are not clearly without grounds and they could characterize violations of the above-mentioned provisions. Therefore, the Commission concludes that the petition is not inadmissible under Articles 47(c) and 47(d) of the Convention.

V. CONCLUSIONS

66. In regard to the petitions of Acevedo, Daniel; Agro, Eduardo; Agrofolio, José Heribe; Ambrossetti, Pedro S.; Amodeo, Enrique Domingo; Balciunas, Robert; Caride, Juan Manuel; Carmona, Antonio; Chañaha, Angel Amadeo; Menéndez, Amilcar; Orsi, Vittorio; Otero, Angela; Pafundi, Amancio Modesto; Piscitelli, Pascual; Rodríguez Arias, Eduardo, A.; Solari, María Elena, and Tudor, Enrique José the Commission concludes that they comply with the requirements set out in Articles 46 and 47 of the Convention and therefore are admissible.

67. Based on the arguments of fact and of law outlined above, and, without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

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DECIDES TO:

1. Declare admissible the petitions of Acevedo, Daniel; Agro, Eduardo; Agrofolio, José Heribe; Ambrossetti, Pedro S.; Amodeo, Enrique Domingo; Balciunas, Robert; Caride Juan Manuel; Carmona, Antonio; Chañaha, Angel Amadeo; Menéndez, Amilcar; Orsi, Vittorio; Otero, Angela; Pafundi, Amancio Modesto; Piscitelli, Pascual; Rodríguez Arias, Eduardo, A; Solari, María Elena; y Tudor, Enrique José in reference to alleged violations of the rights provided for in Articles 1(1), 2, 8(1), 21, 24 and 25(2)(c) of the Convention and of the rights enshrined in Article XI and treated jointly in Articles XVI, XXXV, and XXXVII of the Declaration.
2. Notify the parties of this decision.
3. Continue with the analysis of the merits of the case.
4. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, Washington, D.C., on the 19th day of January 2001. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.