Inter-American Commission on Human Rights

REPORT No. 109/25
CASE 12.692
REPORT ON MERITS (PUBLICATION)

M.E.F
ARGENTINA

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I. INTRODUCTION[1]

1. On 10 August 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission", "the Inter-American Commission," or "the IACHR") received a petition filed by M.E.F.[2] (hereinafter "the petitioner") alleging the responsibility of the Argentine Republic (hereinafter "the State", "the Argentine State," or "Argentina") for the violation of several of her rights enshrined in the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") as a result of the failure to comply with a decision adopted by the Argentine courts in her favor.

2. The Commission adopted Report on Admissibility No. 10/09 on March 19, 2009.[3] On April 6, 2009, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement; however, the conditions for resolving the case through that procedure never materialized. The parties were afforded the regulation time limits to present additional observations as to merits. All information received was duly relayed between the parties.

II. POSITIONS OF THE PARTIES

A. The Petitioner

3. The petitioner stated that on September 1, 1988, she entered an employment relationship with the Embassy of Australia in the Argentine Republic, where she worked as an economist. She claimed that on May 2, 1997, she was dismissed after having notified her superiors that she was pregnant and after requesting the regularization of employer's social security contributions as well as her registration in the embassy's employment records.

4. She said that after filing a lawsuit for wrongful dismissal, on February 28, 2001 the Argentine 44th Labor Court of First Instance ordered the Australian Embassy to pay compensation of $219,924.86 Argentine pesos. She said that both parties appealed to the National Chamber of Labor Appeals, which partially changed the judgment at first instance and increased the amount ordered in compensation to 271,644.11 Argentine pesos plus interest and legal costs. She also stated that the judgment was made final by virtue of the fact that the Australian Embassy did not file a special appeal with the Supreme Court of Justice of the Nation.

5. She claimed that, despite the fact that the decision was final, the Embassy had so far failed to comply voluntarily with the sentence. She added that in response to her request to the Argentine courts for the judgment to be enforced, on February 8, 2002, the 44th Labor Court of First Instance ordered the Australian Embassy to comply with the sentence. She said that on February 20, 2002, the Embassy announced that it maintained and did not waive the immunity from execution invoked in the answer to the complaint, submissions, and statement of grievances, a privilege which arises from the Vienna Convention on Diplomatic Relations.

6. The petitioner also reported that in September 2003, the Embassy of Australia offered to pay her an amount equal to less than 50% of the debt owed. She added that she was obliged to accept the offer and, therefore, signed a payment agreement that was approved by the Argentine courts on November 25, 2003. She claimed that the respective period elapsed, yet the Embassy failed to fulfill its obligation to pay; therefore, that agreement was void and the amount established in the judgment again became payable.

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[1] Pursuant to Article 17.2 of the Commission's Rules of Procedure, Commissioner Andrea Pochak, an Argentine national, did not participate in the debate or decision in this case.

[2] In response to the petitioner's request of November 11, 2023 that her name be withheld to protect her privacy, her safety and that of her family, the Commission will use M.E.F. to identify her.

[3] IACHR, Report No. 10/09, Petition 4071-02, Admissibility. Argentina, March 19, 2009. In that report the Commission declared the petition admissible in relation to possible violations of rights recognized in Articles 21 and 25 of the American Convention in connection with Articles 1(1) and 2 of that instrument. In addition, the Commission declared inadmissible the submissions with regard to Articles 17(1), 24, 26, and 29 of the American Convention.

7. She reported that she wrote repeatedly to the Ministry of Foreign Affairs, International Trade, and Worship of Argentina, as well as to the President of the Nation, so that they might intercede with the Embassy of Australia, in order that it complies with the judgment. In that regard, she said that the Argentine State did not reply to her complaint notes and that, although the Argentine Foreign Ministry acted as an intermediary with the Embassy in the signing of the out-of-court payment agreement, those efforts failed to yield results.

8. She mentioned that, though the Australian Embassy was ordered at trial to pay 100% of the costs, it also failed to comply with that obligation. In that regard, she stated that, under Argentine law, where the person ordered to pay costs fails to comply, the other party shall be required to make the payment. Accordingly, in April 2005 the petitioner was judicially instructed by the 44th Labor Court of First Instance, on pain of enforcement, to pay the fees of the judicially regulated lawyers and experts. She said that, instead of collecting her pay claim from the Embassy, she had to borrow to defray the procedural costs that it refused to pay.

9. Specifically, as regards the law, the petitioner argued that her **right to judicial protection** had been violated because the judgment at second instance that increased the amount awarded, and which was final, was not enforced by the Argentine courts. In that regard, she noted that due process of law should include the enforcement of final judicial decisions that had become res judicata. She also stated that the absolute immunity from execution recognized by the State rendered judicial protection a mere formality, generating a state of denial of justice, since, inasmuch as it was unable to enforce either the judicial decision or the payment agreement, the effectiveness of the remedy was illusory.

10. Finally, she argued that her **right to property** had been violated, since property includes the holding of rights legally consecrated by judgments with the authority of res judicata. In that regard, she noted that the non-enforcement of the judgment led to the deprivation of the pay claimed and other compensation sought.

B. The State

11. The State said that the Argentine courts admitted the petitioner's labor claim, and that she enjoyed a fair and equitable trial and received a ruling that favored her claims and that was subsequently upheld on appeal. It noted that she had prompt access to justice and enjoyed the right to jurisdiction, since Australia recognized the jurisdiction of the Argentine courts by answering the lawsuit.

12. It mentioned that while Australia waived its immunity from jurisdiction under the Vienna Convention on Diplomatic Relations, it did not waive its immunity from execution and noted that the waiver of the former does not imply the waiver of the latter. It also claimed that the possibility of action by the Argentine State was decidedly extrajudicial, since constrained execution in relation to a foreign state that invokes immunity from execution, as Australia did in this case, is not possible. It said that the domestic law did not settle the issue of immunity from execution, and that this was an unresolved issue in international practice.

13. It stated that when enforcement was rendered impossible by the defense invoked by the Australian Embassy, the Argentine State exercised its good offices so that the latter might agree to comply with the sentence judgment that ordered compensation in favor of the petitioner. It added that the Argentine State assisted in reaching the payment agreement that was approved judicially but with which the Embassy did not comply due to its unwillingness to make any payment.

14. It said that the petitioner had not been harmed by the actions of the Argentine State, but by the fact that the Australian Embassy invoked immunity from execution in respect of her claim. In that regard, it noted that the attitudes of the diplomatic mission of a foreign State were not attributable to the Argentine State. It stated that the petitioner's claim that the Argentine State should take charge of the obligations of Australia was not compatible with any legal norm in force in Argentina.

15. As to the merits of the matter, the State argued that it had not violates any rights protected by the American Convention. Specifically with respect to the **right to judicial protection**, it claimed that the petitioner had not demonstrated what act or omission on the part of the State had violated that right, and it noted that the petitioner should have instituted an international proceeding for protection of human rights rather than sue the State of which she was a national, which had afforded her a fair trial and allowed her to obtain a favorable judgment.

16. With regard to the **right to property**, the State acknowledged that the state of non-compliance of the judgment returned in favor of the petitioner had had a detrimental effect on her assets; however, it stated the matter was not one in which the right to property should be analyzed, bearing in mind that the concept of property cannot be extended to include potential compensation or the possibility of obtaining a favorable verdict in disputes concerning sums of money.

17. It also claimed that the petitioner had not demonstrated an injury to her right to use and enjoyment of property that she owned or of an interest in relation to an object over which she has acquired legitimate rights under domestic law, or that the State has dispossessed her of such rights.

III. FINDINGS OF FACT

A. Relevant law

18. The Commission notes that this case concerns the enforcement of a verdict in favor of the alleged victim against the Embassy of Australia in Argentina. In this regard, the rules governing the privileges and immunities of foreign diplomatic missions in the territory of the receiving State envisaged in the Vienna Convention on Diplomatic Relations are relevant. The pertinent parts of that instrument provide as follows:

> Article 1:
>
> For the purpose of the present Convention:
>
> (...) (i) the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the mission including the residence of the head of the mission.
>
> Article 22.
>
> 1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.
>
> 2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
>
> 3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.
>
> Article 41.
>
> 1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
>
> 2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.[4]

19. In that sense, Decree-Law No. 7.672 of 1963 acknowledges that the Vienna Convention on Diplomatic Relations is in force in the Argentine Republic inasmuch as:

Article 5:

Let the Vienna Convention on Diplomatic Relations adopted by the United Nations Conference on Diplomatic Relations and Immunities in Vienna on April 18, 1961 and signed by the Argentine Republic on that same day („) be hereby adopted (…).[5]

20. In addition, the Argentine Republic's Law 24.448 on Jurisdictional Immunity of States provided as follows:

Article 2.

Foreign States may not invoke immunity from jurisdiction in the following cases:

(a) When they expressly agree through an international treaty, a written agreement, or a statement in a given case, that the Argentine courts exercise jurisdiction over them;

(b) Where it is the subject of a counterclaim directly linked to the main action initiated by the foreign State;

(c) Where the claim concerns a commercial or industrial activity carried out by the foreign State and the jurisdiction of the Argentine courts arises from the contract invoked or international law;

(d) When they are sued over labor matters by Argentine nationals or residents in the country under contracts concluded in the Argentine Republic or abroad and having an effect in the national territory;

(e) Where they are sued for damages arising from crimes or quasi-crimes committed in the territory;

(f) In the course of actions relating to immovable property that is in national territory;

(g) In the course of actions based on the status of the foreign State as heir or legate of property in the national territory;

(h) Where, having agreed in writing to submit to arbitration any dispute relating to a commercial transaction, it seeks to invoke immunity from jurisdiction of the Argentine courts in proceedings concerning the validity or interpretation of the arbitration, arbitration proceedings or concerning the annulment of the award, unless otherwise provided for in the arbitration agreement.[6]

B. Suit for wrongful dismissal and appeal

21. According to available information, the alleged victim, M.E.F., an economist by profession, was engaged to work for the Australian Embassy in the Argentine Republic from September 1, 1988, where she carried out research and analysis, as well as preparing economic reports.[7]

[4] Vienna Convention on Diplomatic Relations, cited by the petitioner in her brief containing observations, dated May 26, 2004.
[5] Decree Law N° 7.672 on International Agreements issued by the Ministry of Foreign Affairs and Worship of the Argentine Republic on September 14, 1963.
[6] Law 24.448 on Jurisdictional Immunity of States of the Argentine Republic, cited by the State in its brief of February 12, 2007.
[7] Annex 1, Decision of the 44th Labor Court of First Instance of February 24, 2001. Appended to the brief containing the petitioner's observations of May 26, 2005.

22. On May 2, 1997, while pregnant, she received notice of her dismissal. The communication cited loss of confidence owing to the petitioner's conduct as grounds for terminating her employment at the Embassy.[8]

23. On August 4, 1997, the petitioner filed suit against the Australian Embassy with the 44th Labor Court of First Instance, seeking wage claims and compensation arising from her dismissal.[9] The Australian Embassy did not invoke the immunity from jurisdiction provided in the Vienna Convention on Diplomatic Relations because it was prevented from exercising that privilege by the fact that the matter concerned a labor suit brought by an Argentine citizen, as envisaged in the above-cited domestic law.

24. On February 28, 2001, the judge of the 44th Labor Court of First Instance ordered the Australian Embassy to pay the petitioner compensation of $219,924.86 Argentine pesos, plus accrued interest. The judge indicated the following:

> (...) the fact is that the evidence provided by the defendant ultimately does not support the position set out in the answer that the plaintiff "failed to state the truth" and that, as a corollary of this, the summons made by the Embassy were due to [her] failure to perform her employment duties.
>
> (...) I do not dispute that the "repetition" of "non-serious" labor misconduct may justify dismissal, but it should be agreed that the "disciplinary" history (lack of punctuality) claimed by the defendant in the answer, in addition to the absence of a recent injurious act to trigger the termination.
>
> (...) The former employer also found the plaintiff's attitude of requiring that the reports be requested in writing to be insulting. In my view, such a requirement did not show bad faith on the part of the worker, since the defendant ultimately failed to establish in the dispute the alleged failure to deliver the reports in a timely and appropriate manner. Moreover, the defendant argued that the decision was made not to increase [her] salary in 1997 because of her poor performance, something refuted by the pay receipt contained in the confidential envelope in the Secretariat (...) which records the payment of the sum of $1,565.50 as an "annual increase.".
>
> (...) Therefore, I find the dismissal ordered by the defendant to be illegitimate as there was no serious contractual breach on the part of the worker to justify the termination of employment. (...) The pay claims arising from the dismissal are, therefore, valid (...) Consequently, since the "unjustified" dismissal occurred within the maternity protection period (...), the compensation provided for in Article 182 of the labor law (...) is also valid.[10]

25. Subsequently, both parties lodged appeals with the Tenth Chamber of the National Court of Labor Appeals because they disagreed with the decision in areas such as the amount of compensation. On October 18, 2001, the appellate court partially modified the judgment at first instance and increased the amount of compensation to $271,644.11 Argentine pesos. The court stated:

> (…) the Court DECIDES: (1) To partially modify the appealed judgment and, consequently, to raise the deferred amount awarded to $271,644.11 (...) which amount shall bear the interest set in the original decision; (2) To set aside the decision of the lower court as to costs and fees (...); (3) To order the defendant to pay the costs of both instances (...); (4) To set the fees of the legal representation of the plaintiff (...), defendant, experts, translator, and accountant (...) at the sum of $5,000, respectively; 5) To set the fees of Dr. Miguel A. Jorge (...) at the sum of $2,500 (...); 6) To confirm the appealed decision in all other respects; 7) To set the fees of the signatories of the presentations (...) at 30% and 25%, respectively, of that which is appropriately due to the legal representation of their respective parties for their actions in the previous instance (...)[11]

[8] Annex 1, Decision of the 44th Labor Court of First Instance of February 24, 2001. Appended to the brief containing the petitioner's observations of May 26, 2005.
[9] Annex 1, Decision of the 44th Labor Court of First Instance of February 24, 2001. Appended to the brief containing the petitioner's observations of May 26, 2005.
[10] Annex 1, Decision of the 44th Labor Court of First Instance of February 24, 2001. Appended to the brief containing the petitioner's observations of May 26, 2005.
[11] Annex 2, Decision of the Tenth Chamber of the National Court of Labor Appeals of October18, 2001. Appended to the brief containing the petitioner's observations of May 26, 2004.

26. The Commission notes that the Embassy of Australia did not file an extraordinary appeal against the second instance judgment, with the result that it became final and res judicata in October 2001.[12]

C. Judgment enforcement phase and payment agreement

27. On February 8, 2002, the Argentine Judiciary, at the request of the petitioner, asked the Australian Embassy to state within five days whether it would invoke immunity from execution or whether it would comply effectively with the judgment.[13]

28. On February 20, 2002, the defense of the Australian Embassy, in response to the request from the Argentine courts, informed that it maintained and did not waive the immunity from execution envisaged in the Vienna Convention on Diplomatic Relations and invoked in the answer to the complaint, submissions, and statement of grievances, for which reason it would not comply with the judgment. In that regard, it said:

> (...) 1. The Embassy of Australia in the Argentine Republic does not consent to submit to the enforcement of judgment in these proceedings, nor does it renounce privileges and/or immunities established by the Vienna Convention on Diplomatic Relations, adopted by the United Nations Conference on Diplomatic Intercourse and Immunities on April 18, 1961, and adopted by Decree-Law 7672 of September 13, 1963.[14]

29. On May 29, 2002, the petitioner sent a note of complaint to the Ministry of Foreign Affairs, International Trade, and Worship, requesting that it take the measures allowed to it under international law in the area of international relations so as to make it possible for the Australian Embassy to comply with the judgment.[15]

30. According to the State, on July 3, 2002, the Argentine Foreign Ministry issued a cabinet instruction for the exercise of good offices with the Australian Embassy in order that it might agree to comply with the judgment ordering compensation for the petitioner.[16]

31. The petitioner sent a new note of complaint dated September 4, 2003, to the Office of the President of the Nation and the Ministry of Foreign Affairs, International Trade, and Worship, denouncing that the Argentine Foreign Ministry had not responded in writing to the request for intervention in the dispute with the Australian Embassy that the petitioner had sent on May 29, 2002.[17]

32. As noted by the State, on September 11, 2003, officials from the Argentine Foreign Ministry held a meeting with the Head of the Diplomatic Mission of Australia in Buenos Aires to urge the latter to comply with the judgment in question.[18]

33. On October 16, 2003, the petitioner sent a communication to the Ministry of Foreign Affairs, International Trade, and Worship denouncing that that organ had failed to exert sufficient diplomatic and international pressure to compel the Australian Embassy to comply with its sentence, for which reason she asked the Argentine State to pay her the amount of $758,876.23 Argentine pesos.[19]

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[12] Annex 3, Opinion of the Ministry of Justice and Human Rights of the Argentine Republic of February 12, 2007. Appended to the brief containing the State's observations of August 18, 2011.
[13] Annex 4, Request of the Argentine Judiciary to M.E.F. of February 8, 2002. Appended to the brief containing the petitioner's observations of November 10, 2006.
[14] Annex 5, Ratification of the invocation of immunity from execution by the Embassy of Australia of February 20, 2002. Appended to the petitioner's brief of November 10, 2006.
[15] Annex 6, Note of complaint to the former Minister of Foreign Affairs of Argentina, Carlos Ruckauf, of May 29, 2002. Appended to the brief containing the petitioner's observations of May 26, 2004.
[16] Mentioned in the State's brief of April 29, 2005.
[17] Annex 7, Note of complaint to the former President of Argentina, Néstor Kirchner, and the former Minister of Foreign Affairs of Argentina, Rafael Bielsa, of September 4, 2003. Appended to the brief containing the petitioner's observations of May 26, 2004.
[18] Mentioned in the State's brief of April 29, 2005.
[19] Annex 8, Note of complaint to the former Minister of Foreign Affairs of Argentina, Rafael Bielsa, of October 16, 2003. Appended to the brief containing the petitioner's observations of May 26, 2004.

34. On November 25, 2003, the 44th Labor Court of First Instance approved an out-of-court agreement signed by the petitioner and the Australian Embassy at the Argentine Foreign Ministry. That agreement provided as follows:

> (…) 1. The Embassy of Australia in the Argentine Republic, without waiving immunity from execution and subject to the obligation following the approval of this agreement, undertakes to pay the plaintiff and professionals involved in the proceedings (...) the total sum of one hundred fifty thousand United States dollars (...)
>
> (…) 2. In compliance with point 1 of this agreement, the Embassy of Australia in the Argentine Republic shall simultaneously deposit the sum of one hundred eight thousand United States dollars (...) and the sum in pesos equivalent to forty-two thousand United States dollars (...) at the selling exchange rate of the Banco de la Nación Argentina on the day immediately following notification of approval of the agreement. Both amounts will be deposited by the Embassy of Australia in the Argentine Republic within five days after notification of the approval of this agreement (...)
>
> (…) 10. If payment is not made in the terms and conditions agreed on, this agreement shall be null and void, and the judicial proceedings shall return to the situation they were in prior to this agreement. Likewise, if this agreement is not fulfilled within twenty (20) working days from the signing of this agreement, the plaintiff (…) may declare the agreement null and void, in which case, too, the judicial proceedings shall return to the situation they were in prior to this agreement (...).[20]

35. On December 18, 2003, the petitioner sent a note to the Ministry of Foreign Affairs, International Trade, and Worship advising it of the failure of the Embassy of Australia to fulfill the signed payment agreement.[21]

36. On July 12, 2005, taking into account the non-compliance with the payment agreement, the lawyers who represented the petitioner in the proceedings filed a complaint with the 44th Labor Court of First Instance requesting it to order her to pay their fees.[22] On April 25, 2005, the court notified the petitioner that she had 30 days to show the deposit of the amount due.[23]

37. On July 15, 2005, the petitioner entered into a fee payment agreement with her lawyers for professional services rendered in the amount of $4,400 Argentine pesos. In that regard, that agreement originated from the failure of the Australian Embassy to pay the costs of the proceedings and the mandate of Argentine adjective law that establishes that, in the event that the party ordered to pay legal costs fails to do so, professionals may claim payment from the client.[24]

38. On July 26, 2005, the 44th Labor Court of First Instance ordered the petitioner to pay the professional fees of the bookkeeping expert, given the failure of the Embassy of Australia to pay the legal costs.[25] On August 24, 2005, the petitioner entered into a payment agreement with the bookkeeping expert in the amount of 990 Argentine pesos,[26] and with the public interpreter for 2,000 Argentine pesos.[27]

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[20] Annex 9, Payment agreement approved by the 44th Labor Court of First Instance, November 25, 2003. Appended to the brief containing the petitioner's observations of May 26, 2004.
[21] Annex 10, Note of complaint to the former Minister of Foreign Affairs of Argentina, Rafael Bielsa, of December 18, 2003. Appended to the brief containing the petitioner's observations of May 26, 2004.
[22] Annex 11, Complaint of Miguel Jorge and Juan Martín Canedo for payment of professional fees filed with the 44th Labor Court of First Instance. Appended to the brief containing the petitioner's observations of July 11, 2005.
[23] Annex 12, Order of the 44th Labor Court of First Instance to M.E.F. to pay attorneys' fees, dated April 26, 2005. Appended to the brief containing the petitioner's observations of July 11, 2005.
[24] Annex 13, Fee payment agreement between M.E.F. and Miguel Jorge and Juan Martín Canedo of July 15, 2005. Appended to the brief containing the petitioner's observations of November 10, 2006.
[25] Annex 14, Order of the 44th Labor Court of First Instance to M.E.F. to pay bookkeeping expert fees, dated April 26, 2005. Appended to the brief containing the petitioner's observations of November 10, 2006.
[26] Annex 15, Fee payment agreement between M.E.F. and the bookkeeping expert of August 24, 2005. Appended to the brief containing the petitioner's observations of November 10, 2006.
[27] Annex 16, Fee payment agreement between M.E.F. and the public interpreter of October 17, 2005. Appended to the brief containing the petitioner's observations of November 10, 2006.

39. To date, the Australian Embassy has made no payment arising from the judgment that became final in 2001 or from the payment agreement concluded with the petitioner in 2003.

IV. DETERMINATIONS AS TO LAW

A. The rights to judicial protection[28], to property[29] and to equality and non-discrimination[30]

1. General considerations on enforcement of domestic judicial decisions and effective judicial protection

40. Article 25.2 (c) establishes that States must "ensure compliance by the competent authorities with any decision in which the appeal has been deemed appropriate. In this regard, the Inter-American Court has held that one of the components of the right to judicial protection recognized in Article 25 the American Convention is precisely that States must "must guarantee effective mechanisms to execute the decisions or judgments issued by [competent] authorities, so that the declared or recognized rights are effectively protected. This is because a final judgment (*res judicata*) provides certainty concerning the right or dispute examined in the specific case and, therefore, one of its effects is the requirement or obligatory nature of compliance."[31]

41. The Court has also found that the State has the obligation to enforce such remedies when granted.[32] This presupposes the guarantee of adequate and effective measures of constraint, so that, if necessary, authorities issuing decisions or judgments can enforce them and thereby ensure that the protection of the right recognized in the final judgment is materialized [Tr: unofficial translation].[33]

42. In that connection, the effectiveness of judgments depends on their execution. The contrary would imply the denial of this right.[34] The IACHR has held that judicial decisions must be carried out, whether voluntarily or constrainedly.[35] In addition, the Inter-American Court has stated that the implementation of judgments should be governed by those specific standards that enable the realization of the principles of, *inter alia*, judicial protection, due process, legal certainty, judicial independence, and rule of law.[36]

43. The European Court of Human Rights, for its part, has held that to achieve full effectiveness of the judgment, its implementation should be complete, perfect, comprehensive,[37] and without delay.[38] It has

[28] The pertinent portions of Article 25 of the American Convention provide: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake (...) c. To ensure that the competent authorities shall enforce such remedies when granted.

[29] Article 21 of the American Convention provides: 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law.

[30] Article 24. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

[31] I/A Court H.R., Case of Suárez Rosero v. Ecuador, Merits, Judgment of November 12, 1997, Series C. No. 35, par. 65; Case of Flores v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment March 6, 2019, Series C. No. 375, par. 128.

[32] Case of Flores v. Peru, Preliminary Objections, Merits, Reparations and Costs, *supra*, par. 128.

[33] Ibid, par. 128.

[34] I/A Court H.R., Case of Acevedo Jaramillo v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of February 7, 2006, par. 220.

[35] IACHR, Case 12.357, Application to the Inter-American Court, Discharged and Retired Employees of the Office of the Comptroller, Peru, April 1, 2008, par. 53.

[36] I/A Court H.R., Case of Mejía Idrovo v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 5, 2011. Series C. No. 228, par. 105, and Case of the Garífuna Punta Piedra Community and its members v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Judgment of October 8, 2015, Series C. No. 304, par. 244.

[37] ECHR, Case of Matheus v. France. Judgment of 31 March 2005, § 58; and Case of Sabin Popescu v. Romania, Judgment of 2 March 2004, §§ 68 ff.

[38] ECHR, Case of Cocchiarella v. Italy, Judgment of 29 March 29 2006, § 89.

also stated that the right to a fair trial would be illusory if a State's domestic legal system were to allow a final binding decision to remain inoperative to the detriment of one party. In that regard the European Court held that execution of a judgment given by a court must be regarded as an integral part of the trial for the purposes.[39]

44. The Inter-American Court has held that in a system based on the principle of rule of law, all public authorities, within the framework of their jurisdiction, must abide by judicial decisions and move promptly to their enforcement.[40] In like fashion, the IACHR has highlighted: "Ensuring the execution of judicial judgments thus constitutes a fundamental aspect that is the very essence of the rule of law."[41]

45. At the same time, in cases relating to execution of judgments, both the Commission and the Court have referred to the right to private property. In this connection, it is worth noting that according to the Inter-American Court, 'the concept of property is a broad one and comprises, among other aspects, the use and enjoyment of "property," defined as those material objects which are susceptible of being possessed, as well as any rights which may be part of a person's assets. In addition, the Court has protected acquired rights, understood as rights that have been incorporated into personal patrimony. The Commission recalls that the right to property is not absolute and, accordingly, may be subject to restrictions and limitations, provided that the latter are imposed through appropriate legal channels and in accordance with the parameters established in Article 21 of the American Convention.[42]

46. In the *Five Pensioners* and *Acevedo Buendía v. Peru* cases, the Inter-American Court declared that there had been violation of the right to property due to the financial impairment caused by failure to comply with judgments seeking to protect the right to a pension acquired by the victims in accordance with domestic regulations. In that judgment, the Court pointed out that from the time a pensioner pays his or her contributions to a pension fund and ceases to serve in the institution concerned with a view to acceding to a retirement scheme provided for by law, he or she acquires the right for the pension to be governed by the terms and conditions of that law. It also declared in the Acevedo Buendía case that the pension rights acquired by that person has "property implications" (*efectos patrimoniales*) protected under Article 21 of the American Convention.[43]

47. Likewise, in the judgment in the *Muelle Flores v. Peru* case, the Court declared that: "social security benefits, including the right to an old age pension, form part of the right to property and must therefore be protected against arbitrary State interference. The right to property may even encompass the legitimate expectations of the entitled person, particularly if he or she has made contributions to a contributive system. With much more justification, it covers acquired rights when all the conditions for obtaining a benefit, such as an old age pension, have been met, and all the more so when that right was recognized in a court judgment."[44]

48. Finally, the IACHR emphasizes that, in accordance with the obligation to guarantee human rights, both organs of the Inter-American system have indicated that, in certain circumstances, State international responsibility may also arise from acts of private individuals that are not, in principle, directly attributable to the State; this is due to the State's lack of due diligence in preventing, investigating, and punishing any violation of the rights recognized by the Convention or the absence of actions to restore, if possible, such a right. Likewise, regarding this obligation, the IACHR indicated that it implies the duty of the States Parties to organize the entire governmental apparatus and, in general, all structures through which public power is exercised, in such a way that they are capable of legally ensuring the free and full exercise of human

[39] ECHR, Case of Hornsby v. Greece, Judgment of 19 March 1997, § 27.
[40] I/A Court H.R., Case of Mejía Idrovo v. Ecuador, *supra*, par. 106.
[41] IACHR, Case 12.357, Application to the Inter-American Court, Discharged and Retired Employees of the Office of the Comptroller, Peru, April 1, 2008, par. 54.
[42] I/A Court HR. Case of Salvador Chiriboga v. Ecuador. Preliminary Objections and Merits. Judgment of May 6, 2008. Series C No. 179, par. 54.
[43] I/A Court H.R., Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375, par. 213.
[44] I/A Court H.R., Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375, par. 214.

rights.[45] For the purposes of determining the international responsibility of the State, the decisive factor is to determine whether a particular violation of the human rights recognized by the Convention has taken place with the support or tolerance of public authority or whether the latter has acted in such a way that the violation has been committed in the absence of any prevention or with impunity.[46]

2. The Principle of Equality and Non-Discrimination and Dismissal Due to Pregnancy

49. Furthermore, the IACHR recalls that the Inter-American Court has stated that the notion of equality stems directly from the unity of nature of the human race and is inseparable from the essential dignity of the person. Any situation that, by considering a certain group superior, leads to treating it with privilege is incompatible with the principle of equality. Any situation that, by considering it inferior, treats it with hostility or in any way discriminates against it from the enjoyment of rights recognized to those who do not consider themselves to be in such a situation is incompatible with the principle of equality and non-discrimination. The Court's jurisprudence has indicated that, in the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of jus cogens. It underpins the legal framework of national and international public order and permeates the entire legal system.[47]

50. The Inter-American system not only embraces a formal notion of equality, limited to requiring objective and reasonable criteria of distinction and, therefore, prohibiting unreasonable, capricious, or arbitrary differences in treatment, but also moves toward a concept of material or structural equality based on the recognition that certain sectors of the population require the adoption of affirmative equalization measures. This implies the need for differential treatment when, due to the circumstances affecting a disadvantaged group, equal treatment entails suspending or limiting access to a service, good, or the exercise of a right.[48]

51. The Commission emphasizes that various national and international organizations have held that dismissing a woman for being pregnant violates the principle of equality and non-discrimination. In this regard, in its Report on Women's Work, Education and Resources, the IACHR, recalling ILO Convention 183, emphasized that States must adopt measures to ensure that maternity does not constitute a cause of discrimination in employment and access to employment, including the express prohibition of requiring a woman applying for a job to present proof of pregnancy.[49]

52. The Committee recalls that since the Recommendation concerning maternity protection, the General Conference of the International Labour Organization has stressed that:

> (1) Whenever possible, the period before and after childbirth during which it is unlawful for an employer to dismiss a woman under Article 6 of the Maternity Protection Convention (Revised), 1952, should begin to run from the day on which the employer has been notified, by means of a medical certificate, of that woman's pregnancy, (2) Reasons such as serious misconduct on the part of the woman employee, the cessation of the activities of the undertaking in which she is employed or the termination of her contract of employment may be considered by national laws or regulations as just causes for dismissal during the period in which the woman is protected. Where works councils exist, they should be consulted with respect to such dismissals.[50]

53. Similarly, ILO Convention 158 on Termination of Employment stipulates that among the reasons that shall not constitute just cause for termination of employment is pregnancy.[51]

[45] I/A Court H.R. Case Velasquez Rodriguez v. Honduras. Merits. judgment of July 29, 1988. Series C No. 4. Par. 166.
[46] I/A Court H.R. Case Velasquez Rodriguez v. Honduras. Merits. judgment of July 29, 1988. Series C No. 4. Par. 173.
[47] I/A Court H.R. Case Flor Freire v. Ecuador. Preliminar Exception, Merits, Reparations y Costs. Judgment of August 31, 2016. Series C No. 315. Par. 109.
[48] IACHR. Report on Poverty and Human Rights in the Americas, September 7, 2017, Par. 160.
[49] IACHR. Women's Work, Education and Resources: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights, November 3, 2011, Par.106.
[50] ILO, Maternity Protection Recommendation, 1952 (No. 95).
[51] Convention 158 on Termination of Employment, 1982.

54. For its part, Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women establishes as an appropriate measure to eliminate discrimination against women in the field of employment "(a) To prohibit, under penalty of sanctions, dismissal on the grounds of pregnancy or maternity leave and discrimination in dismissals on the basis of marital status".[52]

55. The Court of Justice of the European Union has indicated that the dismissal of a female worker on the grounds of pregnancy or for a reason based essentially on pregnancy constitutes direct discrimination on grounds of sex, contrary to Articles 2(1) and (7) and 3(1)(c) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.[53]

56. On the other hand, national courts such as the Colombian Constitutional Court have held that the purpose of the protection of pregnant or breastfeeding women in the labor sphere is to "prevent discrimination that, as a result of pregnancy, a woman may suffer, specifically the termination or non-renewal of the contract due to or on the occasion of that condition or breastfeeding. In this way, the maternity leave is also supported by the general equality clause of the Constitution, which prohibits discrimination on grounds of sex, as well as by the aforementioned Article 43 of the Constitution, which provides for equal rights and opportunities between men and women".[54]

3. Analysis of the instant case

57. In the instant case no party disputes the fact that the competent courts acknowledged that the petitioner was unjustifiably dismissed by the Australian embassy in Argentina. In fact, on February 28, 2001, the 44th National Court of First Instance admitted the suit filed by the petitioner and ordered the Australian Embassy to pay compensation.

58. That decision was appealed by both parties before the Tenth Chamber of the National Court of Labor Appeals and on October 18, 2001 that court partially amended the judgment and increased the penalty. The Australian embassy did not file any additional appeal against that ruling, so that the judgment was final by October 2001 and was remitted to the lower court judge for execution of the sentence.

59. The Commission takes note of the fact that at that last stage, on February 8, 2002, the National Court of First Instance No. 44 called on the Australian embassy to comply with the judgment or else ratify the immunity from execution it had claimed earlier on. On February 20, 2002, the Embassy's legal counsel replied that it ratified the immunity from execution claimed from the moment of its reply to the suit, argument, and statement of grievances and would not therefore comply with the sentence.

60. The IACHR underscores that the judge in charge of enforcing the decision merely accepted the State's response informing that it was exercising its right to immunity from execution, and when the State availed itself of this immunity, it did not take any steps to seek execution of the judgment. In these circumstances, the Commission notes that the failure of the National Court of First Instance to verify whether it was possible to enforce the judgment and to take the appropriate measures to execute a judicial decision that had become res judicata constituted in the instant case a limitation to Mrs. M.E.F.'s right to judicial protection insofar as the elements and attributes of that right were limited. As indicated, Article 25(2)(c) specifically requires a State to "ensure compliance" when a remedy has been granted.

61. Consequently, the Commission considers it pertinent to analyze below whether such omission and conduct on the part of the judge is compatible with the criteria required by the American Convention.[55]

[52] Convention on the Elimination of All Forms of Discrimination against Women.
[53] Judgment of the Court (Second Chamber) of 11 November 2010 (reference for a preliminary ruling from the Augstākās Tiesas Senāts - Republic of Latvia) - Dita Danosa v LKB Līzings SIA.
[54] Constitutional Court of Colombia, Judgment SU-075 of 2018.
[55] In accordance with Article 30 of the Convention, the restrictions permitted under this Convention on the enjoyment and exercise of the rights and freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and for the purpose for which they were established.

62. The IACHR emphasizes, on the one hand, that the Argentine State adopted the Vienna Convention on Diplomatic Relations, which provides that the premises of the diplomatic mission, its furniture and other property located therein, as well as its means of transportation, may not be subject to a measure of execution. In this regard, although immunity from execution and the requirements for its application are not expressly regulated in Argentine law, the current legislation establishes a certain category of assets that are not subject to a measure of execution of a court judgment. The Commission also considers that the principle of equality between States justifies that foreign States may not be subject to enforcement measures on certain types of assets, i.e., those that are destined to carry out a State activity by a receiving State and that the impossibility for the courts of the receiving State to issue enforcement measures on assets for official use or the patrimony of a foreign State contributes to guarantee the performance of the functions of the consular and diplomatic offices on behalf of their respective States.

63. Notwithstanding the foregoing, the Commission considers that it is particularly appropriate in this case to determine whether the total omission of the judge to enforce the judgment, limiting himself to accepting the State's response opposing immunity from execution was conventionally acceptable, for which it is necessary to verify whether he could have adopted other types of measures that would have had a lesser impact on the right of the alleged victim to seek compliance with the executed judgment and safeguard the principle of State sovereignty that underlies immunity from execution.

64. Here, the IACHR observes that several domestic and international courts have interpreted immunity from execution as a relative, not an absolute, entitlement. That notion opened up the possibility of forcibly attaching assets used by a State for purposes other than official non-commercial uses, without that constituting a violation of the principle of sovereignty among States.

65. For instance, in the case of *Germany v. Italy*, the International Court of Justice acknowledged, in reference to an analysis of the United Nations Convention on the jurisdictional immunities of States and their property (2004), that while immunity from execution is a privilege contemplated by customary international law it is not an absolute entitlement, so that certain goods owned by the State may be attached by a foreign State if they are being used to perform an activity unrelated to sovereign functions. The Court had this to say:

> (...) the immunity from enforcement enjoyed by States in regard to their property situated on foreign territory goes further than the jurisdictional immunity enjoyed by those same States before foreign courts. Even if a judgment has been lawfully rendered against a foreign State, in circumstances such that the latter could not claim immunity from jurisdiction, it does not follow ipso facto that the State against which judgment has been given can be the subject of measures of constraint on the territory of the forum State or on that of a third State, with a view to enforcing the judgment in question.
> Similarly, any waiver by a State of its jurisdictional immunity before a foreign court does not in itself mean that that State has waived its immunity from enforcement as regards property belonging to it situated in foreign territory.
>
> (...) The rules of customary international law governing immunity from enforcement and those governing jurisdictional immunity (understood stricto sensu as the right of a State not to be the subject of judicial proceedings in the courts of another State) are distinct, and must be applied separately.
>
> (...) Indeed, it suffices for the Court to find that there is at least one condition that has to be satisfied before any measure of constraint may be taken against property belonging to a foreign State : that the property in question must be in use for an activity not pursuing government non-commercial purposes, or that the State which owns the property has expressly consented to the taking of a measure of constraint, or that that State has allocated the property in question for the satisfaction of a judicial claim.
>
> (...) Despite the above, it is clear in the present case that the property which was the subject of the measure of constraint at issue is being used for governmental purposes that are entirely non-commercial, and hence for purposes falling within Germany's sovereign functions.

(...) In these circumstances, the Court finds that the registration of a legal charge on Villa Vigoni constitutes a violation by Italy of its obligation to respect the immunity owed to Germany."[56]

66. For its part, in the *Wallishauser v. Austria* case, the European Court of Human Rights pointed out that the jurisdictional immunities of the State are governed by customary international law and states that those customs are codified in the United Nations Convention on the jurisdictional immunities of States and their property (2004), irrespective of the scant number of ratifications of said Convention. It also stressed that:

(...) there is a development in international law towards limiting jurisdictional immunity in respect of employment-related disputes: that development is reflected in Article 5 of the 1972 European Convention on State Immunity and in Article 11 of the International Law Commission's 1991 Draft Articles, and is now enshrined in Article 11 of the 2004 Convention (...).[57]

67. The Commission points out that Article 19 of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) establishes the following:

Article 19

No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated: (i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that post-judgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.[58]

68. Likewise, in the case of *Hirschhorn v*. Romania the European Court pointed out that the State had violated the right to due process and the plaintiff's right to property when it failed to execute a judgment regarding a building owned by the Romanian Government that was being leased to the United States Government via the Peace Corps. Specifically, the Court stressed that:

[...] 58. Nor is the Court persuaded by the Government's argument that the United States Peace Corps enjoys immunity from jurisdiction and that the judgment of 24 June 1999 cannot therefore be enforced.

59. The Court notes at the outset that this argument was first raised in the Government's observations. In the proceedings which ended in the judgment of the Bucharest Court of Appeal dated 12 March 2002 the domestic courts, in dismissing the applicant's claims, based their decisions solely on the interpretation of the civil-law provisions concerning leases, without referring to the supposed immunity of the United States Peace Corps.

61. As to the Government's allegations that the validity of the applicant's title to the property could depend on the outcome of the actions brought after the final judgment of 24 June 1999, the Court observes that those actions

[56]International Court of Justice Case of Jurisdictional Immunities of the State (Germany v. Italy. Judgment of February 3, 2012, paras. 113-120.
[57] ECtHR. Case of Wallishauser v. Austria No. 2. Judgment of June 20, 2013, paras. 39 and 69.
[58] Convention on Jurisdictional Immunities of States and Their Property, November 30, 2004, A/59/508

> merely represented attempts by the applicant to secure compliance with the judgment by the authorities. Accordingly, they could not have any bearing on the validity of his title to the property. In any event, the Court has already held that it would be excessive to require an applicant who has obtained a final judicial decision against the State to bring further proceedings against the domestic authorities to secure performance of the obligation in question.
>
> […] 62. These considerations are sufficient for the Court to conclude that in refusing to comply with the final judgment ordering the return of the building to the applicant, the domestic authorities deprived him of effective access to a court.[59]

69. In the same vein, Spain's Constitutional Court concluded, in Case 107/1992, that public international law does not impose absolute immunity from execution/enforcement, but rather allows national courts to perform enforcement vis-à-vis a foreign State only in respect of certain assets, given that a different interpretation would violate the right to effective judicial protection by restricting the right to execution/enforcement without legal cause. It also underscored that it was up to lower courts to determine which assets of the foreign State in the territory of the host State are being used for economic activities in which the State, without invoking its prerogatives (*sin hacer uso de su potestad de imperio*) is behaving like a private person, so as to attach them. In the Courts words:

> (...)In light of the data culled from international case law, it can only be concluded that, in referencing public international law, Article 21.1 of the Organic Law of the Judiciary (*L.O.P.J*) does not impose an absolute immunity from execution/enforcement rule. Rather, on the contrary, it supports the view that such immunity is relative. Article 24.1 of the Spanish Constitution (C.E.), as was already pointed out, does not impose but rather permits a limited concept of immunity from execution/enforcement, above all bearing in mind that the raison d'être of immunities for foreign States is not to afford them indiscriminate protection, but rather to safeguard their full sovereignty. For that reason, as a general rule, when in a given activity or attachment of certain assets the sovereignty of the foreign State is not at stake, both the international legal order and, by inference (*por remisión*), the domestic legal order, do not allow a judgment to go unenforced so that a decision not to enforce one amounts to a violation of Article 24.1 of the Spanish Constitution (C.E.).
>
> (…) If we move now from immunity from jurisdiction to immunity from execution/enforcement, more caution can be discerned when it comes to making exceptions to the immunity rule, even as such exceptions are undeniably occurring more frequently in practice in numerous State. Those exceptions are following the pattern set for immunity from jurisdiction, that is to say, there is no questioning the principles that a domestic court cannot adopt enforcement (or precautionary) measures with respect to property of a foreign State in the territory of the host State that the former uses to perform sovereign or ius imperii activities. As things stand today, that is clear, as regards immunity from execution. From that point on, acceptance of the non-immunity from execution/enforcement of property that the foreign State uses in the host State for activities *iure gestionis* or of an unmistakably private or commercial nature varies, ranging from non-acceptance of even the slightest exception to immunity from execution/enforcement to undoubtedly progressive positions requiring that the property must be unequivocally assigned to sovereign (iure imperii) activities.
>
> (...) Having established that currently public international law does not insist on absolute immunity from execution/enforcement, but rather allows domestic courts to enforce judgments against a foreign State, and that therefore any other interpretation (...) must be regarded as violating Article 24.1 of the C.E. because it restrict the right to enforcement without legal cause, it remains to be determined to what extent, or, if you will, subject to what limits, a Spanish court can enforce a judgment against property of a foreign State on our soil.
>
> (...) It may well be that, apart from property that cannot be embargoed because it is really or presumably being used for activities proper to diplomatic or consular missions, the foreign State (...) subject to enforcement/execution may own other assets in our country.
>
> (...) With respect to those assets, where they exist, the immunity from execution/enforcement guaranteed by the international legal order, and, by inference (*por remisión*) by Article 21.2 of the L.O.P.J, extends only to those used for *iure imperii* activities, not to those used for *iure gestionis* activities.

[59] ECtHR. Case of Hirschhorn v. Romania. Judgment of July 26, 2007, paras. 58-62.

(„) In this way, in order to satisfy their right to enforce judgments, ordinary courts are authorized to attach property that is unmistakably assigned by the foreign State to industrial and commercial activities in which its sovereignty is not at stake because those activities are governed by private legal rules of commerce.

(...) In each case, it is up to the enforcing judge to determine, based on our laws, which of the properties specifically owned by the foreign State on our soil are unequivocally assigned to the performance of economic activities in which the State makes no use of its sovereign prerogatives and acts like a private person. Nor is it necessary, moreover, once that is the case, that the property to be attached be assigned to the same activity *iure gestionis* that triggered the litigation because, otherwise, execution/enforcement would be illusory in cases like the instant case, in which, since it deals with the dismissal of an Embassy employee and it has already been admitted that such disputes have nothing to do with the immunity from jurisdiction of the foreign State, no property would be excluded from immunity against execution/enforcement, since only embassy property would be related to the activity that prompted the dispute.[60]

70. That criterion was ratified and consolidated in subsequent decisions[61] in which it was determined that it is up to the enforcement judge to determine which assets of a foreign State are protected via immunity from execution/enforcement. For example, in Judgment 176/2001, the Spanish Constitutional Court resolved that some garage parking lots owned by the French Consulate in Bilbao could not be embargoed as they were used in activities proper to the Consulate [62] Likewise, in Judgment 112/2002, the same court deemed that sums of money from VAT reimbursements by the United States government could indeed be executed given that those funds derived from both public activities and commercial and cooperation activities and the latter are not protected from execution/enforcement.[63]

71. In addition, on April 10, 2002, the Court for Social Matters (*Juzgado de lo Social*) in Madrid, in a ruling on execution of a judgment against Italy, found that an educational center associated with the Italian embassy has nothing to do with a foreign State's sovereign power, so that *ius imperii* could not be invoked,[64] For its part, in Ruling 42/2004, the Provincial Court of Cádiz declared the embargoing of the current account of a branch of a Spanish bank located in a naval base of the United States to be null and void, because such funds are public and for military personnel, whose accounts are controlled by the United States Defense Department, so that those assets are not subject to enforcement/execution measures.[65] Finally, in judgment 2012/9582, the Social Division of the Spanish Supreme Court determined that embassy current accounts cannot be embargoed because they are inviolable under the terms of the Vienna Convention on Diplomatic Relations.[66]

72. In the case of Blasson v. the Czech Embassy, the Supreme Court of Justice of the Argentine Nation set aside the preventive embargo placed on a bank account owned by that embassy as it considered that the measure in question seriously impaired the sovereignty of the foreign State and recognized the relative immunity from execution/enforcement thesis. In that regard, it stated that "attachment (*ejecución forzada*) of the property of a foreign State is inadmissible without the latter's consent, provided that said property serves its sovereign purposes."[67]

73. At the same time, the Commission notes that certain legislations also recognize the immunity from execution/enforcement principles, with exceptions in respect of assets used for commercial activities in the host State. Thus, the foreign Sovereign Immunities Act (1976), for example, excludes immunity of property of a foreign State used for a commercial activity in the United States, provided that the assets

[60] Constitutional Court of Spain (TCE) Judgment 107/1992, Case of Diana Gayle Abbott v. Republic of South Africa. Judgment of July 1, 1992. Legal Grounds (*Fundamentos Jurídicos*) 1, 2, 3, 4, 5, and 6. ECLI:ES:TC:1992:107.
[61] Constitutional Court of Spain (TCE) Judgment 292/1994 Case of Esperanza Jequier Beteta of October 27,1994 ECLI: ES: TC: 1994:292. Judgment 18/1997 Case of Emilio Blanco Montero of February 10, 1997. ECLI:ES:TC:1997:18.
[62] Constitutional Court of Spain (TCE) Judgment 107/1992, Case of Maite González Zarandona v. Consulate of the Republic of France in Spain. Judgment of September 17, 2001. Legal Grounds (*Fundamentos Jurídicos*) 1, 2, 3, and 4. ECLI: ES: TC: 1992:107.
[63] Constitutional Court of Spain (TCE) Judgment 112/2002, Case of Brígida and Marcos v. United States of America Judgment of July 1, 2002. Legal Grounds (*Fundamentos Jurídicos*) 1, 2, 3, 4, 5, 6, 7, and 8. RTC/2002/112 AUTO.
[64] Court for Social Matters (*Juzgado de lo Social*) of Madrid Ruling of April 10, 2002, JUR/2002/216230.
[65] Provincial Court of Cádiz. Ruling N° 42/2004), of November 8, 2004. JUR/2005/78178.
[66] Social Division of the Supreme Court of Spain. Judgment of June 25, 2012. JUR/2012/9582.
[67] CSJN. Judgment in the case of Beatriz Blasson v. Embassy of the Czech Republic. Judgment of October 6, 1999.

involved are or were being used for the commercial activity that gave rise to the litigation.[68] Likewise, the British *State Immunity Act (1978)*[69] and the Canadian *State Immunity Act (1985)*[70] consistently preclude immunity from execution/enforcement for all assets of the foreign State being used or intended at the time for commercial purposes. Similarly, the Australian *Foreign States Immunities Act (1985)* [71] excludes assets destined to serve commercial activity purposes from immunity from execution/enforcement and, while diplomatic property is excluded from that consideration, the Act simply requires that, for assets to be attached, they have to be primarily assigned to commercial activities.

74. In light of the above, the Commission observes, based on the aforementioned judicial rulings and legislation, that the concept of relative immunity provides for both protection of property not assigned to commercial purposes and that is needed for a State to properly perform its diplomatic and consular functions and exercise its sovereignty, and at the same time attachment of assets of a commercial nature in order to execute a judgment.

75. In the instant case, the Commission notes that the Argentine judicial authorities in charge of the execution process limited themselves to accepting the response of the State of Australia, which opposed immunity from execution to the enforcement of the judgment in favor of the alleged victim, on the understanding that this made execution absolutely impossible, thereby limiting one of the essential components of the right to judicial protection, which consists of the execution of the judgment, an aspect specifically protected by Article 25(2)(c) of the American Convention. The Commission considers that the omission of the judge in charge of the proceedings to enforce the judgment against the Australian Embassy and, in particular, due to the fact that, as explained above, there are other means to achieve it in respect of the immunity from execution -such as through the verification of the assets that would be destined to a commercial activity or that could be subject to forced execution, in accordance with the parameters described above- constituted a disproportionate affectation of Mrs. M.E.F.'s right to judicial protection.

76. On the other hand, the IACHR recalls that the alleged victim alleged that her dismissal was a consequence of having notified her superiors of her pregnancy and having requested the regularization of the employer's social security contributions, as well as her registration in the labor records of the Embassy. In the same decision of February 28, 2001, the National Judge of First Instance stated that "given that the 'unjustified' dismissal took place within the maternity protection period (...) the compensation provided for in article 182 of the labor law is also viable". The Commission considers that the omission of the judge in charge of the execution of the judgment in this case resulted not only in the limitation of the essential components of the right to judicial protection, but also in the substantive components that the remedy protected. In particular, the Commission considers that the response of the judicial authorities resulted in the validation of the reasons for the dismissal of the alleged victim, which, as indicated, did not comply with the maternity protection period, and therefore, in accordance with the standards indicated above, there was also a violation of the principle of equality and non-discrimination.

77. The Commission therefore concludes that the Argentina State is responsible for violation of rights established in Articles 21, 25.1, and 25.2.c) of the American Convention, in conjunction with the obligations contained in Article 1(1) and 2 thereof, to the detriment of M.E.F.

V. ACTIONS SUBSEQUENT TO-REPORT 188/20 AND COMPLIANCE INFORMATION

78. The Commission adopted merits report No. 188/20 on 14 July 2020 comprising paragraphs 1 to 77 above and transmitted it to the State on November 3, 2020. In this report the Commission recommended:

[68] Foreign Sovereign Immunities Act (1976) of the United States of America. U.S. Code Section 1610 (a.2). Exceptions to the immunity from attachment or execution.
[69] State Immunity Act (1978) of the United Kingdom. Section 6 (1.b) and Section 16 (1.b). Ownership, possession and use of property and Excluded matters.
[70] State Immunity Act (1985) of Canada. Section 5. Commercial activity.
[71] Foreign States Immunities Act (1985) of Australia. Section 32 (1). Execution against commercial property.

1. to take the necessary measures, including those judicial or diplomatic measures at the highest possible level, tending to achieve compliance with the decision issued on October 18, 2001 with respect to the Australian Embassy.

2. Adopt the payment of compensation to the victim for the violation declared in this report, specifically, the failure to adopt adequate measures to ensure the execution of a judicial decision.

79. The Commission received reports from the State on compliance with the recommendations established and observations from the petitioner. During this period, the Commission granted eleven extensions to the State for the suspension of the time period provided for in Article 51 of the American Convention. Likewise, the State reiterated its willingness to comply with the recommendations and expressly waived its right to file preliminary objections with respect to compliance with the deadline established in the aforementioned Article, in accordance with the provisions of Article 46 of the Commission's Rules of Procedure.

80. With regard to the first recommendation, on taking the necessary measures to comply with the decision of October 18, 2001 with respect to the Embassy of Australia, the State informed that on December 29, 2020, the State sent an official letter to the First Secretary of the Europe and Latin America Division of the Australian Foreign Ministry, in which the Ambassador of Argentina in Australia submitted the Background Report and requested the cooperation of the Australian government in complying with this recommendation. The State considered that with this "the Argentine Foreign Ministry took the steps suggested to the State of Australia, which is why the aforementioned recommendation should be considered to have been complied with".

81. Mrs. M.E.F., for her part, considered that this was an incomplete measure for several reasons. On the one hand, she pointed out that the note was not addressed to the highest diplomatic level, which was the Chancellor. On the other hand, she considered that the claims to be made by the Argentine Government to Australia should include not only the compensation for the dismissal without cause of an Argentine citizen, who was pregnant, but also the wages owed, interest and updates, the work certificate for labor and social security purposes and the debt for social security contributions owed by Australia to the ANSES.

82. The State reported that on July 19, 2021, a meeting was held with Mrs. M.E.F., at which she was informed that Australia expressed its willingness to pay her a certain amount, in accordance with the judicial agreement reached in due course.

83. Subsequently, Mrs. M.E.F. indicated that the amount offered by Australia represented only 13.4% of the amount owed to her. She also pointed out that this amount does not include the penalty payment for the failure to deliver the work certificate during all these long years. In this regard, she indicated that the judgment obliged Australia to deliver the work certificate for labor and social security purposes, under penalty of penalty payments. She considered that, nevertheless, Australia systematically refused to deliver it to her, ignoring her innumerable claims, when the delivery of such certificate was an obligation of every employer.

84. Mrs. M.E.F. indicated that in view of the Argentine State's suggestion to accept the amount offered by Australia, she was willing to accept the offer, under certain conditions that included: that the payment be made before September 15, 2021; that Australia deliver to her, at the time of signing an eventual Payment Agreement, the certification of her remunerations; and that she would determine in a possible Payment Agreement with Australia to which items she would allocate the amount to be received.

85. Between 2021 and 2023, the State informed the IACHR about the steps and negotiations it held with the Australian authorities to legally implement the appropriation of the amount and ensure compliance with this recommendation. The State also held meetings with Mrs. M.E.F.

86. Among these steps, on April 18, 2022, a preliminary draft Agreement was prepared between Argentina and Australia that would provide a legal framework for a transfer of funds from Australia. The State, in

response to the Petitioner's request, before sending the draft agreement to Australia, sought that the Australian authorities could deal directly with the Petitioner and sign an agreement with her.

87. On July 28, 2023, the petitioner reported that it signed a Party Agreement with the Embassy of Australia, receiving directly from the Embassy the sum offered as compensation for unjustified dismissal aggravated by maternity, without any cooperation from the Argentine State to conclude this Agreement. The petitioner considered that, on the contrary, the contradictions and obstacles set up by the Argentine State, particularly during the last two years, were the cause of unnecessary delays and have caused her substantial material and moral damages, including the great emotional strain of having to litigate for decades, first in Argentina and then internationally, to have her rights respected. The petitioner indicated that the signing of this Agreement puts an end to a litigation of more than 26 years with the Australian Embassy.

88. On October 10, 2023, the State confirmed that on July 20, the Australian Embassy in the Argentine Republic and Mrs. M.E.F. signed an agreement whereby the Australian Government agreed to pay the petitioner the sum offered to compensate her for the damages resulting from the dismissal that occurred while she was in the maternity protection period.

89. The State considered that the steps taken on its part were decisive in reaching the agreement between the petitioner and the Australian Embassy. As an example of this, the State reported that on July 28, 2023, it received an e-mail from the Legal Counsel of the Australian Embassy, in which it thanked the Argentine State for having informed the Embassy of the processing of the case before the IACHR and for its contribution to reaching an agreement.

90. In addition, the State indicated that the Merits Report and, in particular, this recommendation helped the Argentine Government to justify the reactivation of the proceedings before the Australian authorities and helped the Australian Government to understand the importance for the Argentine Republic that Australia comply with the payment to which it was condemned.

91. The State pointed out that it did everything possible, within the limits of international law, to ensure that the Australian Government complied with the orders of the Argentine courts and that the fact that the Australian Government agreed to resume negotiations with the petitioner and to meet with her, as well as the agreement that was reached, are the result of those efforts.

92. On October 30, 2023, the Petitioner reiterated the signature of the agreement with the Australian government and indicated that as a result of the Payment Agreement, Australia had paid it compensation for damages resulting from the unjustified dismissal. It also indicated that the amount paid by Australia represents less than 20 percent of the current value that Australia should have paid 22 years ago.

93. With respect to social security rights, the petitioner indicated that Australia only provided her with a certificate of wages received but refused to provide her with the work certificate art. 80 for labor and social security purposes required by the National Social Security Administration (Anses) where the employer's contributions and contributions to the Anses must be recorded and certified.

94. The petitioner indicated that she did not agree that the intervention of the Argentine Foreign Ministry had achieved “full reparation” for the unjustified dismissal nor that it had contributed decisively to the satisfaction of the plaintiff's pecuniary claims, including those related to the social security contributions derived from her employment relationship with the Australian Embassy in Buenos Aires.

95. With regard to the second recommendation, concerning compensation, the State reported its willingness to initiate a process of dialogue with the petitioner in order to reach an agreement and comply with this recommendation through an Ad Hoc Arbitral Tribunal. The petitioner, for its part, indicated that she has had several meetings “with officials of Human Rights and the Argentine Foreign Ministry” to carry forward the creation of an Ad Hoc Tribunal to determine the liquid sum that corresponds in law to be paid to the State. She also informed that they sent her information on Arbitration Tribunals and their

regulations. She stated that at the request of the Argentinean officials, she has worked to appoint an arbitrator and a lawyer to follow the arbitration process.

96. Subsequently, the State argued that immunity from execution only yields upon the express and specific waiver of the foreign State, when it is a question of assets that are not assigned to a State function. Therefore, in the present case, the Argentine State asserted that Australia has not waived its immunity from execution, and since the Petitioner has not identified, in the judicial proceedings, assets of that country that are not affected to a State function, such immunity has not lost its absolute nature in the present case.

97. In this regard, it argued that due respect is due to the immunity from execution enjoyed by the Australian Government and with this it indicates that, having concluded the necessary coordination for the first recommendation, it will subsequently take a position on the matter.

98. The petitioner indicated that she had initially held meetings with the Ministry of Foreign Affairs regarding the establishment of said tribunal, but after the Argentine State approached the Australian State, Argentina decided to suspend the dialogue. She reiterated its request for the confirmation of an arbitration tribunal to determine the corresponding compensation.

99. The State indicated that it understands that, having reached a satisfactory agreement between the petitioner and her debtor, the State of Australia, the present case should be considered closed, inasmuch as the petitioner has already effectively received the aforementioned compensation - the non-payment of which by Australia was the cause that gave rise to the present international claim - and has even found satisfaction with the recognition of the periods of pension contributions that she had been claiming - recognition that will have a significant impact on the amount of the benefits that Mrs. M.E.F. will receive as a pensioner.

100. On October 30, 2023, the petitioner indicated that the agreement signed with the Embassy of Australia did not imply its waiver of the reparations that it was legally entitled to pay to the State of Argentina to comply with the second recommendation of the Merits Report. It also reiterated that the State had previously expressed its willingness to comply with this recommendation through an arbitral tribunal and that it had accepted this proposal.

101. After evaluating the information on the status of compliance with the recommendations, on November 3, 2023, the Commission decided not to refer the case to the Inter-American Court and to proceed with the publication of the Report, in accordance with the provisions of Articles 51 of the American Convention and 47 of the IACHR's Rules of Procedure.

102. The IACHR indicated to both parties that in examining the case:

> it evaluated the substantive progress in compliance with the recommendations of the Merits Report. In particular, the Commission noted that the State took the necessary measures, including diplomatic measures at the highest level, aimed at achieving compliance with the decision issued on October 18, 2001, regarding the Australian Embassy and that payment [...] of compensation from the Australian government was obtained.
> The Commission will follow up on the second recommendation, which refers to the adoption of compensation payments to the victim for the violation declared in the report, specifically the failure to adopt adequate measures to ensure the enforcement of a court ruling.

103. On December 4, 2023, the petitioner reported that it had not been contacted by the State to move forward with signing the agreement to comply with the second recommendation through the aforementioned Ad Hoc Tribunal.

104. On July 16, 2024, in relation to the second recommendation, concerning compensation for the violation resulting from the failure to adopt adequate measures to ensure the enforcement of a judicial

decision, the State reiterated that "for the Argentine Government, due respect for the immunity from execution enjoyed by the Australian Government under international law cannot entail, as a consequence, the financial liability of the Argentine Republic."

105. The State requested that this Report expressly record its position that there was no "failure to adopt adequate measures to ensure the enforcement of a judicial judgment" on its part, or at least, no legally reprehensible omission in light of current domestic and international law. It considers that:

> Since Australia had not waived its immunity from execution, and the petitioner had not at the time identified Australian assets not used for state functions, that immunity had not lost its absolute character. […] Consequently, it would have been up to the interested party in any event to identify Australian assets in Argentina that were not used for state functions, or at the very least, to request the court to issue measures to identify them. If it did not do so, the Judge could not, under current law, do so proprio motu. And, in any event, even if the Judge had acted ex officio, in violation of the provisions of the current Codes of Procedure, nothing suggests that Australian State assets in Argentine territory not used for official purposes could have been identified. In this regard, the Argentine State reiterates its position that it cannot be asserted that in the present case, any type of liability has been incurred, through action or omission, that would justify the Argentine State paying compensation to the petitioner in addition to that already received from the State of Australia. From this perspective, paying compensation as sought would contradict Argentina's consistent position on immunity from execution before foreign and international courts, as it would imply admitting that respecting a foreign State's immunity from execution and the dispositive principle in procedural matters may constitute internationally unlawful conduct that gives rise to a need for reparation, a proposition rejected by the Argentine Republic.

106. On November 13, 2024, the petitioner responded that she does not believe that the compensation paid by Australia is the result of a "strenuous effort" made by the Argentine State. It reiterated that, on the contrary, "the Argentine State, with its actions, omissions, and delays, has tolerated and condoned Australia's conduct in Argentina for more than a quarter of a century to my detriment." She considers that the State has not, to date, claimed from Australia the debt for contributions to the social security system, and that the Argentine State is the only party entitled to make such a claim, which affects her interests.

107. The petitioner requested that the IACHR once again urge the State to continue the dialogue already initiated in order to move forward with the signing of an agreement for the establishment of an Ad Hoc Arbitration Tribunal to determine the compensation owed to her.

108. Regarding the **first recommendation**, concerning the adoption of the necessary measures to achieve compliance with the decision issued on October 18, 2001, regarding the Australian Embassy, the Commission observes that, during the three years since notification of the Merits Report, the State took numerous steps to secure payment from the Australian government. The steps taken by the Argentine State were essential for the signing of the agreement between Australia and the petitioner, both by informing the Australian government of the IACHR's recommendation in its Merits Report and by requesting direct dialogue with the victim and continuing to do so periodically. The Commission notes that it was as a result of these efforts that the petitioner reached an agreement with the Australian government and that the compensation offered was paid. Therefore, the Commission concludes that the first recommendation has been fully met.

109. Regarding the **second recommendation**, about the payment of compensation to the victim for the failure to adopt adequate measures to ensure the enforcement of a judicial decision, the Commission notes the State's offer to sign a compliance agreement to establish an Ad Hoc Tribunal to determine the amount of compensation, which was accepted by the petitioner. However, the State subsequently considered making a statement on the matter once the first recommendation was fulfilled.

110. After the payment agreement between the petitioner and Australia was signed, the Argentine State understood that having reached a satisfactory agreement between the petitioner and her debtor, the State of Australia, the present case should be considered closed, since the petitioner has effectively received the

aforementioned compensation, the nonpayment of which by Australia was the cause that gave rise to this international claim. The State maintains this position.

111. In this regard, the Commission reminds the Argentine State that the compensation established in the second recommendation of its Merits Report results from the violation it determined, based on the analysis carried out in paragraphs 57-77 above. The Commission highlights paragraphs 74-77 above and reiterates that:

> The failure of the judge presiding over the proceedings to conduct enforcement of the judgment against the Australian Embassy, and in particular because, as explained, there are other means to achieve this within the framework of immunity from execution—such as through verification of assets that are intended for commercial activities or that could be subject to enforcement, in accordance with the parameters described above—constituted a disproportionate infringement of Ms. M.E.F.'s right to judicial protection.

112. The Commission observes that the State maintains that there was no legally reprehensible omission in light of current domestic and international regulations, maintaining a position of non-compliance with the second recommendation of its Merits Report. Therefore, the Commission concludes that the second recommendation has not been complied with.

VI. ACTIONS FOLLOWING REPORT No. 79/25 AND INFORMATION ON COMPLIANCE

113. On May 28, 2025, the Commission adopted Merits Report No. 79/25, which includes paragraphs 1 through 112 above, and issued its conclusions and final recommendation to the State. On May 30 of the same year, it transmitted them to the State and the petitioner, giving them two weeks to inform the IACHR of the measures taken to comply with its recommendation. To date, the Commission has not received a response from the Argentine State regarding Report No. 79/25.

VII. FINAL CONCLUSIONS AND RECOMMENDATION

114. The Commission concludes that the State of Argentina is responsible for violating rights established in Articles 21 (private property), 25.1 and 25.2.c (judicial protection) of the American Convention on Human Rights, in conjunction with the obligations established in Article 1.1. thereof.

115. Based on the analysis and conclusions contained in the instant report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THAT THE STATE OF ARGENTINA:

1. Adopt the payment of compensation to the victim for the violation declared in this report, specifically, the failure to adopt adequate measures to ensure the execution of a judicial decision.

VIII. PUBLICATION

116. In accordance with the foregoing and pursuant to Article 51(3) of the American Convention, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the rules established in the instruments that regulate its mandate, will continue to evaluate whether the State of Argentina has provided full reparation to the victim in accordance with the above recommendation, until it determines that it has been fully complied with.

Approved by the Inter-American Commission on Human Rights on July 10, 2025. (Signed): José Luis Caballero Ochoa, President, Arif Bulkan, Second Vice President, Roberta Clarke; Carlos Bernal Pulido and Gloria Monique de Mees, Members of the Commission.