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**REPORT No. 74/17**  
**CASE 12.656**  
REPORT ON THE MERITS

VICTORIO SPOLTORE  
ARGENTINA

Approved by the Commission at its session No. 2091 held on July 5, 2017  
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**I. SUMMARY**

1. On September 11, 2000, the Inter-American Commission on Human Rights (hereinafter “the IACHR,” “the Commission,” or “the Inter-American Commission”) received a petition lodged by Mr. Victorio Spoltore (hereinafter “the petitioner” or “the alleged victim”), in which he alleged the responsibility of the Republic of Argentina (hereinafter “the State,” “Argentina,” or “the Argentine State”) for violating the rights enshrined in the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) as a consequence of the denial of justice and excessive delay in the judicial proceedings he brought against his employer, Cacique Camping S.A.

2. The petitioner claimed that on June 3, 1997, nine years after he filed his suit, judgment was issued by the Labor Tribunal, and that said Tribunal had discharged the proceedings in a negligent way, in violation of his human rights, and after an unreasonable amount of time. He stated that on September 2, 1997, he filed appeals against the first-instance judgment (a *recurso de inaplicabilidad*, or appeal for reversal of a decision that contradicts established doctrine, and a *recurso de nulidad*, or motion to vacate based on procedural violations) with the Supreme Court of Justice of Buenos Aires, both of which were dismissed on August 16, 2000—that is, three years after they were filed, with which the entire proceedings had a duration of 12 years.

3. The State denied any responsibility for the delay in the proceedings, stating that it was due to the complexity of the case, to the issue at hand, to the large number of participants in the case, to the normal and regular exercise of the powers of each of the actors involved, and to the attention paid by the Tribunal to all the parties’ contentions. The State added that the petitioner did not pursue the case correctly and that there were delays that were not the State’s responsibility and for which it cannot be blamed.

4. After analyzing the positions of the parties, the Inter-American Commission concluded that the State of Argentina was responsible for violating the right to a fair trial and judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with Article 1.1. thereof, with respect to Mr. Victorio Spoltore. Finally, the Commission issued the corresponding recommendations.

**II. PROCESSING OF THE CASE SINCE THE REPORT ON ADMISSIBILITY**

5. On September 11, 2000, the Commission received the petition and registered it as No. 460-00. Its processing up to the admissibility decision is described in detail in Report No. 65/08 of July 25, 2008.<sup>1</sup>

6. On August 8, 2008, the Commission notified the parties of the admissibility report. Similarly, in accordance with its Rules of Procedure as then in force, it made itself available to the parties with a view to reaching a friendly settlement and asked the petitioner to submit his additional comments on the merits within the following two months. On September 2, 2008, the petitioner presented his additional comments on the merits, which were conveyed to the Argentine State on March 17, 2009, together with a request that it return its additional comments on the merits within the following two months. The State reported that it had no additional comments to offer. The petitioner subsequently continued to submit communications, which were duly conveyed to the Argentine State.

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<sup>1</sup> IACHR, Report No. 65/08, Petition 460-00, Admissibility, Victorio Spoltore, Argentina, June 25, 2008.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioner**

7. The petitioner stated that on June 30, 1988, he filed a labor complaint for occupational sickness against the company Cacique Camping S.A. He argued that because of his day-to-day work, his health had been damaged, forcing him to retire with a 70% disability. He also claimed compensation for inability to work and for pain and suffering.

8. The petitioner indicated that on June 3, 1997, nine years after filing his complaint, the Labor Tribunal issued judgment, finding no responsibility for his deteriorating health on the part of the company Cacique Camping S.A. He added that the Labor Tribunal discharged the proceedings negligently, in violation of his human rights, and after an unreasonable amount of time. On this point, he spoke of different occasions on which the Labor Tribunal delayed the proceedings.

9. He also indicated that on September 2, 1997, he filed an appeal for reversal and a motion to vacate against the first-instance judgment, both of which were dismissed by the Supreme Court of Justice of Buenos Aires on August 16, 2000—that is, three years after they were filed, concluding the proceedings 12 years after the filing of his original suit.

10. The petitioner further contended that on September 16, 1997, he appeared before the office of the Inspector General of the Buenos Aires Supreme Court to report the Labor Tribunal's delay and negligence in the process. He said that the file was before the Supreme Court for resolution for almost two years and, in its judgment of April 16, 1999, it had found that although there had been a delay, the appropriate course of action was a reprimand for the clerk of the court involved for the delay in referring the proceedings to expert advice and for the delay in preparing and signing the deeds of notification.

11. The petitioner contended that under the laws that govern them, labor tribunals must order, on an ex officio basis, such measures as are appropriate for processing the case. He added that the impetus of the State is essential in labor-related proceedings.

12. The petitioner noted that Article 12 of Law No. 7718, which applied to his labor proceedings, provided that: "(...) the court shall order, on an ex officio basis, such measures as are appropriate for development of the proceedings. In addition, it may order the performance of any formality necessary to prevent vacation." He noted that labor proceedings are special and are grounded in the protection afforded by Article 14 of the Argentine Constitution, and so they are to be given impetus on an ex officio basis.

13. Based on the foregoing, the petitioner contended that the State violated his right to prompt recourse and to judicial protection, as provided for in Articles 8 and 25 of the Convention.

#### **B. Position of the State**

14. The State indicated that on September 1, 1963, Mr. Victorio Spoltore began work as an employee of the company Cacique Camping S.A. and that, in May 1987, his employment there ended. The State further noted that during that time, he held various positions. The State reported that in 1984, Mr. Spoltore developed a heart condition and, as of that point, his health began to suffer.

15. The State noted that Mr. Spoltore filed for retirement on the grounds of disability with the Welfare Office for Industry, Trade, and Civilian Activities. Mr. Spoltore was granted that benefit after a medical board ruling found that he had a 70% work disability.

16. The State added that on June 30, 1988, Mr. Spoltore filed suit for occupational sickness compensation against the company Cacique Camping S.A, which was heard by a Labor Tribunal. It reported that the petitioner claimed that his worsening health was due to the work he performed at the company's industrial facility. The State reported that the Labor Tribunal issued judgment on June 3, 1997, dismissing his

claim on the grounds that it found no causal link between his work and the state of his health. It noted that Mr. Spoltore filed appeals against the ruling, which were dismissed on August 16, 2000.

17. The State added that on September 16, 1997, Mr. Spoltore filed a disciplinary complaint against the Labor Tribunal, in which it was found that actions attributable to the Tribunal had caused unjustified delays in two specific formalities and, on account of which, the decision to “reprimand” the clerk of the Tribunal was taken.

18. The State claimed that those findings did not mean that there was an unwarranted delay in the judicial proceedings as a whole. It added that the admission could not be extended to all the other formalities in the proceedings and that the time taken by other stages must be seen in light of the particular circumstances of the case.

19. The State noted that in addition to the respondent company, the proceedings involved three insurance companies as third-party respondents, which meant that all the proceedings had to be placed before all the co-defendants and that each one of them had to be afforded the possibility of lodging the remedies and objections allowed to them by law. The State indicated that it could not be blamed for the delays in summoning the insurance companies since those delays were due to the actions of the respondent company in failing to provide all the information on the insurance policies it held. It added that one of the third-party insurance companies appeared while undergoing corporate reorganization while the main respondent had declared an arrangement with its creditors and had even changed its corporate name. The State claimed that several formalities were challenged, repeated, or delegated to experts’ offices in another jurisdiction. Based on the foregoing, it maintained that the time taken to process the case was neither excessive nor unreasonable.

20. The State indicated that many of the evidentiary formalities carried out during the proceedings were proposed by Mr. Spoltore. It added that the delays that occurred in the proceedings were due to the complexity of the case, to the issue at hand, to the large number of parties involved in the case, to the normal and regular exercise of the powers of each of the parties, and to the attention paid by the Tribunal to all of their contentions. Moreover, the State contended that the petitioner had failed to press his case. It stated that in Argentina, proceedings before labor tribunals, like all other cases before the civil courts, are governed by the principle of the impetus of the parties.

21. The State explained that this does not relieve it of the duty of guaranteeing that all judicial proceedings are dealt with within a reasonable time, but that this does not mean that particular attention need not be paid to the procedural activity of the interested party. It claimed that Mr. Spoltore could have lodged countless motions seeking the resolution of the delays in the disciplinary proceedings, which he failed to do. The State added that on November 11, 1992, the medical expert indicated the need for Mr. Spoltore to undergo a psychological examination and that, once again, there was no further activity in the case until March 23, 1993.

22. The State claimed that six hearings were scheduled. The first hearing, it claimed, was set for May 10, 1995, and the case file does not explain the reason why it was deferred. The second hearing, the State contended, was deferred by Mr. Spoltore, because an evidentiary formality was still pending. It noted that the third hearing was deferred because the respondent had informed the Tribunal of the initiation of the arrangement with its creditors and had requested deferral. The State reported that the fourth hearing was deferred because the commercial court involved in processing the creditors’ arrangement had failed to respond to a notice that it was sent. It stated that the fifth was deferred, without specifying the reasons. Finally, it reported that on June 3, 1997, the hearing in the proceedings took place. The State noted that between the first hearing and the last, a total of 2 years and 23 days passed. However, the case record does not indicate any challenges made by the petitioner to the dates set for the hearings or to the deferrals.

#### IV. PROVEN FACTS

23. On September 1, 1963, Victorio Spoltore began to work for the company Cacique Camping S.A.; he remained there until May 1987, when his employment ceased.<sup>2</sup> During that time, he performed various functions, including those of operator, assistant cutter, cutter, assistant foreman, cutting chief, and finally foreman.<sup>3</sup>

24. In 1984, Mr. Spoltore suffered a heart attack<sup>4</sup> and, as of that point, his health began to worsen. As a result of that, he filed for retirement on the grounds of disability with the Welfare Office for Industry, Trade, and Civilian Activities. Mr. Spoltore was granted the benefit after a medical board found that he had a 70% work disability.<sup>5</sup>

25. On June 30, 1988 Mr. Victorio Spoltore filed suit for occupational sickness compensation against the company Cacique Camping S.A., which was heard by Labor Tribunal No. 3 of the San Isidro Judicial Department in the province of Buenos Aires (hereinafter “the Labor Tribunal”). In the suit, Mr. Spoltore argued that his worsening health originated in the work activities he performed at the respondent’s industrial facility and that as a result of the decline in his health, he began to receive hostile treatment.<sup>6</sup>

26. On August 26, 1988, the company Cacique Camping S.A. lodged objections on the grounds of pending litigation and expiration of statutory limitations and requested the summoning, as third-party respondents, of the insurance companies India Cía. de Seguros Generales S.A. and Sud Atlántica Cía de Seguros S.A., on the grounds that it maintained workplace insurance contracts with those companies.<sup>7</sup>

27. On October 5, 1988, the Labor Tribunal rejected the pending litigation objection and ordered the objection on the grounds of statutory limitations to be taken into account in due course. On November 21, 1988, the summonses for the third-party respondents referred to in the previous paragraph were served.<sup>8</sup>

28. On April 18, 1989, the respondent requested that a summons be served on an additional insurance company, the Suizo Argentina Compañía de Seguros S.A. The company appeared before the tribunal on October 17 of that year.<sup>9</sup>

29. On November 30, 1989, the evidentiary phase in the proceedings began. On that date a first hearing was set for the selection by lots of an expert accountant and an expert security engineer, who were duly appointed on December 1, 1989.<sup>10</sup>

30. On February 20, 1990, the case file was admitted to the experts’ office, in order for an occupational medicine expert to be appointed. On March 22, 1990, the expert accountant requested an extension of 25 days in the deadline for submitting his opinion, which he finally presented on May 17, 1990.

<sup>2</sup> Annex 1. Judgment of Labor Court No. 3 of June 3, 1997. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>3</sup> Annex 1. Judgment of Labor Court No. 3 of June 3, 1997. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>4</sup> Annex 1. Judgment of Labor Court No. 3 of June 3, 1997. Annex to Mr. Spoltore’s petition of September 5, 2000. Annex 2. Appeals ruling of the Supreme Court of Justice of the Province of Buenos Aires, dated August 16, 2000. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>5</sup> Annex 3. Special remedy on reversal of a decision contradicting established doctrine, dated September 2, 1997. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>6</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>7</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>8</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>9</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore’s petition of September 5, 2000.

<sup>10</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore’s petition of September 5, 2000.

The expert engineer submitted his opinion on April 20, 1990; the Tribunal placed an observation on the report, which was resolved on April 30 of that year.<sup>11</sup>

31. On April 22, 1991, Mr. Spoltore was called to the experts' office to undergo a medical examination. The examination was conducted on May 8, 1991, and, on May 13, 1991, the experts in occupational medicine and psychiatry presented their medical reports. On May 31, 1991, a challenge was lodged against Mr. Spoltore's expert medical report. On July 5, 1991, the experts responded to the challenge and the alleged victim was given a fresh appointment to attend the experts' office.<sup>12</sup>

32. On July 7, 1991, Mr. Spoltore underwent the medical examination and, on July 20, the Labor Tribunal received the corresponding expert report. On August 23, 1991, the medical experts responded to a challenge. The new report was admitted by the Labor Tribunal on September 1, 1992. On March 30, 1993, at Mr. Spoltore's request, the referral of the proceedings to the medical experts' office was ordered. One year later, on August 7, 1993, the Labor Tribunal indicated that the proceedings were to be referred to the San Isidro experts' office.<sup>13</sup>

33. On May 5 and 12, 1993, new appointments were made for the experts' office, on that occasion to conduct the psychological examination. On June 21, 1993, the psychological report was presented. On July 25, 1993, the opinion of the expert psychologist was added and the report was ordered to be forwarded the parties on July 30, 1993, with the corresponding notification deeds issued on March 2, 1994. On account of that, on March 23, 1994, Mr. Spoltore filed a written motion alleging delays and denial of justice.<sup>14</sup>

34. On May 10, 1995, the first hearing in the case was held. On May 21, 1996, the second hearing took place. On August 21, 1996, the case's third hearing was held. On October 15, 1996, the fourth hearing in the case was held, with its deferral until June 3, 1997. The case's fifth hearing took place on March 3, 1997, and finally, on June 3, 1997, the sixth hearing in the case was held.<sup>15</sup>

35. On June 3, 1997, the Labor Tribunal issued its verdict and, on June 30, it gave judgment rejecting the suit brought by Victorio Spoltore.<sup>16</sup> The Tribunal gave the following reasons for rejecting his claims: (a) no connection was found between Spoltore's heart condition and the duties he performed; (b) Mr. Spoltore failed to establish that in his duties, he was exposed to pressure of a physical or mental kind, an extremely noisy environment, or extraordinary activity; (c) he failed to establish that he had suffered mistreatment or aggression at the hands of his superiors or managers; (d) the tasks performed were not found to be dangerous or irregular; (e) the complaints lodged with the police were not suitable for establishing the workplace harassment of Mr. Spoltore; and (f) no difficulty, dedication, or demand for speed was detected in Mr. Spoltore's work.

36. On July 4, 1997, the deeds of notification were prepared, and notice was served on the petitioner on August 19, 1997. On September 2, 1997, Mr. Spoltore lodged special remedies for reversal and for vacation. The admissibility of those appeals was determined on February 4, 1998.<sup>17</sup>

<sup>11</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000.

<sup>12</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000.

<sup>13</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000.

<sup>14</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000.

<sup>15</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000.

<sup>16</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000.

<sup>17</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000.



37. On February 25, 1998, notification was served on the Attorney General. On August 16, 2000, the Supreme Court of Justice of the Province of Buenos Aires dismissed the remedies on the grounds that: (1) Mr. Spoltore's claims had already been ruled on by the Labor Tribunal; (2) what Mr. Spoltore was really seeking was a review of the facts and law of the judgment he was challenging, which went beyond the scope of application of the special remedy for reversal; and (3) that the remedy lodged by Mr. Spoltore was inappropriate for establishing abridgments of constitutional guarantees.<sup>18</sup>

38. Finally, the parties agreed on the contention that on September 16, 1997, Mr. Spoltore lodged, with the office of the Inspector General of the Buenos Aires Supreme Court, a disciplinary complaint alleging delays and negligence in the Labor Tribunal's processing of his case. That complaint was resolved almost two years later, on April 16, 1999. The decision found that although there had been a delay, the appropriate course of action was a reprimand for the clerk of the court involved for the delay in referring the proceedings to expert advice and for the delay in preparing and signing the deeds of notification.

## V. ANALYSIS OF LAW

39. In its admissibility report, the Commission said that at the merits phase it would rule on the alleged violation of the right to a decision within a reasonable time and on the alleged denial of justice in the occupational sickness suit lodged by Mr. Spoltore against the company Cacique Camping S.A. and heard by the Labor Tribunal. The purpose of this report is not to establish whether or not Mr. Spoltore was entitled to the compensation he sought, nor to question the result of the labor proceedings. In the circumstances of the case at hand, such a ruling would exceed the Commission's competence. Consequently, the analysis offered below is intended to determine whether the Argentine State, through its judicial authorities that participated in this case, provided Mr. Spoltore with an effective and grounded remedy in accordance with the guarantees of due process and, particularly, with the guarantee of prompt recourse on which the petitioner centered his claims.

### A. Right to a fair trial<sup>19</sup> and right to judicial protection<sup>20</sup>

#### 1. General considerations

40. The right to a fair trial covers all the procedural requirements that must be observed at trial so that persons can defend their rights adequately against actions by the State.<sup>21</sup> Both the Commission and the Inter-American Court of Human Rights (hereinafter "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 restricted to criminal proceedings but instead apply to trials of other kinds.<sup>22</sup> Specifically, in proceedings involving people's rights or interests, the "due guarantees" enshrined in Article 8.1 of the American Convention are applicable,<sup>23</sup> including the provision establishing the right to a decision within a reasonable

<sup>18</sup> Annex 4. Motion to vacate filed by Mr. Spoltore with the Supreme Court of Justice, dated April 29, 1996. Annex to Mr. Spoltore's petition of September 5, 2000. Annex 2. Appeals ruling of the Supreme Court of Justice of the Province of Buenos Aires, dated August 16, 2000. Annex to Mr. Spoltore's petition of September 5, 2000.

<sup>19</sup> Article 8 of the American Convention establishes, in its pertinent parts, that: "1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>20</sup> Article 25.1 of the American Convention provides that: "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."

<sup>21</sup> IACHR. Report No. 42/14. Case 12.453. Merits. Olga Yolanda Maldonado Ordóñez. Guatemala. July 17, 2014, para. 62, citing: I/A Court H. R. Case of Genie Lacayo v. Nicaragua. Judgment of January 29, 1997. Series C No. 30, para. 74; I/A Court H. R. Case of Claude Reyes *et al.* v. Chile. Judgment of September 19, 2006. Series C No. 151, para. 116; and I/A Court H. R. Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A. No. 9, para. 27.

<sup>22</sup> IACHR. Report No. 65/11. Case 12.600. Merits. Hugo Quintana Coello and Others (Justices of the Supreme Court). Ecuador. March 31, 2011, para. 102.

<sup>23</sup> I/A Court H. R. Case of 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.



time. That reasonable time must be seen in light of the total duration of the proceedings, from the first stage in the process up to the adoption of the final judgment.<sup>24</sup>

41. In their constant jurisprudence, the agencies of the inter-American system have applied three factors that are of importance in analyzing the case at hand, namely: (a) the complexity of the matter, (b) the actions of the judicial authorities, and (c) the procedural activity of the interested party.<sup>25</sup> In addition to these elements, they have determined that attention must be paid to the interests at play and to the impact of the trial's duration on the situation of the person involved.<sup>26</sup> In connection with that issue, the Court has ruled that:

(...) in this analysis of reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements, the matter in dispute. If the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible.<sup>27</sup>

42. As regards the burden of argument and evidence regarding the reasonableness of the delay, the Commission has ruled that it falls to the State to identify and prove the reasons why it took longer than reasonable to issue final judgment in a given case.<sup>28</sup> Similarly, the Court has ruled that it is incumbent on the State to explain, on the basis of the aforesaid criteria, the reasons why a proceeding lasted more than a reasonable time and, should the State fail to do so, the Court has broad powers to make its own analysis of the matter.<sup>29</sup>

43. Regarding the complexity of the matter, the Inter-American Court recently<sup>30</sup> reiterated that it takes several elements into account in evaluating that aspect. These include: (i) the complexity of the evidence,<sup>31</sup> (ii) the number of participants in the proceedings<sup>32</sup> or the number of victims,<sup>33</sup> (iii) the time

<sup>24</sup> I/A Court H. R. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330, para. 200.

<sup>25</sup> IACHR. Report on the Merits No. 77/02. Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506). December 27, 2002, para. 76. See also: I/A Court H. R. Case of López Álvarez. 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>26</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 12.695. Merits. Vinicio Antonio Poblete Vilches and Family. Chile. April 13, 2016, para. 149.

<sup>27</sup> I/A Court H. R. 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 Kawas 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. Case 12.584. Merits. July 13, 2010, para. 77.

<sup>28</sup> IACHR. Report No. 3/16. Case 12.916. Merits. Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Angel Alvarado Herrera, and others. Mexico. April 13, 2016. para. 271.

<sup>29</sup> I/A Court H. R. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330, para. 157. Citing: 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>30</sup> I/A Court H. R. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330, para. 158.

<sup>31</sup> I/A Court H. R. 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>32</sup> I/A Court H. R. 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>33</sup> I/A Court H. R. 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.

passed since the violation,<sup>34</sup> (iv) the characteristics of the remedy afforded by domestic law,<sup>35</sup> and (v) the context in which the facts occurred.<sup>36</sup>

44. However, even if a case is deemed complex for one or more of those reasons, it is not enough to offer a generic argument about the complexity of proceedings of that kind; instead, arguments must be developed and evidence presented that demonstrate that this factor impacted the duration of the case.<sup>37</sup> Similarly, the Commission has ruled that even in cases that could be deemed complex by their very nature, the State involved must specifically argue the reasons why that complexity affected the investigations in question.<sup>38</sup>

45. As regards the second element—that is, the actions of the judicial authorities—the Court has determined that judges, who are in charge of directing the proceedings, have the duty to direct and channel the judicial process with the aim of not sacrificing justice and due legal process in favor of considerations of form.<sup>39</sup> The Court has issued similar rulings in cases involving civil proceedings.<sup>40</sup> Also regarding civil disputes, the European Court has determined that it is incumbent on states parties to organize their legal systems in such a way that their courts can guarantee the rights of all persons to secure a final decision within a reasonable time in disputes involving civil rights and obligations.<sup>41</sup>

46. In connection with the third aspect—that is, the procedural activity of the interested party—in past cases the Court has evaluated whether the participants at trial performed the procedural interventions that could reasonably have been required of them.<sup>42</sup>

47. On this point, the European Court has stated that even in legal systems that observe the principle that procedural impetus is the responsibility of the parties, the participants' actions do not absolve the courts of their obligation to ensure a swift trial.<sup>43</sup> Similarly, the European Court has ruled that this same standard applies in situations in which expert assistance is necessary. In such circumstances, the onus of preparing the case and discharging the proceedings swiftly lies with the judicial authority.<sup>44</sup>

48. The European Court has ruled that although certain delays could pose no problem in and of themselves, when analyzed together and cumulatively they could mean that a reasonable time was exceeded.<sup>45</sup> Likewise, it has established that a delay in one particular phase could be permissible, provided

<sup>34</sup> I/A Court H. R. 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>35</sup> I/A Court H. R. 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 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>36</sup> I/A Court H. R. Case of Furlan and Family v. Argentina, para. 156; and Case of Quispialaya Vilcapoma v. Peru, para. 179. Likewise: Case of the Massacre of Pueblo Bello 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>37</sup> I/A Court H. R. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330, para. 159.

<sup>38</sup> IACHR. Report No. 3/16. Case 12.916. Merits. Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Angel Alvarado Herrera, and others. Mexico. April 13, 2016, para. 273.

<sup>39</sup> I/A Court H. R. 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>40</sup> I/A Court H. R. 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 H. R. Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2013. Series C No. 265, paras. 171 and 176.

<sup>41</sup> European Court of Human Rights, Scordino v. Italy (no. 1) [GC] Judgment of 29 March 2006, Application No. 36813/97, § 183.

<sup>42</sup> I/A Court H. R. Case of Forneron and Daughter v. Argentina. Merits, Reparations, and Costs. Judgment of April 27, 2012. Series C No. 242, para. 69.

<sup>43</sup> European Court of Human Rights. Pafitis and Others v. Greece. Judgment of 26 February 1998. Application No. 163/1996/782/983, § 93; European Court of Human Rights, Tierce v. San Marino. Judgment 17 June 2003. Application No. 69700/01, § 31; European Court of Human Rights. Sürmeli v. Germany [GC]. Judgment of 8 June 2006, § 129.

<sup>44</sup> European Court of Human Rights. Capuano v. Italy. Judgment of 25 June 1987. Application No. 9381/81, §§ 30-31; European Court of Human Rights. Versini v. France. Judgment of 10 July 2001. Application No. 40096/98, § 29; European Court of Human Rights. Sürmeli v. Germany [GC]. Judgment of 8 June 2006, § 129.

<sup>45</sup> European Court of Human Rights. Deumeland v. Germany. Judgment of 29 May 1986. Application No. 9384/81, § 90.

that the total duration of the proceedings is not excessive.<sup>46</sup> It has also said that it must be borne in mind that the State is responsible for all its authorities: not only its judicial agencies, but all public institutions.<sup>47</sup>

49. Regarding the fourth element—that is, the general impact on the legal situation of the person involved in the proceedings—the Court has ruled that authorities must act with greater diligence in those cases in which the duration of the proceedings affects the protection of other rights of the participants at trial.<sup>48</sup> Thus, the Inter-American Court has ruled that in cases involving vulnerable people—for instance, persons with disabilities—the pertinent measures must be adopted. These could include prioritizing the attention paid to the case and its resolution by the authorities responsible, in order to avoid delays in its processing, thereby guaranteeing its swift resolution and execution.<sup>49</sup> In rulings that are also of relevance to this case, the European Court has stated labor disputes, by their very nature, demand particularly swift resolution.<sup>50</sup>

50. Likewise, the right to judicial protection entails the State's duty of offering an effective judicial remedy against acts that violate the rights of persons under their jurisdiction.<sup>51</sup> The Inter-American Court has emphasized the need for domestic proceedings to guarantee genuine access to justice in order to determine any disputed right.<sup>52</sup> It has also ruled that their effectiveness presupposes that, in addition to the formal existence of remedies, they must be capable of responding to or resolving violations of rights enshrined in the Convention, in the Constitution, or in law.<sup>53</sup>

## 2. Analysis of the case

51. As indicated in the established facts, the labor proceedings arising from the occupational sickness compensation claim made against the company Cacique Camping S.A. began on June 30, 1988, before Labor Tribunal No. 3, and they came to an end on August 16, 2000, when the Supreme Court of Justice of the Province of Buenos Aires rejected the appeals filed by Mr. Spoltore against the first-instance judgment that had rejected his compensation claim. In other words, the proceedings as a whole lasted for 12 years, 1 month, and 16 days.

52. In the following paragraphs, the IACHR will analyze that period of time in light of the elements commonly used for such determinations and the relevant standards referred to in the previous section.

### 2.1 Complexity of the matter

53. Regarding the complexity of the matter, the Commission notes that effectively, the Argentine State argued the case's complexity as a justification for the delay. Specifically, the State spoke of the matters addressed by the proceedings. It also stated that, in addition to the respondent and the plaintiff, the proceedings involved three insurance companies summoned to appear as third-part respondents, one of which declared a corporate reorganization; that all the formalities had to be reported to all the parties at trial; and that all the parties were entitled to file objections and remedies and that they did so. The State added that various formalities were challenged, repeated, or delegated to experts' offices in another jurisdiction. The Commission will analyze whether the labor proceedings referred to in this case can be considered complex in light of the elements that the inter-American system has previously used to assess such situations.

<sup>46</sup> European Court of Human Rights. *Pretto and Others v. Italy*. Judgment of 8 December 1983. Application No. 7984/77, § 37.

<sup>47</sup> European Court of Human Rights. *Martins Moreira v. Portugal* [GC]. Judgment of 11 July 2017. Application No. 19867/12, § 60.

<sup>48</sup> I/A Court H. R. *Case of Valle Jaramillo et al. v. Colombia*, para. 155; and *Case of Furlan and Family v. Argentina*, para. 202.

<sup>49</sup> I/A Court H. R. *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>50</sup> European Court of Human Rights. *Vocaturio v. Italy*. Judgment of 24 May 1994. Application No. 11981/95, § 17.

<sup>51</sup> IACHR Report No. 42/14. Case 12.453. Merits. *Olga Yolanda Maldonado Ordóñez*. Guatemala. July 17, 2014, para. 62.

<sup>52</sup> I/A Court H. R. *Case of the Dismissed Congressional Employees (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>53</sup> I/A Court H. R. *Case of Abrill Alosilla et al. v. Peru*. Interpretation of the Judgment on Merits, Reparations, and Costs. Judgment of November 21, 2011. Series C No. 235, para. 75. Embedded citations in the original text have been omitted.

54. The Commission first notes that the case involved labor proceedings to determine whether the company was required to provide Mr. Spoltore with compensation. Nothing in the case file indicates that, in terms of their regulations or in practice, such proceedings are particularly complex. On the contrary, in previous cases dealing with civil actions for damages between private citizens in Argentina, the Inter-American Court has ruled that the nature of civil proceedings indicates that they do not entail legal or probative aspects or discussions that would suggest that they are inherently complex.<sup>54</sup> Neither did the State of Argentina specifically explain what aspects of a labor proceeding such as the one at hand would have made it complex. Thus, the Commission believes that the nature of the case does not inherently imply complicated proceedings.

55. Second, the Commission notes that the time that passed between the alleged facts and Mr. Spoltore's filing of his suit was reasonably short, in that he left the company in 1987 and the suit was filed the following year. In addition, nothing in the case file suggests a particular context to the facts that would require complicated determinations beyond the existence or not of a causal relationship between Mr. Spoltore's health and his work at the company. Thus, no complexity in the process is indicated either by the time that passed between the facts and the suit's filing or by the context in which those facts took place.

56. Third, regarding the various remedies filed by the parties, the Commission holds that the lodging of legally permissible remedies in a judicial proceeding cannot constitute grounds for arguing the complexity of that proceeding. When legally permissible remedies are filed, it falls to the judicial authorities to process and resolve them in accordance with the provisions of law. The Inter-American Court has ruled that although in certain circumstances constant appeals filed by the parties could give rise to a degree of confusion in the processing of a case, it nevertheless falls to the judge, as the director of the proceedings, to ensure that they are correctly processed.<sup>55</sup>

57. Fourth, regarding the participants in the process, the Commission notes that the labor proceedings involved a single plaintiff arguing the right of a single individual to compensation. In contrast, one of the State's main arguments regarding complexity relates to the involvement of three insurance companies in addition to Mr. Spoltore and the respondent company. On this point, the Commission holds that although in previous cases the Inter-American Court has determined the existence of numerous participants at trial to be a contributing element to complexity, those rulings were given in connection with criminal proceedings and with respect to a much higher number of participants. In the case at hand, the additional players were three insurance companies, which the State has not shown to have been responsible for the delay. On the contrary, the State merely spoke of the complexity in general terms on account of the numbers of participants in the proceedings, without explaining the causal relationship between those companies' actions and the different delays that arose during the proceedings and that will be analyzed below.

58. In light of the foregoing, the Commission believes that the State failed to prove that the labor proceedings initiated by Mr. Spoltore were of such complexity as to justify a duration of more than 12 years.

## **2.2 Actions of the authorities**

59. As regards the second element—the actions of the judicial authorities—the Commission first notes that the suit was filed on June 30, 1988, and that the respondent company replied to the suit two months later and requested the involvement of two insurance companies as third-party respondents. It took the Labor Tribunal one year and three months to process the summons served on the insurance companies, with which the evidentiary phase did not begin until one year and five months after the suit was lodged.

60. Two experts were appointed on December 1, 1989, and their expert opinions were not presented until April and May 1990—in other words, four and five months after they were requested. The

<sup>54</sup> I/A Court H. R. Case of *Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2013. Series C No. 265.

<sup>55</sup> I/A Court H. R. Case of *Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 22, 2013. Series C No. 265, para. 176.

State did not explain the delay in producing those expert opinions, which were not particularly complex. The information available indicates that the next evidentiary formality—which was also related to expert opinions—took place approximately one year later, in May 1991, when additional expert reports were added to the case file. Likewise, in connection with the medical expert opinion received in July 1991 that was subsequently challenged, a new expert report was received in September 1992: that is, more than a year later. Eight months later, in May 1993, a new expert opinion was ordered; it was delivered in June 1993 and, in July of that year, orders were given for the deeds of notification to be served on the parties. That simple notification procedure was not carried out until eight months later, in March 1994. Following those formalities, the hearings in the case began in May 1995. In other words, the evidentiary phase—which essentially involved expert opinions—lasted for five years and five months, a delay that, from the available information, cannot be explained by the nature of those expert opinions or by the actions of the participants in the proceedings.

61. A total of six hearings in the case were held over an additional period of two years and one month, until judgment was issued on June 3, 1997. The State has not explained why six hearings were needed for the Labor Tribunal to reach its decision in the case, nor is it apparent in light of the evidence appraised. Moreover, although the State spoke of the reasons why the hearings were postponed in order to claim that it could not be held responsible for all the deferrals, it failed to explain why, following those deferrals, new dates several months later were set, which meant that lengthy periods passed between one hearing and the next. Thus, for example, between the fourth and fifth hearing, five months went by.

62. Following the Labor Tribunal's judgment, Mr. Spoltore filed special remedies (an appeal for reversal and a motion to vacate) on September 2, 1997; these were resolved almost three years later, on August 16, 2000. The State provided no adequate explanation for the delay of almost three years in resolving two remedies that, by their very nature and as stated by the Supreme Court of Justice of the Province of Buenos Aires itself, were merely intended to examine the grounds for admissibility, an essentially legal matter that, as such, did not entail evidentiary formalities or additional findings of fact.

63. The foregoing paragraphs indicate that at the different stages of the process—between the filing of the suit and the summoning of all the trial's participants, the evidentiary phase, the hearings, and the appeals lodged against the Labor Tribunal's judgment—there were numerous delays that, through their repeated occurrence and cumulative effect, led to the case having an excessive duration of more than 12 years. The disciplinary proceedings brought by Mr. Spoltore confirmed at least two of the delays described in this section. Besides the fact that the judicial authorities hearing the case were involved in the aforementioned delays, the IACHR notes that although the State determined that some of them were not its fault but due to the activity of the respondent company, the case file indicates no specific measures adopted by either the Labor Tribunal or the Supreme Court of Justice of the Province of Buenos Aires to avoid possible dilatory actions in the proceedings.

64. Consequently, the Commission believes that the description of the judicial authorities' actions indicates that the delays were the fault of the State and that, in connection with those that the participants at trial were able to affect, the judicial authorities adopted no measures to avoid such procedural behavior as they were required to do, according to the cited standards, in their role as the director of the process.

### **2.3 Actions of the interested party**

65. In connection with the actions of Mr. Spoltore as the interested party, the State indicates that many of the evidentiary formalities were requested by him. It claims that Mr. Spoltore failed to press his case and that he could have filed motions requesting the resolution of the delays.

66. The Commission notes that nothing in the case file indicates that Mr. Spoltore engaged in actions that could have created delays or obstructions in the proceedings. On the contrary, as the State has acknowledged, Mr. Spoltore requested evidentiary formalities in the exercise of his rights as the plaintiff in order to establish the harm for which he was seeking compensation. Those actions by Mr. Spoltore cannot be



argued as reasons for the delays in the proceedings. In addition, and in spite of the fact that it was incumbent on the judicial authorities to direct the proceedings, Mr. Spoltore complained on at least one occasion about the delays that had arisen.

67. In light of the foregoing, there is no evidence to indicate that Mr. Spoltore's actions had any impact on the delays in the trial.

#### **2.4 Nature of the interests at play**

68. The Commission believes that a delay of more than 12 years in a judicial proceeding, in the circumstances described in the preceding sections, is in excess of the amount of time that can be considered reasonable. Regardless of the foregoing, the Commission believes it is appropriate to note that in the case at hand, there was even less justification for the delays given that, pursuant to the cited precedents, the case involved at least two elements that required the judicial authorities to act with particular dispatch: first, Mr. Spoltore's disability, which was acknowledged by the Argentine authorities when they granted him his retirement; and, second, the fact that the case involved a labor claim that, by its very nature, demanded timely decisions.

#### **2.5 Conclusion**

69. In light of the above considerations, the Commission concludes that the State did not adequately explain why Mr. Spoltore's legal claim for employment compensation took more than 12 years to be settled and that, consequently, the delay was excessive and violated the guarantee of resolution within a reasonable time. The Commission further concludes that on account of the foregoing, the proceedings did not afford an effective remedy for Mr. Spoltore to pursue a claim regarding what he believed to be his right under domestic law.

### **VI. CONCLUSIONS**

70. Based on the legal and factual considerations set out above, the Inter-American Commission concludes that the Argentine State is responsible for violating the rights to a fair trial and to judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention, in conjunction with the obligations set out in Article 1.1 thereof, with respect to Mr. Victorio Spoltore.

### **VII. RECOMMENDATIONS**

71. In consideration of the foregoing conclusions,

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

1. Make comprehensive redress for the human rights violations established in this report with respect to Mr. Victorio Spoltore, in both the material and moral dimensions, including fair compensation.

2. Take the steps necessary to ensure that the violations established in this report are not repeated. In particular, the State should adopt the administrative or other measures necessary to ensure that judicial proceedings involving labor matters—including those that entail claims for compensation—are resolved promptly and within a reasonable time in line with the standards described in this report.