

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF GRANDE v. ARGENTINA

JUDGMENT OF AUGUST 31, 2011
(Preliminary Objections and Merits)

In the *Case of Grande*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges: *

Diego García-Sayán, President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge, and
Eduardo Vio Grossi, Judge,

also present:**

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court*** (hereinafter "the Rules of Procedure"), delivers this Judgment.

* The Vice President of the Court, Judge Leonardo A. Franco, an Argentine national, did not take part in this case pursuant to Article 19(1) of the Court's Rules of Procedure, according to which, "[i]n the cases referred to in Article 44 of the Convention, a judge who is a national of the respondent State may not participate in the hearing and deliberation of the case."

** The Deputy Secretary, Emilia Segares Rodríguez, advised the Court that, for reasons beyond her control, she would be unable to attend the deliberation of this judgment.

*** The Rules of Procedure of the Court applied in this case are those that were approved in the Court's eighty-fifty regular session held from November 16 to 28, 2009, which entered into force on January 1, 2010, pursuant to Article 78 thereof. This is notwithstanding Article 79(1) of the Rules of Procedure, which establishes that "[i]n cases in which the Commission has adopted a report under article 50 of the Convention before the these Rules of Procedure have come into force, the presentation of the case before the Court will be governed by Articles 33 and 34 of the Rules of Procedure previously in force. Statements shall be received with the aid of the Victim's Legal Assistance Fund, and the dispositions of these Rules of Procedure shall apply." The Inter-American Commission on Human Rights issued the Report on Merits in this case on November 10, 2009 (*infra* para. 2).

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I

INTRODUCTION OF THE CASE AND THE PURPOSE OF THE DISPUTE

1. On May 4, 2010, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”), pursuant to Articles 51 and 61 of the American Convention, presented an application against the Argentine Republic (hereinafter “the State” or “Argentina”). The initial petition was submitted to the Commission on November 2, 1994, by Jorge Fernando Grande (hereinafter also “Mr. Grande” or “the alleged victim”). On February 27, 2002, the Commission adopted Admissibility Report No. 3/02.² Subsequently, on November 10, 2009, the Commission adopted Report on Merits No. 109/09³ and recommended to the State that it take all necessary measures to ensure that Mr. Grande “received an adequate and timely remedy providing full redress for the human rights violations,” and that it “take the corresponding investigative measures in order to establish the criminal and civil responsibilities.” Since the Commission considered that the State had not adopted these recommendations satisfactorily, it decided to submit the case to the jurisdiction of the Court. The Commission appointed Luz Patricia Mejía, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, María Claudia Pulido and Karla I. Quintana Osuna as legal advisors.

2. The facts alleged by the Commission refer to the State having subjected Mr. Grande “to criminal proceedings impaired by irregularities and undue delay, based on evidence that was later invalidated, and for failing to provide the victim with an adequate remedy to redress [by means of a contentious-administrative proceeding] the damage that occurred during the said criminal proceedings.” However, the petition lodged by Mr. Grande on November 2, 1994, that initiated the proceedings before the Commission related to the alleged violations in the proceeding under administrative law and indicated that the authorities responsible for the alleged violations were the Second Chamber of the National Appellate Chamber for Federal Administrative Matters (hereinafter also “the Second Administrative Appellate Chamber”) and the Supreme Court of Justice.

3. The Commission asked the Court to establish the international responsibility of the State for failing to fulfill its obligations by violating Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Grande, by denying him his right to due process and an effective legal remedy.

4. On August 27, 2010, Pedro Patiño-Mayer y Ulurralde, in representation of the alleged victim (hereinafter “the representative”), presented his brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”). Like the Inter-American Commission, he requested that the Court declare the State’s international responsibility for the alleged violation of Articles 8 (Right to a Fair Trial) and 25 (Right

² The Commission decided to declare “this petition admissible in relation to the alleged violation of the rights recognized in Articles 8, 25, and 1(1) of the American Convention, and in the relevant parts of Articles XXV and XXVI of the American Declaration. The claims presented regarding Article 10 of the American Convention are inadmissible.”

³ The Commission concluded that, as of September 5, 1984, [...] the State [...] is responsible for violation of the rights established in Articles 8(1) and 25 of the American Convention, in relation to the general obligations of Article 1(1) thereof, to the detriment of Jorge Grande. The Commission also concluded that the State had violated the right to protection from arbitrary arrest established in Article XXV of the American Declaration on the Rights and Duties of Man to the detriment of Jorge Grande.

to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Jorge Fernando Grande. The representative also requested that the Court declare the violation of Article XXV (Right of protection from arbitrary arrest) of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"). The representative indicated that Mr. Grande "was not heard within a reasonable time in the criminal proceedings against him." He also indicated that the importance of the present case is rooted "in the need for recognition in the Argentine domestic sphere that the protection and respect for the fundamental rights enshrined in the American Convention require the active exercise of the State's functions, especially [...] respect for judicial guarantees [and] judicial protection, as well as [...] ensuring the exercise of these guarantees, [and] the investigation and punishment of failure to comply with this." The representative also requested different types of reparation.

5. On November 18, 2010, the State presented its brief with preliminary objections, answering the application, and with observations on the pleadings and motions brief (hereinafter "the answer to the application"). The three objections filed by the State are: (1) "Lack of competence *ratione temporis* [of the Court] to hear the facts set out in the application that occurred before September 5, 1984"; (2) "Failure to exhaust available domestic remedies," and (3) "Violation of the Argentine State's right to defense during the examination of the case before the Inter-American Commission [...]." Furthermore, the State found that "the criminal proceeding against Mr. Grande was undertaken in a reasonable time in keeping with Article 25(1) of the Convention." Consequently, the State concluded that, in the instant case, there was insufficient evidence to prove a violation of the rights or guarantees recognized in the American Convention. Lastly, the State requested that the Court "reject the petitioner's claim for reparations and that, based on the circumstances of the case, it determine any reparations possibly owed to Mr. Grande pursuant to applicable international standards." The State appointed Eduardo Acevedo Díaz, General Director of Human Rights of the Ministry of Foreign Affairs, International Trade and Worship, as its Agent, and Alberto Javier Salgado, Director of International Litigation of the Human Rights Directorate, as deputy agent.

6. On February 17 and 18, 2011, the representative and the Inter-American Commission presented their observations on the State's preliminary objections. In this regard, both the representative and the Commission asked the Court to reject these objections.

II PROCEEDINGS BEFORE THE COURT

7. The application was notified to the State and the representatives on June 22 and 25, 2010, respectively.

8. In his Order of April 15, 2010, the President of the Court (hereinafter "the President") ordered that the opinion of an expert witness be received by affidavit, and convened the parties to a public hearing in order to hear the testimony of the alleged victim as proposed by the representative, together with the oral arguments of the parties on the preliminary objections and on possible merits, reparations, and costs. In addition, the President gave the parties until June 16, 2011, to present their final written arguments.

9. On May 5, 2011, the representative forwarded the expert opinion of Natalia Sergi. The same day, the Secretariat informed the State that it had until May 15, 2011, to present any observations it deemed pertinent. On May 12, 2011, the State presented some observations on the said expert opinion.

10. The public hearing took place on May 16, 2011, during the forty-third special session of the Court held in Panama City, Panama.⁴

11. On June 15, 2011, the representatives forwarded their final arguments together with several attachments and, on June 16, 2011, the State and the Commission presented their final written arguments. On June 21, 2011, the Secretariat, on the instructions of the President, granted additional time to the State for the presentation of the information requested by the Court during the public hearing; this was forwarded on July 7, 2011. In addition, in the same communication, the parties were given until July 15, 2011, to present any observations they deemed pertinent, as appropriate, on the attachments sent by the representative and the State with its communication of July 7, 2011.

12. On July 14 and 15, 2011, the State and the representatives, respectively, presented the observations requested, and the Inter-American Commission submitted its observations on July 19, 2011. On July 21, 2011, once the parties' observations had been reviewed, the Secretariat noted that the State had included in its brief certain arguments and attachments that had not been requested. And also that, although the representative and the Commission made some observations on the information and attachments submitted by the State, they had also presented arguments that had not been requested. Consequently, on the instructions of the President, the parties were advised that the said arguments and attachments were inadmissible and that the Court would not consider them.

III PRELIMINARY OBJECTIONS

13. The State filed three preliminary objections, which the Court will analyze in the following order: (A) "Lack of competence *ratione temporis* of the Court to hear the facts set out in the application that occurred before September 5, 1984"; (B) "Violation of the Argentine State's right of defense during the examination of the case before the Inter-American Commission on Human Rights," and (C) "Failure to exhaust available domestic remedies."

14. In order to consider these preliminary objections, the Court will begin by referring to the facts alleged by the parties in relation to the actions of the police, and the conduct of the criminal proceeding against Mr. Grande, and of the administrative proceeding filed by the latter.

⁴ There appeared at this hearing: (a) for the Inter-American Commission, Luz Patricia Mejía, Commissioner, and Karla Quintana Osuna and Silvia Serrano Guzmán, lawyers; (b) for the representatives of the alleged victim, Petro Patiño-Mayer and Alurralde, and (c) for the State, Alberto Javier Salgado, Director of International Litigation of the Human Rights Directorate, Deputy Agent, Julia Loreto from the National Human Rights Secretariat, Pilar Mayoral from the National Human Rights Secretariat, and Ramiro Badia from the National Human Rights Secretariat.

a) Actions of the police and criminal proceedings

1. Facts that occurred before the State's acceptance of the Court's compulsory jurisdiction (September 5, 1984)

15. On July 28, 1980, based on information provided confidentially by Mr. Grande, the Bank Division of the Argentine Federal Police learned that, in the Murillo Credit Union (hereinafter "the Union"), where Mr. Grande worked as Head of Loans, loans were being awarded without the necessary guarantees. That same day, the Bank Division of the Argentine Federal Police (hereinafter "the Federal Police") searched the Union's headquarters and seized files and other related documents.

16. On July 29, 1980, the judge of the First National Court of First Instance for Federal Criminal and Correctional Matters (hereinafter "the First Criminal and Correctional Court") intervened and Mr. Grande was arrested at the offices of the *Banco de la Nación*, where he had been summoned to continue collaborating with the investigation.

17. On August 12, 1980, in case No. C144/8, the First Criminal and Correctional Court decided the situation of various defendants, including Mr. Grande. The federal judge "found that the irregularities revealed by the documents seized by the Federal Police should be considered malversation of funds." The facts analyzed by the judge consisted in the alleged fraudulent handling of the files corresponding to the loans granted by the Union.

18. That same day, August 12, 1980, the First Criminal and Correctional Judge issued a court order for the pretrial detention of Mr. Grande and decreed the attachment of his assets for the criminal offense established in Article 7 of Law 20840, because the act had resulted in the liquidation of the Union; he was released on his own recognizance. Mr. Grande was detained from July 29 to August 12, 1980; a total of 14 days.

19. On November 7, 1980, the Central Bank of the Argentine Republic asked to be considered a plaintiff in the action.

20. On August 1, 1983, the preliminary proceedings were concluded.

21. On August 15, 1983, the Federal Prosecutor accused the alleged victim of being the author of the criminal offense defined in article 8 of Law 20840 with the aggravating factor established in article 6(b). According to the State, on October 3, 1983, the prosecutor's injunction and the complaint were forwarded to the six defense counsel of the six defendants

2. Facts that took place after the State's acceptance of the Court's compulsory jurisdiction (September 5, 1984)

22. The defense counsel of one of the defendants requested "[t]he suspension of the time granted for the oral hearing on two occasions," and on March 20, 1985, the continuation of the process was ordered with regard to the other defendants.

23. On October 11, 1985, the defense counsel of another of the defendants affirmed the invalidity of the seizure of the documentation and the First Federal Criminal and Correctional Judge deferred his decision of this issue until the final

judgment. This decision was confirmed by the Second Chamber of the National Appellate Chamber for Federal Criminal and Correctional matters (hereinafter "the Second Federal Criminal and Correctional Appellate Chamber") on June 30, 1986.

24. On September 2, 1986, Mr. Grande answered the prosecutor's accusation, three years after the oral hearing.

25. On December 29, 1987, the judge in charge of the proceedings decided to open the case for the submission of evidence and, in a decision of April 18, 1988, ordered the production of different pieces of evidence.

26. On May 24, 1988, the Second Federal Criminal and Correctional Appellate Chamber decreed the invalidity of the searches of the Union and all the acts that resulted from them, finding that they had been conducted without a court order. This decision was based on the preliminary objection of lack of prosecutorial action filed by the defense counsel of another of the defendants, arguing that the evidence upon which the charges were based was obtained illegally, because it resulted from an illegal search. Although it considered the said objection inadmissible, the said Second Appellate Chamber stated that the invalidity of the acts could be declared *ex officio* at any stage at which omissions, violations or defects that could affect public order were proved.

27. On June 9, 1988, one of the defendants requested the respective judge to dismiss the proceedings against him. On January 13, 1989 the judge of the case worked during the judicial recess in order to decide this case.

28. On January 24, 1989, based on the decision on the invalidity of the searches of the Second Federal Criminal and Correctional Chamber of May 24, 1988, the federal judge ordered the "definitive dismissal" of all the defendants, including Mr. Grande, "in connection with the facts for which they were being prosecuted," and declared that the criminal action had extinguished owing to the statute of limitations.

b) Administrative law proceeding

29. Mr. Grande filed a suit against Argentina in the administrative courts seeking damages for the alleged responsibility of the State for the deficient functioning of the administration of justice. On April 14, 1992, the Judge of First Instance of the Federal Administrative Law Court (hereinafter "the First Instance Judge" delivered his ruling accepting the claim. Both the representatives of the defendant and the State appealed the ruling before the National Federal Administrative Appellate Chamber (*infra* para. 85).

30. On April 6, 1993, the Second Administrative Appellate Chamber overturned the judgment on appeal, and rejected the claim. Mr. Grande filed a special federal appeal against this decision before the Federal Chamber of Administrative Law on the grounds of arbitrariness. On June 10, 1993, this Chamber decided the appeal, denying it and confirming the judgment appealed.

31. Lastly, the alleged victim filed a complaint based on the denial of the special remedy and, on April 12, 1994, the Supreme Court of Justice decided to reject it. Mr. Grande was notified of the decision on May 3, 1994.

32. The Court will now proceed to examine the said three preliminary objections filed by the State.

A. "Lack of competence *ratione temporis* of the Court"

Arguments of the parties

33. The State argued that "the facts that gave rise to criminal case No. C144/80 took place in 1980" and, in addition, the "facts that Mr. Grande argues to found his claim for compensation also predate the entry into force of the Convention for the Argentine Republic"; namely, September 5, 1984; "therefore, they are excluded from the Court's consideration." It also noted that, when accepting the Court's jurisdiction, "it placed on record that the obligations assumed would only take effect with regard to facts that occurred following the ratification of the said instrument." In support of its argument, the State cited Article 28 of the Vienna Convention on the Law of Treaties and indicated that the Court had ruled in keeping with this article in the case of *Cantos v. Argentina*, taking into consideration the principle of the non-retroactivity of international law enshrined in the said convention and in international law in general.

34. For his part, the representative indicated that, "while it is true that the date on which the Argentine State accepted the jurisdiction of the Court was September 5, 1984, it is also true that the reported facts [...] date back to July 28, 1980, and persisted until May 3, 1994." In this regard, he argued that the State's position sought to set aside the practice of the human rights protection organs, the jurisprudence of the European Court of Human Rights, and the provisions of the American Declaration. The representative highlighted, in particular, that "the facts that the Commission presents as factual and legal conclusions are related to the criminal proceedings" after September 5, 1984, "and also to the remedy filed by Jorge Fernando Grande under administrative law, which lasted until [May 3,] 1994; in other words, almost 10 years after the Argentine State's acceptance of the compulsory jurisdiction of the Inter-American Court." Lastly, the representative indicated that, regarding "the facts that took place before the Court had jurisdiction, there is a causal relationship with the facts that occurred afterwards, so that the Court should examine all the facts."

35. The Commission observed that "the violations it had asked the Court to declare in its application took place after September 5, 1984. Indeed, a significant part of the criminal proceeding to which Jorge Grande was subject took place between September 5, 1984, and January 24, 1989. However, the claim for damages, the result of which supports the [Commission's] legal conclusions concerning the lack of judicial protection, was filed and heard in its entirety following the acceptance of the Court's jurisdiction." The Commission stressed that, when "describing the factual framework of the application," it had referred "to the background and all the criminal proceedings against Mr. Grande, insofar as this contextual information was relevant to the Court's analysis of the facts that fall within its temporal competence." Based on the above, the Commission asked the Court to reject this preliminary objection.

Considerations of the Court

36. In order to determine if the Court is competent to hear a case or any aspect thereof, according to Article 62(1) of the American Convention,⁵ the Court must

⁵ Article 62(1) of the Convention establishes that "[a] State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it

consider the date on which the State accepted its jurisdiction, the terms in which it was accepted, and the principle of non-retroactivity established in Article 28 of the 1969 Vienna Convention on the Law of Treaties.⁶

37. Argentina accepted the compulsory jurisdiction of the Inter-American Court on September 5, 1984, and indicated in its interpretative declaration that the Court would have competence with regard to “events occurring after ratification” of the American Convention,⁷ which took place that same day. Based on the foregoing and on the principle of non-retroactivity, in principle, the Court cannot exercise its compulsory jurisdiction to apply the Convention and declare a violation of its provisions when the facts alleged or the conduct of the State that may entail its international responsibility occurred prior to this acknowledgement of jurisdiction.⁸

38. When filing the preliminary objection, the State argued, based on its acceptance of the Court’s compulsory jurisdiction on September 5, 1984, that the facts of the instant case that occurred before this acceptance – such as those that took place in 1980, which resulted in the criminal case, and those alleged as grounds for the claim for compensation under administrative law – fall outside the Court’s competence.

39. The Court notes that, in their arguments contesting this preliminary objection, both the Inter-American Commission and the representative referred to facts or measures taken by the police or the courts, such as: (a) the search of the headquarters of the Murillo Credit Union; (b) the confiscation of diverse documents; (c) Mr. Grande’s arrest and deprivation of liberty from July 29 to August 12, 1980, and (d) all the judicial actions in the criminal proceedings from July 29, 1980, to September 5, 1984, all of which occurred before the State accepted the Court’s compulsory jurisdiction. Consequently, this Court finds that these facts and any others that occurred before the State accepted the compulsory jurisdiction of the Court on September 5, 1984, fall outside the Court’s competence.

40. Therefore, the Court is competent to consider only the facts or acts that occurred after September 5, 1984, with regard to the alleged violations. Consequently, it finds that the preliminary objection is founded as regards the facts that took place before that date.

recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.”

⁶ This article stipulates that “[t]he provisions of a treaty will not obligate a party with respect to any act or event that may have occurred before the date of the treaty’s entrance into force for that party or for any situation that at that date has ceased to exist, except where a different intention is taken from the treaty or substantiated in some other manner.”

⁷ Argentina’s acceptance of jurisdiction on September 5, 1984, indicated that “[t]he Government of the Republic of Argentina accepts the jurisdiction of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights indefinitely and under the condition of strict reciprocity for cases relating to the interpretation or application of the [...] Convention, taking into account the interpretative statements contained in the instrument of ratification as a partial reservation.” *Cf.* American Convention on Human Rights. Argentina, acceptance of jurisdiction. Available at: <http://www.oas.org/juridico/spanish/firmas/b-32.html>; last access August 25, 2011.

⁸ *Cf. Case of Cantos v. Argentina. Preliminary objections.* Judgment of September 7, 2001. Series C No. 85, paras. 35 to 37; *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of September 23, 2009. Series C No. 203, paras. 19 and 20; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 16.

B. "Violation of the Argentine State's right to defense during the examination of the case before the Inter-American Commission on Human Rights"

Arguments of the parties

41. Regarding the factual scenario in which the petitioner lodged the initial petition concerning the claim for damages under Articles 8(2) and 10 of the Convention, the State argued that it had duly exercised its defense concerning these facts, insofar as they referred to a petition relating to the results of an action filed under administrative law. It was "the [...] Commission itself that, later, violating the State's right to defense, [...] change[d] the procedural purpose of the petition, focusing it on what had happened during the criminal proceedings." Furthermore, the State indicated that, in its Report on Merits, the Commission "did not refer to the State's arguments [...] regarding the lack of coherence between the Admissibility Report and the facts described by the petitioner in his petition. Indeed, the Commission merely invoked estoppel with regard to the requirements for the admissibility of the petition." Lastly, the State considered that it "was in a position of inequality, because it was unable to present the necessary defense against the facts that the petitioner had not cited – and which were therefore not part of the litigation – that the [Commission] had included in its Admissibility Report, and this violated the State's right to defense."

42. Regarding this preliminary objection, the representative did not make any specific observation, because he considered that the objection was addressed at the Commission's actions during the proceedings concerning the petition's admissibility.

43. For its part, the Commission indicated that "since the beginning of the proceedings [before it], Mr. Grande had indicated precisely the dates of the start and end of the criminal proceedings against him." In any event, "from the briefs presented by the State before the decision on admissibility, it is clear that the Argentine State understood that the facts relating to the duration of the proceedings were part of the purpose of the case, as well as the possible violation of the guarantees established in Article 8 of the American Convention." The Commission "mentioned unofficially in its Admissibility Report that it would analyze the facts alleged in relation to the rights established in Articles 8 and 25 of the Convention, in particular the guarantee of a reasonable time." In this regard, the Commission mentioned that "it has been the consistent practice of the organs of the inter-American system to analyze the facts submitted to their consideration [...] not limited to the legal provisions cited [...], but rather incorporating those that are found to be relevant and applicable to the said facts. This practice is supported by the principle of *iura novit curia*." Therefore, in its decision on admissibility the Commission defined the provisions of the Convention that could be relevant to the analysis of the merits of the case, in the exercise of its powers and based on the factual support of the petition and all the information received from both parties at the admissibility stage.

Considerations of the Court

44. The Court observes that the State has repeatedly maintained that it could not exercise its right of defense in the admissibility proceedings concerning the petition, because it considered that the Commission changed the procedural purpose of the petition. Hence, the State contested the admissibility requirements, and the Commission has not assessed this. Based on the assertions of the State and the

Commission, in this case the Court finds it necessary to examine the proceedings followed before the Inter-American Commission.

45. This Court has held that “[w]hen a preliminary objection is filed that questions the actions of the Commission in relation to the proceedings before it, [...] the Inter-American Commission has autonomy and independence in the exercise of its mandate pursuant to the provisions of the American Convention and, particularly, in the exercise of its functions in the proceedings relating to individual petitions.⁹ Nevertheless, in matters that it is considering, the Court has the power to review the legality of the Commission’s actions,¹⁰ which does not necessarily mean revising the proceedings conducted before it.¹¹ The Court reviews the proceedings before the Commission when one of the parties alleges justifiably that there has been an evident error or failure to observe the admissibility requirements for a petition, which violates the right of defense.

46. The Court, as a jurisdictional organ, will proceed to review the actions and decisions taken by the Commission in order to ensure the appropriateness of the admissibility requirements as well as the principles of adversarial proceedings, procedural balance, and legal certainty.¹²

a) *Proceedings before the Inter-American Commission*

47. First, the Court notes that, in the proceedings before the Commission, Mr. Grande’s petition of November 2, 1994, related to the decision of the Second Administrative Appellate Chamber that annulled the first instance judgment, rejecting his claim for compensation, and also to the complaint declared inadmissible by the Argentine Supreme Court of Justice (*supra* para. 2). These organs were named as the State authorities responsible for the alleged violation of the rights recognized in Articles 8(2) (presumption of innocence) and 10 (right to compensation) of the American Convention.¹³ On June 15, 1995, the Commission began processing the petition, and forwarded the pertinent parts of the application to the State so that the State could make observations on it.

⁹ Cf. *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights* (Arts. 41 and 44 to 51 of the American Convention on Human Rights). Advisory Opinion OC-19/05 of November 28, 2005. Series A No. 19, first operative paragraph; *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 31, and *Case of Vélez Loo v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 22.

¹⁰ Cf. *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights* (Arts. 41 and 44 to 51 of the American Convention on Human Rights). Advisory Opinion OC-19/05, *supra* note 8, third operative paragraph; *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 8, para. 30, and *Case of Vélez Loo v. Panama*, *supra* note 8, para. 22.

¹¹ Cf. *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. 66; *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 8, para. 31, and *Case of Vélez Loo v. Panama*, *supra* note 8, para. 22.

¹² Cf. *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights* (Arts. 41 and 44 to 51 of the American Convention on Human Rights). Advisory Opinion OC-19/05, *supra* note 8, para. 27.

¹³ Cf. Initial petition of Mr. Grande lodged on November 2, 1994 (appendices to the application appendix 3, f. 501).

48. In a brief of December 14, 1995, regarding the claim for compensation, the State acknowledged that “all the domestic remedies have been filed and exhausted in accordance with the principles of international law.”¹⁴ Subsequently, after the parties had tried unsuccessfully to reach a friendly settlement, the State, prior to the Admissibility Report, submitted observations on the petitioner’s arguments concerning the administrative proceeding in a brief of November 19, 2001. In this regard, it argued that: (a) the facts that the petitioner uses as grounds for his claim for compensation occurred before the Convention entered into force [...] and, therefore, are excluded from the Commission’s competence: (b) “the petitioner did not use the available remedies to contest his procedural situation,” for example, by an appeal for annulment, but rather “he agreed to all the procedural actions ordered by the respective judicial authorities; [...] the extended duration of his procedural situation was evidently the result of [Mr.] Grande’s indifference or legal inexperience and/or that of his legal counsel.” The claim for compensation is based on “the invalidation decided by the criminal justice system, which he did not request, of a search to which he not only agreed spontaneously, but that was a result of his own complaint”; (c) the inexistence of miscarriage of justice (Article 10) based on the decisions of the administrative court and on the principle of *estoppel*, and (d) “the dismissal of the case was founded on the impossibility of obtaining new evidence for the prosecution,” in relation to the violation of the presumption of innocence (Article 8(2) of the Convention).

b) Admissibility Report No. 3/02

49. Subsequently, the Commission issued Admissibility Report No. 3/02 of February 27, 2002, in which it analyzed the admissibility requirements and considered, in this regard, that “the parties agree that the pertinent domestic remedies with regard to Mr. Grande’s claim to obtain compensation were exhausted based on the decision of the Supreme Court of Justice of April 12, 1994, that rejected the remedy of complaint.” Regarding the scope of the petition, the Commission indicated that “the complaints lodged before it refer to Mr. Grande’s detention, the related criminal proceedings filed against him in 1980, proceedings that remained pending until the charges were dismissed (1989), and the civil actions that he filed seeking compensation.”

50. Regarding the time frame for presentation of the petition, based on the file of the administrative proceedings, the Commission indicated that the “Mr. Grande received the final judgment on May 3, 1994, and the petition was presented on October 31, 1994, received [...] on November 2, 1994”; thus, it was presented within the six months established in Article 46(1)(b) of the Convention. Also, regarding the characteristics of the facts adduced, “based on the principle of *iuria novit curia*, in its decisions on merits [the Commission indicated that] it would also examine the provision established in Articles [8 and 25 of the Convention] that any person accused of a criminal offense has the right to be heard within a reasonable time.” Lastly, the Commission rejected the arguments relating to the alleged violation of Article 10 of the Convention, “because no final judgment was handed down against Mr. Grande, but rather his case was dismissed.”

51. Following the Admissibility Report, in its brief of November 7, 2002 (in response to the Commission’s note of September 3, 2002), the State indicated in the relevant part that: “it appeared that the analytical framework of the Report did not coincide

¹⁴ Cf. Brief of the State of December 14, 1995 (appendices to the application, appendix 3, f. 729).

with the content and purpose of the petitioner's initial claim." In this regard, the State argued that, "although it is reasonable to infer that questions could arise from the general content of the petitioner's description of what happened in the context of the facts relating to the search and subsequent criminal proceedings, [...] that does not appear to have been the petitioner's intention. This is because, from reading his petition, it is clear that [Mr.] Grande finds himself a victim of the alleged violation of Articles 8(2) and 10 of the Convention which, in his opinion, was constituted in the context of his claim for damages that was rejected by the Federal Administrative Appellate Chamber."

52. Furthermore, in the said brief of November 7, 2002 the State emphasized that although the intention of the petition was to seek the declaration of the alleged responsibility of the State for the consequences of a proceeding based on evidence that was later rejected, this does not authorize such facts to be evaluated in light of the Convention and/or [...] the compatibility of the facts relating to the search and subsequent proceedings with the obligations assumed by the State, [because] the claim would be time-barred, and would therefore be inadmissible." The State added that "it seems clear that [...] the provisions of Article 46(1)(b) of the American Convention would apply to the alleged incompatibility of the search and the criminal proceedings with the State's obligations under the [American] Declaration and the Convention."

c) *Report on Merits No. 109/09*

53. The Commission's Report on Merits No. 109/09 of November 10, 2009, merely indicated that "the State's arguments concerning the admissibility of the case [...] are inappropriate at this procedural stage. Regarding the State's arguments, the Commission indicated that the admissibility requirements were duly analyzed in the chapter of the Admissibility Report on exhaustion of domestic remedies and the time frame for the presentation of the petition." Consequently, the Commission indicated that "it did not refer to those arguments in the [...] report."

54. From the above, the Court observes that, in its Admissibility Report No. 3/02, invoking the principle of *iura novit curia*, the Commission did in fact modify the purpose of Mr. Grande's petition, which referred to the alleged violations that arose during the administrative proceedings (*supra* paras. 2 and 47). Specifically, the Commission included the alleged violation of reasonable time in the criminal proceedings and the analysis of Articles 8 and 25 of the Convention. It also rejected the petitioner's arguments regarding the alleged violations of Articles 8(2) and 10 of the Convention, in relation to the claim for compensation processed by the administrative law jurisdiction, regarding which the State had presented its arguments at the admissibility stage of the petition. Thus, it was at that time that the State, procedurally, became aware of the scope of the purpose of the petition in the instant case.

55. Responding to the Commission's new approach and following the Admissibility Report, the State submitted several arguments to contest the Commission's competence to examine the new purpose of the petition. Among these, in application of Article 46(1)(b) of the Convention, it indicated the petitioner's failure to exhaust domestic remedies in relation to the criminal proceedings, as well as the "time-barred presentation of the claim concerning the alleged violations in relation to the criminal proceedings." However, in its Report on Merits No. 109/09, the Commission indicated

that the arguments on admissibility were inappropriate at that procedural stage, and therefore did not rule on the matter.

d) *Admissibility of individual petitions and Article 46 of the American Convention*

56. The Court has indicated that “the processing of individual petitions is governed by guarantees that ensure the parties may exercise their right of defense in the proceedings. These guarantees are: (a) those related to conditions for the admissibility of the petitions (Articles 44 to 46 of the Convention),¹⁵ and (b) those relating to the adversarial principles (Article 48 of the Convention),¹⁶ and procedural balance. It is also necessary to mention here the principle of legal certainty (Article 39 of the Commission’s Rules of Procedure).”¹⁷

57. Specifically, Article 46(1)(b) establishes the admissibility requirement for filing a petition that it be lodged “within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

58. In this regard, the Court notes that while, in Admissibility Report No. 3/02, the Inter-American Commission examined the admissibility of the petition in relation to the administrative proceeding in accordance with Article 46(1)(b) of the Convention, the said report included violations allegedly committed during the criminal proceedings that had concluded in 1989, without ruling on the said admissibility requirement in relation to those proceedings.

59. This Court finds it relevant to note that, when submitting the initial petition on November 2, 1994, the criminal proceedings had already concluded with the dismissal of the case against the Mr. Grande on January 24, 1989; that is, four years and ten months before the case was submitted to the inter-American system. It was in 1992 that the First Instance Judge decided to admit the claim for damages filed by Mr. Grande, a proceeding in which the final remedy concerning this claim was exhausted with the decisions of Federal Appellate Chamber on June 10, 1993, and the Supreme Court of Justice on April 12, 1994. The latter decision was notified on May 3, 1994.

¹⁵ It is worth recalling that Article 46 of the American Convention establishes that the admissibility of a petition or communication lodged before the Inter-American Commission under Articles 44 or 45 of the Convention is subject to the remedies under domestic law having been pursued and exhausted in accordance with generally recognized principles of international law. In addition, this Court has consistently maintained that an objection to the exercise of the Court’s jurisdiction based on the alleged failure to exhaust domestic remedies must be presented at the appropriate procedural moment; that is, during the admissibility procedure before the Commission. *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 85; *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 224, para. 13, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of July 5, 2011. Series C No. 228, para. 27.

¹⁶ Advisory Opinion OC-19/05 on *Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights (Arts 41 and 44 to 51 of the American Convention on Human Rights)*, *supra* note 8, cited in this regard Articles 36, 37, 43 and 44 of the Rules of Procedure of the Inter-American Commission on Human Rights approved during its 137th regular session held from October 28 to November 13, 2009.

¹⁷ *Cf. Control of Due Process in the Exercise of the Powers of the Inter-American Commission on Human Rights (Arts. 41 and 44 to 51 of the American Convention on Human Rights)*. Advisory Opinion OC-19/05, *supra* note 8, para. 27. In addition, it is worth pointing out that, currently, the principle of legal certainty is regulated in Article 38 of the Inter-American Commission’s Rules of Procedure approved by the Commission at its 137th regular session held from October 28 to November 13, 2009.

60. It is evident to the Court that the petition submitted within the six months required by Article 46(1)(b) of the Convention related to the claim for damages in the administrative courts rather than to the criminal proceedings. Therefore, with regard to the alleged violations that were included in Admissibility Report No. 3/02 concerning facts related to the criminal proceedings, the Commission did not duly verify the admissibility requirement of Article 46(1)(b) of the Convention (*supra* para. 57).

61. Based on the foregoing, in the instant case, the Court finds that this preliminary objection is founded because, owing to the change in the initial purpose of the petition in the Admissibility Report and the Commission's subsequent application of estoppel to the State's arguments concerning admissibility requirements in its Report on Merits, the Commission neglected to verify the admissibility requirement established in Article 46(1)(b) of the Convention regarding the criminal proceedings. Consequently, the Court will not examine the said criminal proceedings.

C. "Failure to exhaust domestic remedies"

The arguments of the parties

62. The State filed the preliminary objection of failure to exhaust domestic remedies and indicated that "the claim filed by Mr. Grande in the administrative court cannot in any way be identified as a judicial remedy to be exhausted, insofar as it was used to seek compensation for alleged damage caused by his prosecution, rather than a modification of his situation in the criminal proceedings, which is the central purpose of the application in question." In this regard, the State indicated several remedies available to contest the alleged judicial delay.¹⁸ The State also stressed that "Mr. Grande [...] enjoyed legal counsel and therefore knew or should have known the remedies available to him," and his claim for compensation was "rejected by the domestic courts in the understanding, *inter alia*, that these matters [...] had not been disputed in a timely manner during the criminal proceedings." In response to the Commission citing the principle of estoppel with regard to the State's position in its first communication of December 1995 stating that the remedies had been exhausted, the State maintained that "this position referred exclusively to the specific violations indicated by the petitioner himself under Articles 8(2) and 10 of the Convention," in relation to the administrative proceeding and not to the criminal proceedings.

63. Regarding this preliminary objection, the Commission indicated that "most of the arguments made by the State are time-barred." The Commission underscored that, of the "six remedies mentioned by the State in its answering brief before the Inter-American Court, only one – the appeal for the invalidation of the seizure of documents – was alleged at the admissibility stage before the Commission in support of the alleged failure to exhaust domestic remedies."¹⁹ In addition, the Commission argued

¹⁸ Namely: (a) an appeal to invalidate the search and the seizure of documents in order to "contest his prosecution in the courts." The State specified the scope of this remedy and cited articles 509, 512 and 513 of its Federal Code of Criminal Procedure in force at the time of the events; (b) an appeal against the order of pre-trial detention; (c) a request for a "prompt trial" in the face of an alleged delay in deciding some issues in the case; (d) a remedy of complaint for delay in justice based on articles 442, 14(2) and (3), 544 and 545 of the Code of Criminal Procedure; (e) a criminal complaint for the offense of delay in justice based on article 273 of the Criminal Code, and (f) an application for *amparo* (protection of constitutional rights) based on Article 14 of the Constitution arguing a violation of his right to work "owing to the alleged delay."

¹⁹ The Commission added that "even with regard to the application for invalidation the State presented more specific arguments in its answering brief before the Court [...]. For instance, before the Court, it gave

that “the State has not justified sufficiently the need for Mr. Grande to file an appeal for the invalidation of the seizure of the documents. It is unclear how Mr. Grande could have avoided the procedural delay by way of this measure.” Additionally, the Commission noted that “from what the State has indicated, it is unclear that Mr. Grande might be required to duplicate a remedy that had already been filed in the same proceeding that was ongoing against him, the result of which would have implications for his procedural situation, as it in fact happened.” The Commission also considered “that, based on the principle of estoppel, the State was not able to change the position set out in its first response to the Commission,” in which it acknowledged that domestic remedies had been exhausted pursuant to the principles of international law.

64. The representative concurred with the Inter-American Commission’s arguments concerning the objection of failure to exhaust domestic remedies.

Considerations of the Court

65. Regarding the filing of this preliminary objection, the Court refers to its decision concerning the *ratione temporis* preliminary objection concerning the time frame of its jurisdiction, as well as its decision on the second preliminary objection in which it stated that it would not examine matters arising from the criminal proceedings.

66. The Court also finds it unnecessary to analyze whether the remedies available in the domestic jurisdiction in relation to the criminal proceedings were exhausted, given that, by the date on which the petition was lodged before the Inter-American Commission, November 2, 1992, the criminal proceedings had already concluded four years and ten months earlier with a dismissal in favor of Mr. Grande.

67. Moreover, the Court notes that there is no dispute between the parties as regards the exhaustion of domestic remedies in relation to the administrative proceeding, which forms part of the matter analyzed by this Court.

68. Therefore, the Court finds that it is not appropriate to rule on this preliminary objection and, since the facts related to the alleged violations of Articles 8 and 25 of the Convention that took place during the administrative proceeding fall within the jurisdiction of the Court, they will be analyzed in this judgment when examining the merits.

IV COMPETENCE

69. The Court is competent to hear this case pursuant to Articles 62(3) of the American Convention because Argentina has been a State Party to the Convention since September 5, 1984, and accepted the compulsory jurisdiction of the Court that same day; that is, September 5, 1984.

details of the legal basis for the remedy, its function within the Argentine legal system, and legal precedents. This information was omitted from the briefs on admissibility before the [Commission].

V EVIDENCE

70. Based on the provisions of Article 57 of the Rules of Procedure, as well as the case law of the Court regarding evidence and its assessment,²⁰ the Court will proceed to examine and assess the documentary evidence submitted by the Commission, the representatives, and the State on different procedural occasions, the expert witness statement given by affidavit, and the testimony received during the public hearing held in this case. To this end, the Court will observe the rules of sound judicial discretion, within the corresponding legal framework.²¹

A. Testimony of the alleged victim and expert evidence

71. The Court received the following affidavit:

Natalia Sergi, proposed by the representatives, who gave expert evidence on (i) the duration of criminal proceedings in Argentina, and (ii) the alleged lack of reparation for victims of the said violations.

72. Regarding the evidence given at the public hearing, the Court heard the testimony of:

Jorge Fernando Grande, proposed by the representative, who testified on: (i) the alleged facts of the case; (ii) the alleged violations, and (iii) the alleged effects on him of these violations.

B. Admission of documentary evidence

73. In this case, as in others,²² the Court admits the probative value of those documents that have been presented by the parties in a timely manner, which have not been contested or objected to, and whose authenticity has not been challenged.

74. The representative forwarded several document with their final written arguments, submitted on June 15, 2011, relating to different expenses incurred by the representative and the alleged victim as a result of the public hearing in this case. The State, together with the brief it submitted on July 7, 2011, presented several documents relating to the duration of criminal proceedings in Argentina because the Court requested this information during the public hearing. The Court admits this documentation pursuant to Articles 57 and 58 of the Rules of Procedure.

C. Admission of the testimony of the alleged victim and the expert evidence

²⁰ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2011. Series C No. 227, para. 36, and *Case of Mejía Idrovo v. Ecuador*, supra note 14, para. 36.

²¹ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*, supra note 19, para. 76; *Case of Chocrón Chocrón v. Venezuela*, supra note 19, para. 26, and *Case of Mejía Idrovo v. Ecuador*, supra note 14, para. 36.

²² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No 4, para. 140; *Case of Chocrón Chocrón v. Venezuela*, supra note 19, para. 29, and *Case of Mejía Idrovo v. Ecuador*, supra note 14, para. 38.

75. The Court considers it pertinent to admit the testimony of the alleged victim (*supra* para. 72), to the extent that it is adapted to the purpose defined by the President in the Order that required it (*supra* para. 8). Pursuant to the Court's case law, since the alleged victim has an interest in the case, his testimony will not be assessed alone, but rather together with all the evidence in the proceedings, because it is useful insofar as it can provide further information on the alleged violations and their consequences.²³

76. Regarding the expert opinion provided by Natalia Sergi, in its observations, the State indicated that the report "lack[ed] the necessary elements to be considered an expert opinion" and exceeded the purpose of the opinion defined in the President's Order of April 15, 2011. The Court finds it pertinent to admit this evidence insofar as it is adapted to the purpose defined in the Order requiring it (*supra* para. 8).

VI ARTICLES 8 AND 25 OF THE AMERICAN CONVENTION

77. In this chapter, the Court will proceed to analyze the facts concerning the claim for compensation in the administrative proceedings, regarding which the Commission and the representative allege the violation of the judicial guarantees and protection established in Articles 8(1) and 25(1) of the American Convention.

Arguments of the parties

78. In the section of the application relating to the administrative proceedings, the Inter-American Commission indicated that Jorge Grande had filed a claim for damages against the State to repair the procedural violations that occurred during the criminal proceeding. The claim was based on: "(1) unconstitutional searches had been conducted; (2) on that unlawful basis, a trial was held that lasted almost nine years; (3) that trial entailed [his] detention and prosecution for an extended period, [and] (4) lastly, the charges were dismissed, upon recognition of the irregular act." In addition, it observed that the main arguments used during the administrative proceeding were: (a) "the existence or inexistence of a judicial error in the assessment of the evidence during the criminal proceeding, based on article 1112 of the Civil Code, even though this article is more comprehensive and refers to the existence of any act or omission by public officials in the exercise of their functions," and (b) "the alleged procedural inactivity of Mr. Grande."

79. In this regard, the Commission indicated that, in the administrative sphere, the remedy filed by the alleged victim was "rejected without taking into account the illegality of the evidence that had already been declared in the criminal proceeding, and without considering the prolonged delay in reaching a decision in the case." To the contrary, special attention was given to "Mr. Grande's alleged passivity," as if the "[o]bligation to advance a criminal proceeding and to prove his innocence corresponded to the defendant." This constituted "a criterion that is inconsistent with the provisions of the American Convention and inter-American case law." The Commission concluded that "[a]lthough the State itself, through the Federal Appellate

²³ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Chocrón Chocrón v. Venezuela*, *supra* note 19, para. 34, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 14, para. 42.

Chamber, acknowledged that there had been a violation of Mr. Grande's right to due process as regards obtaining evidence, the State did nothing to remedy this violation, either by reparation or by a disciplinary administrative investigation to determine whether police or judges should be sanctioned." The Commission did not submit specific arguments on the alleged violations of Articles 8 and 25 of the Convention during the administrative proceeding at the public hearing or in its final written arguments.

80. For his part, the representative stated that "[t]he first instance judgment in the administrative jurisdiction decided in favor of Jorge Fernando Grande on the grounds that the State had acted unlawfully (even though it was subsequently overturned by the Federal Appellate Chamber based on an argument tending to show that no judicial error had occurred) must be taken into consideration because it clearly acknowledges an unlawful act of the State." Additionally, the representative indicated that "[t]he rejection of the remedy filed by Mr. Grande in that instance was founded on the inexistence of a judicial error, without taking into account [either] the unlawfulness of the evidence that had been decided in the criminal proceedings, [or] the prolonged lapse of time before a decision was reached." He also reiterated some of the Commission's remarks on this point. Lastly, the representative concluded that the State had violated the rights embodied in Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Grande. During the public hearing and in his final oral arguments, he repeated some of his previous arguments without referring specifically to the alleged violations.

81. Meanwhile, the State declared that, in the present case, "it understands that the so-called fourth instance doctrine is being constituted regarding the administrative proceeding" and, in that regard, stressed that "the special appeal filed against the judgment of the National Appellate Chamber for Federal Administrative Matters of the Federal Capital was rejected for technical reasons." It added that the alleged victim resorted to the Commission and the Court to make his claim "merely because he disagreed with the decision of the National Appellate Chamber for Administrative Matters." To conclude, the State indicated that "no violation of due process or access to justice occurred in this case, because Mr. Grande had [the] possibility of accessing suitable and effective remedies, and yet, as was shown, made poor use of them, ultimately trying to blame this on the State." Finally, it noted that "Mr. Grande is trying to obtain financial compensation based on the argument of alleged violations that occurred in the domestic jurisdiction." In its brief with final arguments, the State repeated some of the arguments indicated above.

Judicial actions during the administrative proceedings

82. Jorge Fernando Grande filed a claim for damages under the administrative jurisdiction against the State for its responsibility in the deficient functioning of the administration of justice, as well as for its irregular and unlawful conduct.²⁴ In this regard, Mr. Grande stated that the applicable doctrine indicated that, "in the case of alleged judicial error or improper functioning of the administration of justice, the State's responsibility is [...] evident and direct," because every judicial decision must be the result of the determination of the facts on which the interpretation and application of the rules of law that decide the disputed situation are based. Therefore, when this interpretation is based "on an erroneous assessment of the facts or on their

²⁴ Cf. Claim for damages filed by Jorge Grande (undated), in the administrative jurisdiction, in case No. 28,928 (file of the Commission's appendices, appendix 12, fs. 970 top 978).

inappropriate subsumption, it must be concluded that the conduct of the judge is irregular." Lastly, he asked for compensation for pecuniary damage (loss of earnings), non-pecuniary damage, and expenses for psychological care, and claimed monetary compensation. He based his claim on articles 14, 16, 17 and 100 of the 1953 Argentine Constitution and articles 43, 1078, 1109, 1112 and 1113 *et seq.* of the Civil Code, as well as teachings and jurisprudence.

83. On April 14, 1992, the First Instance Judge of the Federal Administrative Court handed down his judgment in which he decided to admit the claim filed by Mr. Grande, confirmed the unlawful act by the State, and determined the scope of the damage and the amount of reparation, which he established, in equity, as the sum of \$150,000 (one hundred and fifty thousand pesos) as compensation.²⁵ In his judgment, the federal judge considered the following arguments: (a) the declaration of the invalid nature of the searches and all the resulting acts during the criminal proceedings [fruit of the poisonous tree doctrine], due to the clear violation of the guarantee of immunity of domicile; (b) the exclusionary rule as a legal mechanism that may only be applied when there has been specific harm to one of the parties that cannot be rectified by any other means, and that entails correcting the proceedings for the benefit of the defendant; (c) that, based on having declared the invalidation, the criminal judge ordered the dismissal of the case against the defendant in relation to the facts for which he was being investigated, stating for the record that the fact that preliminary proceedings had been opened did not harm his good name and reputation, and (d) that, since eight years had passed since the beginning of the case, it appeared that it would not be possible to obtain new evidence.

84. In addition, the First Instance Judge referred to the State's responsibility for its jurisdictional acts, and indicated that doctrine offered different interpretations, but broadly speaking, the responsibility of the State and its corresponding obligation to provide compensation can result from both its lawful and its unlawful activities, because their admissibility only requires the effective existence of a damage caused directly and immediately by the conduct of the State. The law stipulates that when the State is responsible for unlawful acts that harm private individuals, this entails full compensation. The first instance judge added that "technically, it is not possible to speak of an alleged State responsibility owing to a jurisdictional activity, understood as the obligation to repair a harm committed by a judge," because, in the instant case, the annulment ordered by the Federal Criminal and Correctional Chamber related to acts committed by the Argentine Federal Police without any intervention of the national Judiciary. Lastly, he indicated that, what is at issue is a error in a service provided, understood as an irregular functioning of the administration of justice, and not a presumption of responsibility for jurisdictional acts, and he confirmed an unlawful action by the State in the case.

85. Both parties appealed the judgment of the First Instance Judge before the National Appellate Chamber for Federal Administrative Matters. The representatives of the plaintiff did so with regard to the amount of compensation ordered (considering it

²⁵ Cf. Judgment of First Instance Court of the Federal Court for Administrative Matters delivered on April 14, 1992, in case No. 28,928 (file of the Commission's appendices, appendix 5, fs. 919 to 933).

insufficient),²⁶ and the representatives of the State did so with regard to the admissibility of the case (the merits).²⁷

86. On April 6, 1993, the Second Chamber of the National Appellate Chamber for Federal Administrative Matters overturned the first instance judgment, rejecting the complaint and concluded that the civil reparation ordered was inadmissible.²⁸ The said Second Administrative Appellate Chamber first considered the appeal filed by the State, which was founded on the fact that the plaintiff had not acted in a way that deserved the sanction imposed since Mr. Grande's failure to raise the issue of the invalidation made the doctrine of estoppel applicable²⁹ and gave rise to the admissibility of an civil action for reparation.

87. In addition, the Second Administrative Appellate Chamber explained and noted that the Supreme Court of Justice had indicated that, anyone who provides a service must be responsible for any possible damage caused by its irregular execution, and although this doctrine has been applied in cases of allegations of damage produced as a result of judicial errors, it is only admissible to assign responsibility to the State-Judge when the judicial error is evident, and that, in that case, this has not occurred because Mr. Grande had benefited from the judgment which invalidated the searches, without having filed this remedy and the result of this invalidation was the rectification of the proceeding and the rejection of all those elements tainted by defects. This ruling changed that court's opinion, by considering that the consent of the person who underwent the search was irrelevant to legitimize the invasion of the privacy of the home. Consequently, there was no manifest error in the plaintiff's prosecution, especially since the dismissal of the case was based on the impossibility of obtaining further evidence. In addition, the Second Administrative Appellate Chamber found that Mr. Grande had not used all the legal remedies to obtain immediate redress, because he allowed the police to enter; and it did not rule on the other complaints.

88. Jorge Grande submitted a special federal appeal against this judgment of the Second Administrative Appellate Chamber alleging arbitrariness and requested that the appeal be considered filed and that, prior to it being admitted, that it be elevated to the Supreme Court of Justice.³⁰ As grounds for the appeal, he indicated that: (a) *res judicata* applied with regard to the fact that the case originating the appeal was based on an unlawful act of the State, and (b) the criteria used to overturn the first instance judgment had been applied to the presumption that the proceeding had been conducted properly, but this could not extend to cases in which proceedings had been conducted in an irregular manner, because, in the latter case, State responsibility was generated automatically, to the extent that there was a harm; and this reasoning also applied to the argument of the judgment on appeal, when it stated that the plaintiff did not use all the legal remedies to obtain immediate redress.

²⁶ Cf. Appeal of the plaintiff (undated) in case No. 28,928 (file of the Commission's appendices, appendix 3, fs. 794).

²⁷ Appeal by the State in case No. 28,928, which does not appear in the evidence provided by the parties to the Inter-American Court. The information indicated in this judgment appears in the judgment of the Second Appellate Chamber (file of the Commission's appendices, appendix 9, f. 95).

²⁸ Cf. Judgment of the National Administrative Appellate Chamber delivered on April 6, 1993, in case No. 28,928 (file of the Commission's appendices, appendix 6, fs. 934 to 941).

²⁹ Cf. Judgment of the National Appellate Chamber for Administrative Matters, *supra* note 27, fs. 934 al 941.

³⁰ Special federal appeal filed by Mr. Grande before the Federal Administrative Chamber (undated) in case No. 28,928 (appendices of the Commission, appendix 3, fs. 819 to 830).

89. On June 10, 1993, the Federal Administrative Chamber decided the special federal appeal against the judgment, rejecting it and confirming the judgment on appeal.³¹ The reasoning for this rejection was that the specific considerations regarding the assessment of the criminal case and the applicable law had not been refuted.

90. Mr. Grande submitted a complaint to the Supreme Court of Justice³² against the previous decision owing to the rejection of the special appeal he had filed.³³ On April 12, 1994, the Supreme Court of Justice decided to reject the complaint³⁴ based on article 280 of the National Code of Civil and Commercial Procedure.³⁵ Mr. Grande was notified of the decision on May 3, 1994.³⁶

Considerations of the Court

91. Regarding the administrative proceeding, which was processed when this Court had jurisdiction, the Court observes that Mr. Grande filed a claim for damages under administrative law to determine his right to compensation, because he considered that he had been the victim of judicial error, in which he set out his claims and was heard by a competent judge. In addition, the alleged victim was able to file all the remedies available in the domestic jurisdiction, as indicated in paragraphs 82 to 90 of this judgment.

92. The Commission and the representative alleged the violation of Articles 8 and 25 of the American Convention in the said administrative proceeding. In this regard and in support of this contention, the Commission indicated, in general, that: (a) when processing the claim for compensation, the unlawfulness of the evidence offered in the criminal proceeding was not taken into account, or the prolonged lapse of time to reach a decision in that proceeding, and (b) the State did nothing to remedy the alleged violation of due process in the criminal jurisdiction, despite recognizing the irregularity in the administrative proceeding. For his part, the representative concurred with the Commission's arguments and, in particular, indicated that the Second Administrative Appellate Chamber did not consider the unlawful conduct of the State with regard to the illegality of the evidence or the duration of the criminal proceeding.

³¹ The decision of June 10, 1993, which is not among the evidence provided by the parties to the Inter-American Court. The information in this judgment appears in the complained filed by Mr. Grande (*infra* note 31, f. 963). According to the State, "[t]he explanation for this rejection was that the specific findings relating to the assessment of the criminal case and the applicable law had not been refuted" (file of preliminary objections, merits, reparations and costs, brief answering the application, f. 127).

³² *Cf.* Complaint based on rejection of the special appeal before the Supreme Court of Justice filed by Mr. Grande before the Federal Administrative Chamber (undated), in case No. 28,928 (file of the Commission's appendices, appendix 9, fs. 949 to 963).

³³ The special appeal was filed against a final judgment that could not be appealed by any other means, delivered by the highest court with jurisdiction on behalf of the plenum of the Supreme Court of Justice (file of the Commission's appendices, appendix 9, f. 949).

³⁴ *Cf.* Judgment of the Argentina the Supreme Court of Justice handed down on April 12, 1994 (file of the Commission's appendices, appendix 10, f. 964).

³⁵ This article provides that: "when the Supreme Court hears a case by special appeal, the reception of the case shall entail a summons and also that the Court, based on its sound judicial discretion and merely invoking this rule, may reject the special appeal for lack of sufficient federal harm or when the questions raised are insubstantial or lack significance."

³⁶ *Cf.* Notification of Mr. Grande dated May 3, 1994 (the Commission's appendices, appendix 3, f. 830).

93. In this regard, the Court observes that neither the Commission nor the representative presented specific, autonomous arguments or facts that occurred during the processing of the claim for compensation under the administrative jurisdiction that could result in violations of due process and judicial guarantees. Consequently, the international responsibility of the State for the violation of Articles 8 and 25 of the American Convention to the detriment of Jorge Fernando Grande has not been proved.

VII OPERATIVE PARAGRAPHS

94. Therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

DECLARES:

Unanimously that:

1. It admits the first preliminary objection, pursuant to paragraphs 36 to 40 and of this judgment.
2. It admits the second preliminary objection, pursuant to paragraphs 44 to 61 of this judgment.
3. It is not incumbent on the Court to rule on the third preliminary objection pursuant to paragraphs 65 to 68 of this judgment.
4. It has not been proved that the State violated the rights to judicial guarantees and protection established in Articles 8 and 25 of the American Convention on Human Rights, pursuant to paragraphs 91 to 93 of this judgment.

AND DECIDES:

Unanimously

1. To close the file.

Done, at Bogotá, Colombia, on August 31, 2011, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary