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## **REPORT No. 112/25**

### **CASE 13.092**

REPORT ON ADMISSIBILITY AND MERITS (PUBLICATION)

HÉCTOR LEONARDO KEMELMAJEN AND RAFAEL CHAIKIN

ARGENTINA

**Cite as:** IACHR, Report No. 112/25, Case 13.092. Admissibility and Merits (Publication). Héctor Leonardo Kemelmajen and Rafael Chaikin. Argentina. July 14, 2025



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## I. INTRODUCTION<sup>1</sup>

1. On July 2, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “the IACHR”) received a petition presented by David Efraín Villarreal (hereinafter “the petitioning party”) which alleges the international responsibility of the Argentine Republic (hereinafter “the State”, “the Argentine State” or “Argentina”) for the imposition of a precautionary measure of general inhibition to sell or encumber property for more than 30 years, against Héctor Leonardo Kemelmajen and Rafael Chaikin, within the framework of an action for patrimonial liability brought against them, which in their opinion would have been delayed beyond a reasonable period of time.

2. On March 1, 2018, the Commission informed the parties that, according to the instruments that govern its mandate, it deferred the treatment of the admissibility of the matter until the debate and decision on the merits. The Commission made itself available to the parties in order to initiate a friendly settlement process without the conditions for such effect being met. The parties had the statutory deadlines to present their observations on the case. All the information received was duly transferred between the parties.

## II. POSITIONS OF THE PARTIES

### A. Petitioning party

3. The petitioner indicates that Héctor Leonardo Kemelmajen was a member of the Board of Directors of the financial entity “Caja Mutual Yatay 240 Sociedad Cooperativa de Crédito”, exercising the position of vocal holder from April 21, 1979 to May 15, 1980. For his part, Rafael Chaikin was also appointed as a member, however, he never held the position because he did not accept it.

4. It refers that in the eighties the financial entity “Caja Mutual Yatay” filed a bankruptcy request before the National Court of First Instance in Commercial Matters No. 4, Secretariat No. 7, by virtue of which cessation of payments was decreed on February 25, 1982 and May 18, 1983 bankruptcy was declared.

5. It states that, as a result of the previous process, on July 2, 1985, a file entitled CAJA MUTUAL YATAY 240 SOC. COOP DE CRED. LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248/94, promoted by the Central Bank of the Argentine Republic, in its capacity as liquidating authority of financial entities. It explains that within the framework of this process, on February 11, 1987, the National Judge of First Instance in Commercial Matters No.4, decreed the precautionary measure of inhibition of assets against the administrative authorities of the “Caja Mutual Yatay” which included the alleged victims of the case, as jointly liable for the damages caused to the entity’s creditors, up to the sum of three million five hundred thousand dollars.

6. It contends that the purpose of the measure was to prevent the sale or encumbrance of any personal or corporate asset, and would persist until the final decision was adopted, but it had to be renewed every five years at the request of the Central Bank of the Argentine Republic. It alleges, however, that in the present case the renewal requests were formulated in an extemporaneous manner contrary to the Civil and Commercial Procedure Code of the Nation, which establishes that the inhibition measures expire by right five years after they have been ordered and they can only be re-registered if requested before the deadline. Specifically, it indicates that the general property inhibition against the alleged victims was registered on October 7, 1987

<sup>1</sup> 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.

with the Real Estate Registry of the Province of Buenos Aires, so that the first five years expired on October 7, 1992, however, the renewal of the measure was requested until April 22, 1994, and closed on November 10, 1994, that is, two years after the deadline for the corresponding re-registration had expired.

7. It argues that the restrictions imposed on the right to property should not be extended indefinitely, since this means an early fulfillment of a future sentence. It stands out that, in the case under study, the precautionary measure imposed lasted for more than 30 years.

8. The petitioning party points out that domestic law only allows the issuance of precautionary measures when the plaintiff's claim is credited, and there is a need to guarantee the creditor that the debtor will be in a position to face a possible patrimonial sentence, however, in the present case, the measure was imposed without an adequate analysis of the alleged participation of the alleged victims in the events that led to the failing state of the "Caja Mutual Yatay" in January 1981 in which they had no participation, because in the case of Mr. Kemelmajen, he separated from the entity on May 15, 1980, and in the case of Mr. Chaikin, he was never effectively linked, because he did not accept the position to which he was offered.

9. It states that, within the framework of the process, a final judgment on the merits was never issued and it was filed due to procedural inactivity, so that the inhibition measure continues in force after more than 35 years.

10. Regarding the adverse effects of the precautionary measure of general inhibition of assets, it states that Mr. Rafael Chaikin was a partner of a tourism company "Bantur Viajes y Turismo SRL" that he established on November 21, 1985, which was his main source of income and the precautionary measure had the effect of blocking him commercially and financially, so he could not continue to carry out banking operations, which led to the closure of the company. He adds that, as a consequence of the above, he had to migrate to the United States with his two minor children, and seek a job as a construction worker, which he maintains to date.

11. It argues that in the case of Mr. Kemelmajen, he was a partner of the real estate company called "Rabinovich Propiedades SH" which had real estate brokerage as a commercial activity, and the alleged victim was in charge of signing tickets, contracts, reservations and transfers of goodwill, tasks that he could not continue to perform due to the precautionary measure of general inhibition of assets. In addition to the above, he was a law student, a public accountant and had an accounting firm of which he was the sole owner, having accountants in his charge and more than fifty clients. He states that, as a consequence of the general property inhibition precautionary measure, he was unable to maintain his bank accounts in which his clients deposited money for the payment of taxes, which he made by writing his own checks. Likewise, he was blocked from accessing loans and maintaining deposits for fear that these would be blocked. Due to all the above, he had to sell his study to the accountant who succeeded him and resigned his professional registration in November 1988 before the Professional Council.

12. It adds that, at the time of the precautionary measure, Mr. Kemelmajen had a four-year-old daughter and an unborn son and that the blockade measure on his economic life led him to settle in Asunción, Paraguay, where he established a jewelry store. However, the difficult adaptation to this environment caused his family to return to Buenos Aires and later led to his divorce.

13. Regarding the admissibility requirements, the petitioning party indicates that the present petition meets all the requirements established in Article 46 of the Convention. Specifically, with respect to the requirement of exhaustion of domestic remedies, the petitioning party indicates that the exception to said rule established in Article 46.2 of the American Convention operates in this case. It states that they did not file appeals against the precautionary measure of inhibition of assets or their renewals because they were never notified of the adoption of the measures, in contravention of the provisions of Article 198 of the CPCC, which provides that the precautionary measures must be notified to those affected within three days of being ordered or made effective. It refers that, in the particular case, they learned of them by virtue of the patrimonial and financial blockades imposed against them.

14. It states that the precautionary measure was subject to the appeal for revocation and appeal, but that due to the fact that they were not notified, they could not appeal them. It adds that they could have challenged them on the occasion of the spontaneous notification, but as this appeal required a lawyer and a "complex, onerous and extended" procedure, they could not present it since their funds were blocked and they only had what was necessary for the satisfaction of their basic needs. They affirm that against this they tried the legal and gratuitous sponsorship of the State, but at that time it only existed for criminal and family cases and not for commercial matters.

15. It alleges that the State is right when it states that the alleged victims had the possibility of lifting the general inhibition on their assets if they surrendered assets worth three million five hundred thousand dollars. However, it states that this sum was not within the possibilities of any of the victims in this case, which is why, 30 years after the general property inhibition was imposed, it is still in force due to the impossibility of guaranteeing the removal of the same.

16. Regarding the law, it argues the violation of the rights to personal integrity of the alleged victims, taking into account that for more than 20 years they did not issue a final judgment in the framework of the incident process of general inhibition of property, by the action of the Central Bank of the Argentine Republic, who, in its capacity as exclusive liquidator of financial entities, prosecuted Messrs. Kemelmajen and Chaikin without their actions being linked to the "failing state" of the Fund Mutual Yatay and all this had a moral and psychological impact on the alleged victims, in the terms indicated above.

17. Likewise, it argues the violation of judicial guarantees and judicial protection, specifically the reasonable term, since the bankruptcy process lasted 37 years, and the precautionary measure of inhibition of assets lasted 33 years, which implies, in addition, an early sentence against the alleged victims, who were also not even linked to the financial entity at the time of the events.

18. Likewise, it sustains the violation of the right to private property, since the precautionary measure of general inhibition of selling and/or encumbering their assets for the sum of three million five hundred thousand dollars generated, without justification or legal support, that the alleged victims could not freely exercise their economic rights.

19. Finally, it alleges the violation of the right to equality before the law, referring to the fact that in the present case the Bankruptcy Law was applied in a different manner, by holding the alleged victims responsible for the damages caused to creditors of the Mutual Fund despite the fact that they were not linked to said entity at the time the events that led to the criminal status occurred, which has been taken into account in other cases.

## **B. State**

20. The State indicates that Héctor Leonardo Kemelmajen was part of the Board of Directors of the "Caja Mutual Yatay" as a titular member from April 21, 1979 to May 15, 1980 and, as regards Rafael Chaikin, specifies that he was also appointed as the titular member, however, he did not exercise the aforementioned position.

21. It indicates that the Caja Mutual Yatay, in fact, filed a bankruptcy request in the eighties, which was confirmed through a judicial decision on May 18, 1983 in the framework of a bankruptcy proceeding carried out by the National Court of First Instance in Lo Comercial No 4, Secretariat No 7, which set February 25, 1982 as the date of cessation of payments.

22. It adds that by virtue of this, the Bank of the Argentine Republic, as trustee, promoted an incidental process of patrimonial liability and within the framework of the same, a precautionary measure of general inhibition of assets against the alleged victims was decreed, as of April 1987, which was registered in the Real Property Registry of the Province of Buenos Aires on October 7, 1987.

23. The State declares that the imposition of this measure of general inhibition of assets was not uninterrupted. It specifies that the alleged victims were not inhibited in the city of Buenos Aires, for four years during the period between the January 3, 2000 to February 10, 2004. It states that they were not inhibited in the jurisdiction of the Province of Buenos Aires between December 16, 1999 and August 3, 2005.

24. It indicates that, after this term in which they were not inhibited, the measures were re-registered in the city of Buenos Aires and in the Province of Buenos Aires in the years 2004 and 2005 respectively and once the term provided by law had expired, they expired.

25. It adds that on December 23, 2003, a first instance judgment was issued in which Messrs, Chaikin, and Kemelmajen, among others, were sentenced to pay the plaintiff the sum of \$ 6,026,907.82 plus interest and costs. It states that such decision was appealed by the alleged victims and on March 1, 2004 the appeal was granted before the National Chamber of Commercial Appeals. It adds that as a result of this conviction, on March 7, 2012, the registration of a new general inhibition of assets was ordered at the request of the Central Bank of the Argentine Republic against the petitioning party, which as of December 2012 could prove its effective work.

26. The State emphasizes that the petitioning party's assertion that the State itself recognized that they were not linked to the Caja Mutual Yatay at the time the criminal status was decreed is not correct, since the only thing the State did is record the start and end date of the alleged victims' employment relationship with the Caja Mutual, which does not imply a consideration on the merits of the matter.

27. Regarding the admissibility requirements, the State argues that the requirement of exhaustion of domestic remedies was not met. It states that, as the petitioning party acknowledges, they did not comply with making use of the remedies for reconsideration and appeal to challenge the precautionary measure imposed against them, even though they indicated that these measures had determining effects on their "employment and personal future." It states that the petitioning party relied on a vague reference to the lack of advice and the lack of financial resources without demonstrating how these factors constituted one of the specific exceptions to the rule of prior exhaustion of domestic remedies. "

28. It adds that the alleged victims also had the possibility of questioning the "procedure and / or legitimacy of the measure that ordered the general inhibition of their property" and requesting a substitute measure in accordance with the provisions of Article 203 of the CPCC. However, they did not make such a request either, so they cannot go to the IACHR and pretend to make allegations that were not made at the national headquarters.

29. On the other hand, the State argues that the alleged victims filed the petition 20 years after the cessation of payments from the financial entity for which they worked was decreed. It considers that the absence of reproach before the domestic jurisdiction goes against the principle of subsidiarity of international law, and therefore indicated that the "Commission cannot declare admissible a petition in which it is intended, as in the case, to resort to the to correct what was omitted, or to allege what was not alleged before the national courts". Finally, it specified that the passage of 20 years since the cessation of payments was decreed to the presentation of the complaint before the IACHR exceeded the criterion of reasonableness.

30. Regarding the law, the State limited itself to indicating that it was not necessary to refer to aspects related to the merits, taking into account the lack of exhaustion of domestic remedies provided for in Article 46.1. a) of the American Convention.

### **III. ADMISSIBILITY ANALYSIS**

#### **A. Jurisdiction, duplication of procedures and international res judicata**

<b>On the personal competition;</b>	Yes
<b>By reason of competition;</b>	Yes
<b>Competition in relation to time;</b>	Yes
<b>Competition aspect of matter;</b>	Yes, American Convention (deposit of instrument made on September 5, 1984)
<b>Duplication of procedures and international res judicata</b>	No

## **B. Admissibility requirements**

### **1. Exhaustion of Domestic Remedies**

31. Article 46.1.a) of the American Convention provides that, in order for a complaint filed before the Inter-American Commission in accordance with Article 44 of the same instrument to be admissible, domestic remedies must have been tried and exhausted in accordance with the generally recognized principles of international law. This requirement is intended to allow national authorities to learn about the alleged violation of a protected right and, if appropriate, have the opportunity to resolve it before it is known to an international body.

32. The Commission observes that the petition under analysis refers essentially to two aspects: first, to the alleged illegitimacy and illegality of the precautionary measure of general inhibition of property that was decreed against the alleged victims as of 1985, in the framework of the process of patrimonial responsibility promoted against them. Second, the petitioning party argues the unreasonable duration of the main proceedings. In this regard, it refers that the bankruptcy process lasted 37 years, and the precautionary measure of inhibition of assets lasted for 33 years.

33. Regarding the first aspect, the Commission stresses that the petitioning party argues that it did not file any recourse to challenge the precautionary measure of inhibition and that in the present case the exception to the rule of exhaustion of domestic remedies provided in Article 46.2 of the American Convention for two fundamental reasons: 1) they were never notified of it and they became aware of the measure after it was decreed; 2) although upon learning they could have filed appeals for revocation and appeal, this appeal required a lawyer and it was a complex, expensive and lengthy procedure, and they did not have the means taking into account that their funds were blocked.

34. The State alleges the lack of exhaustion of domestic remedies, indicating that the petitioning party should file remedies for reconsideration and appeal against the precautionary measure imposed, and that its “vague reference” to the lack of advice and lack of economic resources without demonstrating how these two factors prevented compliance with the rule of exhaustion of domestic remedies cannot constitute the exception provided in Article 46.1 of the American Convention.

35. Regarding the argument raised by the petitioning party regarding the lack of financial resources to challenge the inhibition measure, the IACHR emphasizes that this aspect can be taken into account by the Commission, on a case-by-case basis, to analyze compliance with the requirement of exhaustion of domestic remedies, however the petitioner limited itself to making a generic mention without detailing the particular circumstances surrounding his situation, the relationship between such circumstances and the alleged impossibility of exhausting domestic remedies. On the other hand, regarding the lack of legal assistance, the petitioners' argument is also generic in nature, without detailing the efforts made to obtain some type of free



legal assistance.<sup>2</sup> The Commission recalls that once a State party has proven the availability of domestic remedies for the exercise of a right protected by the Convention, the burden of proof shifts to the claimant, who must demonstrate that the exceptions contemplated in Article 46.2 are applicable<sup>3</sup>.

36. By virtue of the foregoing, the Commission considers that the part of the claim related to the arbitrary imposition of the precautionary measure becomes inadmissible due to failure to exhaust domestic remedies contemplated in Article 46.1 a) of the American Convention.

37. On the other hand, regarding the claim related to the unreasonable delay in the main proceedings, as well as the precautionary measure of general inhibition of property, the Commission emphasizes that the process ended while the petition was pending before the IACHR. In this regard, the Commission emphasizes that the petition was presented on July 2, 2005. At that time, the National Court of First Instance had issued the first instance decision of the process, which was challenged by the alleged victims. On July 7, 2008, the filing of the proceedings was determined and finally on March 7, 2012, the National Court of First Instance in Commercial Matters no. 4 ordered a new injunction of property against the alleged victims by virtue of the sentence passed against them.

38. The Commission has upheld for decades a criterion by virtue of which “in situations in which the evolution of the facts initially presented at the domestic level implies a change in compliance or non-compliance with the admissibility requirements, the Commission has indicated that its analysis must be made from the current situation at the time of the admissibility pronouncement”<sup>4</sup>.

39. In view of these considerations, the Commission concludes that in relation to the process for patrimonial liability in the instant case, domestic remedies have been filed and exhausted in accordance with Article 46.1.a of the American Convention.

## **2. Deadline for Submitting the Petition**

40. Article 46.1.b of the American Convention establishes that for a petition to be admissible by the Commission, it will be required that it be presented within a period of six months from the date on which the alleged injured party has been notified of the final decision. In the claim under analysis, the petition before the IACHR was presented on July 2, 2005 and the last decision of the process was issued on March 7, 2012. Therefore, the exhaustion of domestic remedies occurred while the case was under an admissibility study. In these circumstances, it has been a constant criterion of the Commission that compliance with the requirement to present the petition on time is intrinsically linked to the exhaustion of domestic remedies and, therefore, it is appropriate to consider it fulfilled<sup>5</sup>.

## **3. Characterization of the Alleged Facts**

41. The Commission considers that if the facts alleged by the petitioning party are proven, related to the prolonged delay in the process for patrimonial liability, they could constitute a violation of Articles 8 and 25 of the American Convention in relation to Article 1.1 of the same instrument. and therefore declares the petition admissible in relation to these articles.

<sup>2</sup> IACHR, Report No. 44/09, Petition 12.161, Inadmissibility, *Ciro Abadías Boderó Arellano*, Peru, March 27, 2009, para. 28; see also IACHR Report 90/90, Case 9893, Uruguay, para. 22.

<sup>3</sup> I / A Court HR, Exceptions to the exhaustion of domestic remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), requested by the Inter-American Commission on Human Rights, para. 41.

<sup>4</sup> IACHR, Report No. 20/05, Petition 714/00 (“*Rafael Correa Díaz*”), February 25, 2005, Peru, para. 32; IACHR, Report No. 25/04, Case 12,361 (“*Ana Victoria Sánchez Villalobos et al.*”), March 11, 2004, Costa Rica, para. 45; IACHR, Report No. 52/00. Cases 11.830 and 12.038. (*Workers dismissed from the Congress of the Republic*), June 15, 2001, Peru, Para. 21, Report No. 2/08, Petition 506/05 (“*José Rodríguez Dañin*,” March 6, 2008, Para. 56.

<sup>5</sup> IACHR, Report No. 46/15, Petition 315-01. *Cristina Britez Arce*. Argentina. July 28, 2015, para. 47.



## IV. FINDINGS OF FACT

### A. Process of Patrimonial Responsibility..

#### 1. Precautionary Measure of General Inhibition of Goods

42. According to available information, on July 2, 1985, the Central Bank of the Argentine Republic, in its capacity as liquidating authority of financial entities, brought an action for patrimonial liability against the members of the Board of Directors of Caja Mutual Yatay, among which were the alleged victims of the present case<sup>6</sup>. In said lawsuit, the Bank stated that those who acted as administrators of said financial entity were direct perpetrators or participated passively in the conducts that led to the worsening of the equity situation of the “Caja Mutual Yatay 240”<sup>7</sup>. Specifically in the lawsuit, it indicated that such events were:

(...) Your request is based - in your understanding - on the occurrence of the event set forth in art. 166 of Law 19,551 (today Article 173 of Law 24,522). This is because those who served as administrators of the bankruptcy and other third parties also defendants have had direct responsibility or at least passive, permissive behavior that ultimately aggravated the financial situation of the same.

(...) In this way, it imposes individual and shared responsibility from the defendants and co-defendants in the indiscriminate and willful handling of the funds of the bankrupt, thereby incurring the following illicit acts:

a) Irregular credit policy: a.1) Loans granted to people who did not receive current funds.- a.2) Loans granted to persons and / or related companies exceeding the maximum credit support limit established by the BCRA, in contravention of Circulars RF 343, 1321 and “A” 49.- a.3) Shortcomings in debtor files and credit applications.- Among them:

- Anomalies in the signature records - in general, it states that in its opinion different signatures of the same person differ from each other - and in particular that there are signatures of proxies of companies without their corresponding seal;
- Lack of credit applications or not fully complied with;
- Breach of legal aspects, such as lack of statutes, social contracts, board payroll, marital conformity, etc.;
- Failures in the manifestations of assets and / or balances; major deficiencies in accounting records, fundamentally lack of inventory of interest accrued by debtor that make it impossible to accurately determine debts;
- Pledge credits in which the respective pledges have not been implemented;
- Lack of information on commercial references and financial entities;
- Granting of credits to companies without background checks;
- Credits granted to companies whose company type was not specified;
- Credits granted with false signatures of some participants;
- Credits granted with a false signature on the debt endorsement instrument; cites examples.

(...) \* B) Presentation to B.C.R.A. of Balances of Monthly Balances from January to December 1981, which did not reflect the real equity, economic and financial situation of the entity: b.1) Interest accrual on past due debts of uncertain recovery in the July / December 1981 period. - b.2) Adjustment of interests retroactively to neutralize the deterioration of the patrimonial responsibility.- b.3) Insufficient provisions to address risks of uncollectibility of the portfolio.-

Regarding the individualized conducts in these three preceding paragraphs, the receivership frames them as constitutive facts of various false information. From this would arise “prima facie”, the result of an irregular business management, which generated a situation of loss of the capital stock.- (...) <sup>8</sup>.

<sup>6</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. First instance judgment of December 23, 2003. Annex 3 to the State's brief of May 3, 2013.

<sup>7</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. First instance judgment of December 23, 2003. Annex 3 to the State's brief of May 3, 2013.

<sup>8</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. First instance judgment of December 23, 2003. Annex 3 to the State's brief of May 3, 2013.

43. On July 3, 1985, the alleged victims presented their answer to the application, in the following terms:

**(...) To FS. 220/221 by CHAIKIN, RAFAEL.-**

He refers in his answer to the claim that none of the facts is attributed to him personally. That he is included as a defendant, without having had any intervention in any act.

And so it was, because - as he says - he never held any position in the liquidated entity, neither directly or indirectly, nor actively or passively; In other words, he did not perform the position of vocal.-

It clarifies that having been proposed and appointed to occupy a Vocal Office on the Board of Directors is very different from having taken possession of the position or carried out any activity that could imply possession of it.-

With such a position, he categorically denies the facts and the documentary brought by the plaintiff.-

Offers proof to fs. 502/502 round.-

Finally, he requests the claim be rejected, with costs, -.

**\* A FS. 194/195 por KEMELMAJEN, HECTOR LEONARDO.-**

He denies because he does not record all the facts described in the initial brief and that are attributed to him - in his opinion - in a vague and generalized way; even more so because it was considered that on the date on which they were allegedly carried out, he did not exercise any charge in the liquidated entity.

It reaffirms the refusal by highlighting that the plaintiff expressly acknowledges in its letter of promotion of the claim that the imputed facts were Kazakhmated after her retirement from the cooperative, for which she does not bear any responsibility.

It ends up denying the authenticity of the instruments attached by the plaintiff.

Offer proof to Fs. 504 / 505.-

Petition the timely rejection of the claim, with the imposition of costs to the plaintiff<sup>9</sup>

44. On March 17, 1987, the National Court of First Instance in Commercial Matters No. 4, Secretariat No. 7, decreed a general inhibition of assets of a precautionary nature with respect to Rafael Chaikin and Héctor Leonardo Kemelmajen. <sup>10</sup> The Commission does not have such a decision.

45. On April 1, 1987, said measure was registered with the Registry of Real Property of the City of Buenos Aires and on October 7 of the same year with the Registry of Real Property of the Province of Buenos Aires<sup>11</sup>.

46. Subsequently, the National Bank of the Argentine Republic requested the re-registration of the inhibition measure. On March 18, 1992, the National Commercial Court of First Instance No. 4, Secretariat No. 7 ordered the re-registration of the inhibition measure before the Real Property Registry of the city of Buenos Aires. Regarding the re-registration of the inhibition measure in the Province of Buenos Aires, it was not requested and therefore expired five years after the initial registration. Subsequently, the plaintiff requested a new general injunction in the Province of Buenos Aires which was ordered on April 22, 1994 and enacted on November 10, 1994<sup>12</sup>.

47. It is clear that the Central Bank of the Argentine Republic requested a new re-registration in the city of Buenos Aires, which was ordered on November 10, 1994 and was registered on January 3, 1995. Five years after the last registrations, on January 3, 2000, the inhibition expired in the city of Buenos Aires and on December 16, 1999 in the Province of Buenos Aires.<sup>13</sup>

<sup>9</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. First instance judgment of December 23, 2003. Annex 3 to the State's brief of May 3, 2013.

<sup>10</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. First instance judgment of December 23, 2003. Annex 3 to the State's brief of May 3, 2013.

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<sup>12</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. Annex 2 to the State's brief of May 3, 2013.

<sup>13</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. Annex 2 to the State's brief of May 3, 2013.

48. Likewise, according to information available at the request of the Bank of the Republic of Argentina, the general inhibition of assets was ordered to be locked again, which became effective on April 6, 2004 in the city of Buenos Aires and on August 3, 2005 in the Province of Buenos Aires. Five years after the last inhibitions, the expiration of the same operated again.<sup>14</sup>

## 2. Decision of first instance of the patrimonial process.

49. On December 23, 2003, the National Court of First Instance declared the application admissible. In his decision he reasoned that:

(...) First of all, it must be duly established that this Court considers applicable to the case under analysis, the provision of art. 173 of Law 24,522, which establishes that the agent's fraud is a condition of the duty to indemnify that said norm describes.

This is so even when the present process was initiated when the invoked article 166 of the repealed law 19,551 was in force, since the reform introduced by law 24,522 must be applied immediately to the processes in process with the scope of arts. 2nd and 3rd of the Code. Civil (Conf. CN Com. Room "E" in files "Create Argentine Credit SA of Savings and Loan for housing the liquid. C / Campos Antonio and others s / Ordinario", of 3/21/2000 "; published in ED of 04-24-2001) .-

II.- Following the line of argument of the liquidator-liquidator of the Central Bank, which was exposed in his initial brief and in the argument that was presented at the appropriate procedural opportunity, it is appropriate to state that all those who have been sued (members of the council of administration, receivership and responsible third parties), will be sentenced on the basis of what is deduced from the records of the case, mainly the evidence offered and produced by the plaintiff.-

This is so because the attitude of the members of the entity in liquidation "... cannot be merely passive, they are not a decorative figure of the company but rather an organ of it and there is no possibility of excluding their responsibility without a positive activity to state your dissent in writing and make the pertinent complaint to the trustee (art. 272 - Paragraph 3º LS)

The totality of the arguments put forward by each of the defendants (except Calabressi, who did not answer the claim, despite being duly notified (...) in their respective responses, are not sufficient to exempt them from the responsibility attributed to them, especially if we have in Consideration that - in general - the evidence they offered for this purpose does not appear convincing to separate them from the accusations that the plaintiff imputes to them<sup>15</sup>.

(...) What the liquidator indicates that there are credits granted with false signatures, it can be appreciated with certain executive processes arrived ad effectum videndi et probandi, that such an assertion is true; It is important to highlight that it is one more link, in everything that is imputed to the accused (...) The amount of the sentence - despite the fact that the initial amount amounted to \$ 3,424,000,000.- (today \$ 342.40) - It will amount to the sum of \$ 6,026,907.82, as it is the amount that, according to calculations projected by the representative of the Central Bank of the Argentine Republic, after indicating the net flows of funds, are reported to fs. 3813/3816; the figure recorded is as of April 30, 1995.-

(...) Therefore, FAILURE: Giving place to the claim in the preceding terms, condemning (...) CHAIKIN, RAFAEL; KEMELMAJEN, HECTOR LEONARDO (...) to pay the plaintiff the sum of \$ 6,026,907.82 plus interest (...).<sup>16</sup>

<sup>14</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. Annex 2 to the State's brief of May 3, 2013.

<sup>15</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. First instance judgment of December 23, 2003. Annex 3 to the State's brief of May 3, 2013.

<sup>16</sup> Annex 1. Judicial Power of the Nation. MUTUAL BOX YATAY 240 SOC. COOP. FROM CRED.LTDA. S / BANKRUPTCY C / FINKELBERG ABRAHAM AND OTHERS (ACTION OF EQUITY RESP.) S / ORDINARY. 39248. First instance judgment of December 23, 2003. Annex 3 to the State's brief of May 3, 2013.

### 3. File of the patrimonial process and new general inhibition of assets

50. According to available information, the alleged victims subsequently filed an appeal before the National Chamber of Commercial Appeals, which was granted on March 1, 2004.<sup>17</sup> The Commission does not have such a decision.

51. On May 6, 2004, the National Chamber of Commercial Appeals suspended the terms of second instance until "these proceedings are in a position to be elevated to the superior."

52. On February 1, 2008, the National Chamber of Commercial Appeals stated:

(...) In view of the time that has elapsed since the reception of the file from the General Judicial Archive without any activity, it should be returned to be placed in the respective file.<sup>18</sup>

53. On July 7, 2008, the National Chamber of Commercial Appeals ordered the filing of the proceedings in that instance in the following terms:

(...) Intimidate the plaintiff so that within a period of 48 hrs. remove from the Secretariat the documentary and other annexes duly accompanied in the main files, under warning of destruction. This, without prejudice to the fact that the expte. It is in the file, because by disposition of the Hon. Chamber of Commerce it is essential to immediately vacate the basement of the building. Notify by Secretariat<sup>19</sup>.

54. Subsequently, on March 7, 2012, the National Court of First Instance in Commercial Matters No. 4, Secretariat No. 7 ordered a new general inhibition of property against the alleged victims. The procedural report presented by the secretariat of the National Court indicated:

(...) By virtue of the conviction relapsed in the record, (...) the registration of a new general inhibition of assets was ordered at the request of the Central Bank of the Argentine Republic against the defendants, including the two persons in question. To date, his work has not been credited.

saw. On the other hand, after the survey carried out, it should be noted that neither of these two defendants specifically requested the lifting of the general inhibition of assets, and fewer justified or argued the reasons that should be evaluated for its lifting. Nor did they request a replacement of the precautionary measure in the terms of art. 203 of the CPCC.

Finally, it is reported that in these proceedings the general inhibition of assets of Messrs. Rafael Chaikin and Héctor Leonardo Kemelmajen was not blocked before any other body or public registry. Nor was any disqualification to exercise trade or any other restrictive measure in this regard ordered.<sup>20</sup>

55. As indicated by the petitioning party, the file continues without a final judgment but without the possibility of reopening<sup>21</sup>.

<sup>17</sup> Annex 2. Writ of Appeal of March 1, 2004. Annex 2 to the petitioners brief petitioners' brief of July 30, 2009.

<sup>18</sup> Annex 3. National Chambers of Commercial Appeals. Annex 5 to the petitioners brief petitioners' brief of July 30, 2009.

<sup>19</sup> Brief from the petitioners of August 18, 2010.

<sup>20</sup> Brief from the petitioners of August 18, 2010.

<sup>21</sup> Brief of observations of the petitioning party of January 30, 2013.

## V. LEGAL ANALYSIS

### A. Rights to judicial guarantees <sup>22</sup> and judicial protection <sup>23</sup>

#### 1. General considerations

56. The right to judicial guarantees encompasses the set of requirements that must be observed in the procedural instances so that people are in a position to adequately defend their rights before any act of the State.<sup>24</sup> Both the Commission and the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court” or “the Inter-American Court”) have repeatedly stated that, in general, the guarantees established in Article 8 of the American Convention are not limited to criminal proceedings, but apply to processes of another nature.<sup>25</sup> Specifically, in processes in which the rights or interests of individuals are discussed, the “due guarantees” established in Article 8.1 of the American Convention are applicable,<sup>26</sup> among which is that of having a decision within a reasonable period of time. This period must be appreciated in relation to the total duration of the process, from the first procedural act, until the final judgment is issued.<sup>27</sup>

57. In their constant jurisprudence, the organs of the inter-American system have taken into consideration three criteria that are relevant for the analysis of this case, namely: a) the complexity of the matter, b) the conduct of the judicial authorities, and c) the activity process of the interested party.<sup>28</sup> Likewise, it has been established that in addition to these elements, the interest at stake and the impact generated by the duration of the procedure in the situation of the person involved must be taken into account.<sup>29</sup> Regarding this element, the Court has specified that:

(...) In said analysis of reasonableness, the effect generated by the duration of the procedure on the legal situation of the person involved in it must be taken into account, considering, among other elements, the subject matter of the dispute. If the passage of time has a relevant impact on the individual's legal situation, it will be necessary for the procedure to run more diligently so that the case is resolved in a short time.<sup>30</sup>

<sup>22</sup> Article 8 of the American Convention establishes, as relevant, that: 1. Every person has the right to be heard, with due guarantees and within a reasonable period of time, by a competent, independent and impartial judge or tribunal established previously by law, in the substantiation of any criminal accusation made against it, or for the determination of its rights and obligations of a civil, labor, fiscal or any other nature.

<sup>23</sup> Article 25.1 of the American Convention establishes that: Every person has the right to a simple and quick recourse or to any other effective recourse before the competent judges or tribunals, which protects them against acts that violate their fundamental rights recognized by the Constitution, the law or this Convention, even when such violation is committed by persons acting in the exercise of their official functions.

<sup>24</sup> IACHR. Report No. 42/14. Case 12.453. Merits. Olga Yolanda Maldonado Ordóñez. Guatemala. July 17, 2014. Para. 62, citing: Inter-American Court of Human Rights. Case of Genie Lacayo v. Nicaragua. Judgment of January 29, 1997. Series C No. 30, para. 74; Inter-American Court of Human Rights. Case of Claude Reyes et al. v. Chile. Judgment of September 19, 2006. Series C No. 151, para. 116; and Inter-American Court of Human Rights. Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 American Convention on Human Rights). Advisory Opinion OC-9/87. October 6, 1987. Series A No. 9, para. 27.

<sup>25</sup> IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al. “Magistrates of the Supreme Court of Justice,” Ecuador, March 31, 2011, para. 102.

<sup>26</sup> I/A Court. Barbani Duarte et al. v. Uruguay. Merits, Reparations, and Costs. Judgment of October 13, 2011. Series C No. 234, para. 118; and Case of Claude Reyes et al. v. Chile. Merits, Reparations, and Costs. Judgment of September 19, 2006. Series C No. 151, para. 118.

<sup>27</sup> I/A Court. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330. Para. 200.

<sup>28</sup> IACHR, Merits Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506), December 27, 2002, para. 76. See also Inter-American Court of Human Rights, López Álvarez Case. Judgment of February 1, 2006. Series C No. 141, para. 132; Case of García Asto and Ramírez Rojas. Judgment of November 25, 2005. Series C No. 137, para. 166; and Case of Acosta Calderón. Judgment of June 24, 2005. Series C No. 129, para. 105.

<sup>29</sup> IACHR, Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and family, Argentina, October 21, 2010, para. 100; IACHR. Report No. 1/16. Case 12695. Merits. Vinicio Antonio Poblete Vilches and family members. Chile. April 13, 2016. Para. 149.

<sup>30</sup> I / A Court HR. Case of Valle Jaramillo et al. V. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 155. See also, I / A Court H.R., Case of Kwas Fernández v. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, paras. 112 and 115; I / A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 156; I / A Court H.R., Case of Garibaldi v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, para. 133; I / A Court H.R., Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 244. See also. IACHR. Report 83-10. 12,584. Background. July 13, 2010. Para. 77.



58. Regarding the argumentative and probative burden on the reasonableness of the term, the Commission has indicated that it is the responsibility of the State to state and prove the reason why more time than is reasonable has been required to issue a final judgment in a particular case<sup>31</sup>. Along the same lines, the Court has indicated that it is up to the State to justify, based on the criteria indicated, the reason why it has required the time elapsed to deal with the cases and, in the event that it does not prove it, the Court has broad powers to make its own estimate in this regard.<sup>32</sup>

59. Regarding the complexity of the matter, the Inter-American Court has emphasized that it has taken into account various criteria to evaluate this element. Among them are: i) the complexity of the evidence<sup>33</sup>; ii) the plurality of procedural subjects<sup>34</sup> or the number of victims<sup>35</sup>; iii) the time elapsed since the violation<sup>36</sup>; iv) the characteristics of the appeal in domestic legislation<sup>37</sup>, and v) the context in which the events occurred<sup>38</sup>.

60. However, even if for one or more of these reasons a case is considered complex, a generic argumentation regarding the complexity of this type of process is not enough, but it is necessary to develop the arguments and present the evidence that shows that this factor influenced the duration of the same<sup>39</sup>. In a similar vein, the Commission has indicated that even in cases that may be considered complex by their very nature, it is necessary for the State in question to specifically argue the reasons why the complexity has specifically affected the investigations<sup>40</sup>.

61. Regarding the second element, that is, the conduct of the judicial authorities, the Court has understood that the judges, as rectors of the process, have the duty to direct and prosecute the judicial procedure in order not to sacrifice justice and due process in favor of formalism.<sup>41</sup> In cases related to civil proceedings, the Court has ruled in a similar sense.<sup>42</sup> Also regarding civil disputes, the European Court has indicated that it is up to the States parties to organize their legal system in such a way that their Courts can guarantee the right of all people to obtain a final decision in disputes regarding civil rights and obligations in a reasonable time<sup>43</sup>.

<sup>31</sup> IACHR. Report No. 3/16. Case 12.916. Background. Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Angel Alvarado Herrera and others. Mexico. April 13, 2016. Para. 271.

<sup>32</sup> I / A Court HR. Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. Para. 157. Citing: Cf. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 156, and Case of Tenorio Roca et al. V. Peru, para. 239.

<sup>33</sup> I / A Court HR. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs. Judgment of January 29, 1997. Series C No. 30, para. 78, and Case of Quispialaya Vilcapoma v. Peru, para. 179.

<sup>34</sup> I / A Court HR. Case of Acosta Calderón v. Ecuador. Merits, Reparations and Costs. Judgment of June 24, 2005. Series C No. 129, para. 106, and Case of Quispialaya Vilcapoma v. Peru, para. 179.

<sup>35</sup> I / A Court HR. Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 156 and Case of Quispialaya Vilcapoma v. Peru, para. 179.

<sup>36</sup> I / A Court HR. Case of Gonzales Lluy et al. V. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, para. 300.

<sup>37</sup> I / A Court HR. Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 83., Case of Furlan and family members v. Argentina, para. 156 and Case of Quispialaya Vilcapoma v. Peru, para. 179. Likewise, Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 83.

<sup>38</sup> I / A Court HR. Case of Furlan and family members v. Argentina, para. 156. and Case of Quispialaya Vilcapoma v. Peru, para. 179. Likewise, Case of the Pueblo Bello Massacre v. Colombia, para. 184, Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 293.

<sup>39</sup> I / A Court HR. Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016. Series C No. 330. Para. 159.

<sup>40</sup> IACHR. Report No. 3/16. Case 12.916. Background. Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Angel Alvarado Herrera and others. Mexico. April 13, 2016. Para. 273.

<sup>41</sup> Inter-American Court of Human Rights. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, para. 211, and Case of García Ibarra et al. v. Ecuador, para. 132.

<sup>42</sup> I / A Court HR. Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246. Para. 169; I / A Court HR. Case of Mévoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265. Paras. 171 and 176.

<sup>43</sup> European Court of Human Rights, Scordino v. Italy (no. 1) [GC]. Judgment of March 29, 2006, Application No. 36813/97, para. 183.

62. Regarding the third element, that is, the procedural activity of the interested party, the Court has evaluated whether the subjects carried out the interventions in the processes that were reasonably required of them.<sup>44</sup> Along the same lines, the European Court has indicated that even in legal systems that apply the principle according to which the procedural initiative rests with the parties, their attitude does not absolve the courts of their obligation to ensure a speedy trial<sup>45</sup>. Similarly, the European Court has indicated that the same applies to situations in which the cooperation of an expert is necessary. In such circumstances, the responsibility for the preparation of the case and the expeditious conduct of the process rests with the judicial authority<sup>46</sup>.

63. The European Court has indicated that although certain delays may, in themselves, not be problematic, when analyzed jointly and cumulatively, they may result in the reasonable period of time being exceeded<sup>47</sup>. It has also established that a delay in a particular phase could be permissible, as long as the total duration of the process is not excessive<sup>48</sup>. Likewise, it has indicated that it must be taken into account that the State is responsible for all its authorities, not only its judicial bodies but all public institutions<sup>49</sup>.

64. Likewise, it has indicated that it must be taken into account that the State is responsible for all its authorities, not only its judicial organs but all public institutions. Regarding the fourth element, that is, the impact generated on the legal situation of the person involved in the process, the Court has established that the authorities must act with greater diligence in those cases where the protection of other rights of the person depends on the duration of the process.<sup>50</sup> In this sense, the Inter-American Court has indicated that in cases of vulnerable people, such as a person with a disability, it is imperative to take the pertinent measures, such as prioritizing the attention and resolution of the procedure by the authorities at their request in order to avoid delays in the processing of the processes, so as to guarantee the prompt resolution and execution of the same<sup>51</sup>. Also relevant to the present case, the European Court has indicated that labor disputes, by their very nature, require a decision with particular speed<sup>52</sup>.

65. For its part, the right to judicial protection implies the duty of the States to offer an effective judicial remedy against acts that violate the rights of the persons subject to their jurisdiction<sup>53</sup>. The Inter-American Court has highlighted the need for domestic processes to guarantee true access to justice in order to determine any right that is in dispute<sup>54</sup>. Likewise, it has indicated that their effectiveness implies that, in addition to the formal existence of the remedies, they give results or responses to the violations of rights contemplated either in the Convention, the Constitution or the laws<sup>55</sup>.

<sup>44</sup> I / A Court HR. Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs. Judgment of April 27, 2012. Series C No. 242, para. 69.

<sup>45</sup> European Court of Human Rights, Pafitis and Others v. Greece. Judgment of February 26, 1998. Application No. 163/1996/782/983, para. 93; European Court of Human Rights. Tierce v. San Marino. Judgment of June 17, 2003. Application No. 69700/01, para. 31; European Court of Human Rights. Sürmeli v. Germany [GC]. Judgment of June 8, 2006. Application No. 75529/01, para. 129.

<sup>46</sup> European Court of Human Rights, Capuano v. Italy. Judgment of June 25, 1987. Application No. 9381/81, paras 30-31; European Court of Human Rights. Versini v. France, Judgment of July 10, 2001. Application No. 40096/98, para. 29; European Court of Human Rights. Sürmeli v. Germany [GC]. Judgment of June 8, 2006. Application No. 75529/01, para. 129.

<sup>47</sup> European Court of Human Rights. Deumeland v. Germany. Judgment of May 29, 1986, Application No. 9384/81, para. 90.

<sup>48</sup> European Court of Human Rights. Pretto and Others v. Italy. Judgment of December 8, 1983, Application No. 7984/77, para. 37.

<sup>49</sup> European Court of Human Rights, Martins Moreira v. Portugal [GC]. Judgment of July 11, 2017. Application No. 19867/12, para. 60.

<sup>50</sup> Inter-American Court of Human Rights. Case of Valle Jaramillo et al. v. Colombia, para. 155, and Case of Furlan and relatives v. Argentina, para. 202.

<sup>51</sup> I / A Court HR. Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246. Para. 196.

<sup>52</sup> European Court of Human Rights. Vocaturo v. Italy. Judgment of May 24, 1991, Application No. 11981/95, para. 17.

<sup>53</sup> IACHR. Report No. 42/14. Case 12.453. Background. Olga Yolanda Maldonado Ordóñez. Guatemala. July 17, 2014. Para. 62.

<sup>54</sup> I / A Court HR. Case of Dismissed Congressional Workers (Aguado Alfaro et al.) V. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 107; and Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006 Series C No. 148, para. 365.

<sup>55</sup> I / A Court HR. Case of Abrill Alosilla et al. V. Peru. Merits, Reparations and Costs. Judgment of March 4, 2011. Series C No. 223, para. 75. The internal citations present in the original text were omitted.



## 2. Analysis of present case

66. As indicated in the proven facts, in this case, a process for patrimonial responsibility was initiated against the alleged victims on July 2, 1985 before the National Court of First Instance in Commercial Matters No. 4 and in accordance with the information available to the IACHR culminated in the decision of general inhibition of property against the alleged victims on March 7, 2012. In other words, the entire process lasted almost 27 years.

67. Next, the IACHR will analyze this period in light of the elements usually used to make this determination, as well as the relevant standards cited in the previous section.

68. Regarding the complexity of the matter, the Commission observes that the State did not present any arguments or evidence to justify the delay in the process of patrimonial responsibility, considering its complexity. The Commission emphasizes that according to the information available, the purpose of the process was to determine the financial responsibility of the alleged victims after the bankruptcy of the Caja Mutual Yatay, taking into account that they were part of the Board of Directors of said entity. The IACHR considers that this aspect does not prove a complexity of the process that justifies the delay of almost 27 years.

69. Furthermore, the record does not show that there was a particular context in which the events occurred that required complex determinations beyond determining the responsibility of the alleged victims for their participation in the management of the Caja Mutual Yatay.

70. Regarding the second element, that is, the conduct of the judicial authorities, the IACHR notes that the complaint against the alleged victims was filed on July 2, 1985 and the first instance decision was issued on December 23, 2003, that is, more than 18 years after the lawsuit was filed. Likewise, the filing of the process was decreed on July 7, 2008, however a new general inhibition of property against the alleged victims was ordered, on March 7, 2012. The alleged victims argued that the filing of the process without a final judgment was the consequence of the procedural inactivity of the State. The Commission considers that in light of the available elements, it appears that the delay in the process is related to the excessive time lapses that the judicial authorities took in issuing the corresponding decisions of the process and the failure to comply with the procedural impulse that corresponded to the process by the plaintiff.

71. Regarding the procedural activity of the interested party, the Commission observes that, according to the information available, the alleged victims made use of the remedies available to them in the process for patrimonial liability. In this regard, it appears that in the context of the process on July 3, 1985, the alleged victims presented their answer to the application. Likewise, after the first instance decision of December 23, 2003, they filed an appeal. However, there is no evidence that proves that through their procedural activities they generated undue delays in the process. Furthermore, the Commission recalls that the expeditious conduct of the process rests on the judicial authority.

72. Finally, with regard to the effect on the legal situation of the person involved in the process, the IACHR notes that the existence of the process implied that for prolonged periods of time the court imposed a measure of general inhibition of property. Although in this case it is not appropriate to rule on the legitimacy of said measure taking into account the admissibility ruling, the Commission notes that the prolonged delay of the process affected the economic rights of the alleged victims as they were prevented from freely disposing of their assets, which were seized for an excessive time. Although the IACHR does not have enough information to prove this point, the alleged victims argued that the precautionary measure for the inhibition of assets lasted for more than 30 years.

73. By virtue of the foregoing considerations, the Commission concludes that the period of more than 27 years that the process for patrimonial liability took was not duly justified by the State and, therefore, was excessive and violated the guarantee of time reasonable provided in Article 8.1 of the American Convention. Likewise, the Commission concludes that due to the foregoing, said process did not constitute an effective remedy before the competent judges or courts in the terms established in Article 25.1 of the American Convention.

## VI. PROCEEDINGS SUBSEQUENT TO REPORT 323/20 AND COMPLIANCE INFORMATION

74. The Commission adopted Merits Report No. 323/20 on November 19, 2020, comprising paragraphs 1 to 73 above, and transmitted it to the State on December 29 of the same year. In this report the Commission recommended:

1. Make full reparations for the human rights violations declared in this report. In particular, adopt the payment of compensation to the victims for the unreasonable period of duration of the process for patrimonial liability promoted against them.

2. Adopt the necessary training measures to ensure that the judicial processes of patrimonial responsibility are resolved in a timely manner by the corresponding judicial authorities within a reasonable period of time in accordance with the inter-American standards on the matter.

75. In the proceedings subsequent to the notification of the merits report, the Commission received reports from the State and the petitioner on compliance with the recommendations established by the IACHR. During this period, the Commission granted seven 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 by the aforementioned article, in accordance with the provisions of Article 46 of the Commission's Rules of Procedure.

76. The petitioner party also submitted a proposal regarding the amount of compensation. It requests a total compensation for non-pecuniary damage and lost profits of US\$ 29,000,000 for Mr. Chaikin and US\$ 44,800,000 for Mr. Kemelmajen, plus US\$ 14,940,000 in fees.

77. On December 13, 2021, a working meeting was held with the parties to learn about the progress in the implementation of the recommendations. On January 4, 2022, the State informed that since 2017 there were no precautionary measures of inhibition in force in relation to the assets of the two victims and that no new measures had been ordered. It also requested the IACHR to send a technical note clarifying the content of the scope of the first recommendation.

78. On February 4, 2022, the Commission sent the parties the technical note requested by the State. In it, the IACHR clarified that the first recommendation issued by the Commission in the instant case refers to integral reparation that also includes non-pecuniary reparations, which include restitution, satisfaction and rehabilitation measures. The Commission concluded in its Admissibility and Merits Report that the duration of the proceedings for pecuniary responsibility was excessive and violated the guarantee of reasonable time, and that the proceedings did not constitute an effective remedy before the competent judges or courts. Therefore, it indicated that the pecuniary reparation established in the first recommendation must have a causal link with the violations declared by the IACHR, that is, the violation of the rights to judicial guarantees and to judicial protection due to the unreasonable duration of the proceedings for pecuniary liability, as expressly emerges from the language of the recommendation. Such reparation should compensate both material and non-material or moral damages.

79. On February 10, 2022, the petitioner requested the IACHR to refer the case to the Court, considering that the State was not interested in reaching an agreement.

80. On March 8, 2022, the State indicated that the reparations requested by the Petitioner were not consistent with the provisions of the technical note. It also expressed its willingness to initiate, together with the Petitioner, an agreement on compliance with the recommendations that could address the following commitments:

81. With regard to the first recommendation, the State proposed the establishment of an Arbitral Tribunal, which, in an impartial and transparent manner, would rule on the basis of the Merits Report, the technical note and the applicable inter-American case law.

82. With respect to the second recommendation, the State indicated that the petitioners have not indicated their claims with respect to the Commission's second recommendation. Notwithstanding, it mentioned that, within the framework of the compliance agreement, human rights training could be carried out jointly with the IACHR for the national commercial justice system.

83. On March 29, 2022, the Commission indicated to the parties that the creation of an Arbitral Tribunal for the determination of economic reparation was an appropriate measure, taking into account the nature of the violations declared in the Report on Admissibility and Merits; and requested the parties to meet to establish a compliance schedule that includes deadlines and concrete actions to reach said agreement.

84. On July 25, 2022, the State attached a proposal for a compliance agreement addressing the March 8, 2022 proposals.

85. The petitioner considered that the case should be sent to the Court, and would not continue with the negotiation process.

86. On November 2, 2022, the State informed that, although efforts have been made to reach a consensus on the terms of a compliance agreement, the petitioner party has decided to desist from the dialogue process due to interpretative differences on the content and scope of the recommendations, despite the interpretation made by the Commission through the technical note.

87. The State reiterated its willingness to move forward with the signing of the agreement, although it considered that the conditions are in place for the Commission to adopt a final report in accordance with the provisions of Article 51 of the American Convention on Human Rights, since the only obstacle to compliance with the aforementioned recommendations is the petitioner's insistence on attributing to the international decision legal effects that it lacks.

88. After evaluating the information on the status of compliance with the recommendations, on December 29, 2022, the Commission decided not to send 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 Rules of Procedure of the IACHR.

89. The IACHR indicated to both parties that when examining the case:

[it] noted that the main obstacle to reaching an agreement between the parties has been the controversy regarding the amount of payment necessary to comply with the first recommendation of the report on Admissibility and Merits, the scope of which was clarified by the Commission in a technical note of February 4, 2022 in light of the standards developed in the system to achieve integral reparation. Likewise, that on March 29, 2022, the Commission evaluated the State's proposal to reach a compliance agreement that contemplates, among other measures, the creation of an arbitration tribunal to determine the economic reparation and determined that the proposed reparation was adequate taking into account the nature of the violations declared in the report. The Commission took into account the position of the petitioner in relation to the difficulties in reaching an agreement, without having more concrete elements that would allow it to consider that the proposal presented by the State would not constitute a comprehensive reparation in accordance with the standards of the inter-American system and the scope of the merits report. In this regard, the Commission notes the importance of both parties making their best efforts to achieve full reparation for the material violations in the instant case.

90. On February 12, 2023, the Petitioner accepted the State's payment terms in order to be able to make payment as soon as possible, requesting that the payment be made in US dollars, taking into account that the settlement of both parties will be made in the United States. On April 20, 2023, the State requested an

extension to respond, as it had not received all the information from its departments. The IACHR has not received a response from the State.

91. On June 28, 2024, the petitioner informed that no reparations had been made. In view of the information available, the Commission notes that both recommendations are still pending compliance by the State.

## **VII. ACTIONS FOLLOWING REPORT No. 59/25 AND INFORMATION ON COMPLIANCE**

92. On April 23, 2025, the Commission adopted Merits Report No. 59/25, which includes paragraphs 1 through 91 above, and issued its final conclusions and recommendations to the State. On April 25 of that same year, it transmitted the report to the State and the petitioning party, granting them two weeks to inform the IACHR of the measures taken to comply with its recommendations. In the absence of a response, on May 23, 2025, the IACHR reiterated its request for information. To date, the Commission has not received a response from the Argentine State regarding Report No. 59/25.

93. The petitioner reported that the State has not complied with the provisions of the report, nor has it contacted the victims.

## **VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS**

94. The Commission concludes that the Argentine State is responsible for the violation of the rights established in Articles 8.1 (fair trial) and 25.1 (judicial protection) of the American Convention on Human Rights, in relation to the obligations established in Article 1.1 of the same instrument.

95. Based on the analysis and conclusions of this report,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF ARGENTINA:**

1. Make full reparations for the human rights violations declared in this report. In particular, adopt the payment of compensation to the victims for the unreasonable period of duration of the process for patrimonial liability promoted against them.
2. Adopt the necessary training measures to ensure that the judicial processes of patrimonial responsibility are resolved in a timely manner by the corresponding judicial authorities within a reasonable period of time in accordance with the inter-American standards on the matter.

## **IX. PUBLICATION**

96. 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 victims in accordance with the recommendations set forth above, until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on July 14, 2025. (Signed): José Luis Caballero Ochoa, President, Arif Bulkan, Second Vice President, Roberta Clarke; Carlos Bernal Pulido and Edgar Stuardo Ralón Orellana, Members of the Commission.