INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF BARBANI DUARTE *ET AL.*[*] *v.* URUGUAY

JUDGMENT OF OCTOBER 13, 2011
(Merits, reparations and costs)

In the case of *Barbani Duarte et al.,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:[1]

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

also present[2],

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, 65 and 67 of the Rules of Procedure of the Court[3] (hereinafter "the Rules of Procedure"), delivers this judgment, structured as follows:

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[*] The Court, meeting for its ninetieth regular session, decided to adopt the name "*Barbani Duarte et al. v. Uruguay"* as the official name of this case, in accordance with the usual way of identifying cases before the Inter-American Court. The parties were informed of this decision in notes of the Secretariat of the Court dated March 2, 2011.

[1] According to Article 19(1) of the Rules of Procedure of the Inter-American Court applicable to the instant case (*infra* note 2), which establishes that: "[i] the cases referred to in Article 44 of the Convention, to judge who is to national of the respondent State shall not be able to participate in the hearing and deliberation of the case," Judge Alberto Pérez Pérez, to Uruguayan national, did not take part in the processing of the instant case or in the deliberation and signature of this judgment. In addition, Judge Leonardo Franco advised the Court that, for reasons beyond his control, he could not be present for the deliberation and signature of this judgment.

[2] The Deputy Secretary, Emilia Segares Rodríguez, advised the Court, that for reasons beyond her control, she could not be present for the deliberation of this judgment.

[3] Rules of Procedure of the Court approved at its eighty-fifth regular session held from November 16 to 28, 2009, which apply to this case, in accordance with their Article 79. According to Article 79(2) of these Rules of Procedure, "[i]n cases in which the Commission has adopted to 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 [… applying] the provisions of these Rules of Procedure." Therefore, with regard to the instant case, Articles 33 and 34 of the Rules of Procedure approved by the Court at its forty-ninth regular session are applicable.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On March 16, 2010, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted an application against the Oriental Republic of Uruguay (hereinafter "the State" or "Uruguay"), under Articles 51 and 61 of the Convention, in relation to case 12,587. The initial petition was lodged before the Inter-American Commission on October 17, 2003, by Alicia Barbani Duarte and María del Huerto Breccia Farro, on behalf of themselves and in representation of a group of clients of the *Banco de Montevideo S.A.* in Uruguay (hereinafter "*Banco de Montevideo*" or "*the Banco de Montevideo*"). On October 27, 2006, the Inter-American Commission approved Admissibility Report No. 123/06[4] and, on November 9, 2009, it approved the Report on Merits No. 107/09, in accordance with Article 50 of the American Convention.[5] This report was sent to the State on December 16, 2009, and the State was granted two months to provide information on the measures adopted to comply with the recommendations made in the report. On March 12, 2010, the Inter-American Commission considered that the State had not complied with the recommendations made in the Report on Merits and therefore decided to submit the instant case to the jurisdiction of the Inter-American Court. The Inter-American Commission appointed María Silvia Guillén, Commissioner, and Santiago A. Canton, Executive Secretary, as delegates and Elizabeth Abi-Mershed, Assistant Executive Secretary, and Christina Cerna and Lilly Ching, lawyers of the Executive Secretariat, as legal advisers.

2. According to the Commission, this case relates to the alleged international responsibility of the State for failing to provide "a group of depositors of the *Banco de Montevideo*" with an impartial hearing for their claims before the Advisory Commission created under Law 17,613, Financial System Reform Law, or by the Contentious-Administrative Tribunal, concerning the transfer of their funds from the *Banco de Montevideo* […] to the Trade & Commerce Bank [in the Cayman Islands] without consulting them, [and also] the failure to provide the alleged victims with a simple and prompt remedy to examine all the factual and legal issues relating to the dispute before it."

3. The Commission asked the Court to declare the international responsibility of the State of Uruguay for violation of Articles 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) of the Convention, in relation to Article 1(1) thereof. The Commission also asked the Court to order the State to adopt specific measures of reparation, and to pay the costs and expenses.

4. The application was notified to the State and to the representatives on July 8, 2010. At that time, the parties were advised that, as established in Article 34(3) of the Court's previous Rules of Procedure,[6] applicable to this case in accordance with Article

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[4] Report on Admissibility 123/06, Petition 997-03, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Group of Depositors of the *Banco de Montevideo*) of October 27, 2006, (file of attachments to the application, volume I, Appendix 2, folios 54 to 68). In this report, the Inter-American Commission declared case 12,587 admissible in relation to the alleged violation of "Articles 1(1), 2, 8, 21, 24 and 25 of the American Convention."

[5] Report on Merits No. 107/09, Case 12,587, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Group of Depositors of the *Banco de Montevideo*) of November 9, 2009 (file of attachments to the application, volume I, Appendix 1, folios 2 to 52). In this report, the Inter-American Commission concluded that the State had violated "Articles 8 and 25 of the American Convention read together with Article 1(1) thereof, to the detriment of the victims identified in th[is] report." In addition, the Inter-American Commission concluded that "the State is not responsible for violations of Articles 21 and 24 of the American Convention and for failure to comply with Article 2 thereof with regard to the group of persons represented by the petitioners."

[6] Article 34(3) of the Court's Rules of Procedure previously in force establishes:

79(2) of the current Rules of Procedure, if the alleged victims did not have a duly accredited legal representative, "the Commission, in its capacity as guarantor of the public interest under the American Convention, shall represent the alleged victims in the proceedings in order to ensure that they enjoy legal defense."

5. On September 2, 2010, Alicia Barbani Duarte and María del Huerto Breccia Farro, alleged victims and representatives of some of the alleged victims in this case (hereinafter "the representatives"), submitted to the Court their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") under Article 40 of the Court's Rules of Procedure. The representatives indicated that they endorsed "fully" the facts described in the application and asked the Court to declare the international responsibility of the State for the violation of Articles 8(1) (Right to a Fair Trial), 25(1) (Right to Judicial Protection), 21 (Right to Property) and 24 (Right to Equal Protection) of the American Convention, in relation to Article 1(1) thereof. Consequently, they requested that the Court order various measures of reparation.

6. On November 26, 2010, Uruguay submitted to the Court its brief answering the application brief and with observations on the pleadings and motions brief (hereinafter "answering brief"). In this brief, the State rejected the inclusion of the alleged violations of Articles 21 (Right to Property) and 24 (Right to Equal Protection) of the Convention, alleged by the representatives in their pleadings and motions brief, as part of the purpose of this case, because the Inter-American Commission had not included the said alleged violations in its application or in its Report on Merits. In addition, the State contested all the claims presented by the Commission and the facts on which they were founded, as well as the facts alleged by the representatives of the alleged victims; denied its international responsibility for the alleged violations of Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) thereof, to the detriment of the alleged victims identified in the application brief, and also, subsidiarily, its international responsibility for the alleged violations of Articles 21 and 24 of the American Convention in relation to Article 1(1) thereof, to the detriment of the alleged victims identified in the application brief. Regarding the reparations requested by the Commission and the representatives, the State asked the Court to reject all of them. On August 13, 2010, the State appointed Carlos Mata, as its Agent, and Daniel Artecona and Vivina Pérez Benech as Deputy Agents.

II
PROCEEDINGS BEFORE THE COURT

7. Following the presentation of the principal briefs (*supra* paras. 1, 5 and 6), as well as others forwarded by the parties, the President of the Court, in an Order dated January 31, 2011,[7] required that the testimony of seven witnesses, three of whom were proposed by the representatives and four by the State, be received by means of sworn statements made before a notary public (affidavits). The Commission, the representatives and the State were allowed to formulate questions to the said witnesses and expert witnesses before they gave their respective testimony and expert opinion, and also to submit observations on such testimony and opinions.[8] In addition, in the said

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> 3. If this information [the name and address of the representatives of the alleged victims] is not provided in the application, the Commission, in its capacity as guarantor of the public interest under the American Convention, shall represent the alleged victims in order to ensure that they enjoy legal defense.

[7] *Cf. Case of Barbani Duarte et al. v. Uruguay*. Order of the President of the Court of January 31, 2011.

[8] In application of the provisions of Article 50(5), and in keeping with the Order of the President of January 31, 2011 (*supra* note 7, third operative paragraph), on February 7, 2011, the Commission, the representatives and the State forwarded the written questions to be answered by the witnessed proposed by the representatives and the State, when giving their testimony before notary public. On the instructions of the President of the Court, some of the questions proposed by the parties were reformulated, because it was

Order, the President asked that the State present certain documentary evidence, pursuant to Article 58(b) of the Rules of Procedure. He also convened the parties to a public hearing to receive the testimony of two witnesses, one proposed by the representatives and the other by the State, and two expert witnesses, one proposed by the Inter-American Commission and the other by the State, as well as the observations and final oral arguments of the Inter-American Commission, the representatives and the State, respectively, on the merits and possible reparations and costs in the instant case.

8. On February 4, 2011, the representatives forwarded a piece of documentary evidence that allegedly related to supervening facts relevant to the case. On February 14, 2011, the State presented its observations concerning the alleged supervening evidence presented by the representatives, and also provided the documentary evidence requested by the President of the Court in his Order (*supra* para. 7), together with its observations on the latter. The Inter-American Commission did not submit observations on either the alleged supervening evidence or the helpful evidence that the President of the Court had asked the State to provide in his Order (*supra* para. 7).

9. On February 16, 2011, the representatives and the State forwarded the affidavits. On February 28, 2011, the State and the representatives submitted their observations on the statements forwarded by the other party. On that occasion, the representatives presented their observations on the helpful evidence presented by the State (*supra* paras. 7 and 8). In addition, on February 28, 2011, the Inter-American Commission indicated that it had no observations to make concerning the affidavits forwarded by the State and the representatives.

10. The public hearing was held on February 21 and 22, 2011, during the Court's ninetieth regular session which took place at the seat of the Court.[9] During this hearing the Court, based on the provisions of Article 58(a) of its Rules of Procedure, required the parties to present certain helpful documentation and explanations.

11. On March 8, 2011, the President of the Court requested the parties to submit certain helpful information, documentation and explanations, some of it related to the determination of the alleged victims.[10]

12. On March 23, 2011, the representatives and the State forwarded their final written arguments and the Inter-American Commission presented its final written observations on this case. In addition, on that occasion, the representatives and the

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considered that they induced answers, which is contrary to the provisions of Article 50(5) of the Court's Rules of Procedure; furthermore, questions relating to the personal opinion of the witnesses concerning certain facts were not admitted.

[9] The following persons appeared at the hearing: (a) for the Inter-American Commission: María Silvia Guillén, Commissioner, and Lilly Ching and Christina Cerna, legal advisers; (b) for the representatives: Alicia Barbani Duarte, María del Huerto Breccia and María Magdalena Curbelo Carrasco, and (c) for the State: Carlos Mata Prates, Agent; Daniel Artecona Gulla and Viviana Pérez Benech, deputy agents.

[10] The evidence requested included the following: to determine the alleged victims, the Inter-American Commission was asked to forward an individualized list of the persons it had identified as alleged victims in its application brief, and the Inter-American Commission and the representatives of the alleged victims were asked to forward an explanation or position in relation to the fact that in their brief with pleadings, motions and evidence, the representatives had added individuals as alleged victims, who were not included on the Inter-American Commission's list of alleged victims; the Inter-American Commission was asked to indicate whether all the alleged victims had filed petitions under the procedure established in article 31 of Law 17,613; the Commission, the State and the representatives were asked to indicate whether there were any alleged victims whose petition was rejected in the administrative proceedings or in the judicial proceedings under administrative law, even though they had offered evidence of their alleged instruction not to renew the certificates of deposit of the *Trade and Commerce Bank*, and they were asked to indicate their names and the documentation that supported this response; and the State was asked to forward to copy of the decisions adopted by the Board of Directors of the Central Bank of Uruguay in relation to all the alleged victims indicated in the application, as well as of any other relevant domestic judgment that had been delivered following the presentation of their answer to the application.

State responded to the questions raised by the judges during the public hearing (*supra* para. 10), as well as to the request for helpful evidence made by the President of the Court in notes of the Court's Secretariat dated March 8, 2011 (*supra* para. 11). The Commission did not present all the information requested by the President of the Court in the said note of the Secretariat. These briefs were forwarded to the parties, who were given the opportunity to present any observations they deemed pertinent on the information and attachments forwarded in response to the requests for helpful evidence by the Court and its President (*supra* paras. 10 and 11).

13. On April 25, 2011, the Commission submitted its observations on new information and documents sent by the other parties, some of which had been requested by the President of the Court as helpful evidence (*supra* paras. 10 and 11. The representatives forwarded their observations on April 25 and May 13, 2011, while the State submitted them on May 6 and 13, 2011. Together with their observations, the representatives and the State forwarded certain new information and documentation in relation to the alleged victims in this case and, consequently, the parties were allowed to present any observations they deemed pertinent. On June 15, 2011, the Commission, the representatives and the State presented their respective observations.

14. On September 23, 2011, the President of the Court asked the Inter-American Commission, the representatives and the State to submit specific information and documentation regarding the determination of the alleged victims, as well as in relation to the evidence provided on the latter. The representatives and the State presented the requested information on September 29, 2011. The Inter-American Commission responded to this request on October 7, 2011, but did not refer to all the information that the President of the Court had required.

III
COMPETENCE

15. The Inter-American Court is competent to hear this case, under Article 62(3) of the Convention, because Uruguay has been a State Party to the American Convention since April 19, 1985, and accepted the compulsory jurisdiction of the Court on the same date.

IV
EVIDENCE

16. Based on the provisions of Articles 46, 47 and 50 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment,[11] the Court will examine and assess the documentary probative elements forwarded by the parties on different procedural occasions, as well as the testimony and the expert opinions given by means of affidavits and at the public hearing before the Court, as well as the helpful evidence requested by the Court or its President (*supra* para. 12). To this end, the Court will abide by the principles of sound judicial discretion within the corresponding legal framework.[12]

A. Documentary, testimonial and expert evidence

[11] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, paras. 69-76; *Case of del Penal Miguel Castro Castro v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, paras. 182-185, and *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, Merits, reparations and costs.* Judgment of 2September 6, 2006. Series C No. 154, paras. 66-70.

[12] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, supra* note 11, para. 76; *Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs*. Judgment of August 31, 2011. Series C No. 232, para. 29, and *Case of López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of September 1, 2011. Series C No. 233, para. 15.

17. The Court received different documents submitted as evidence by the Inter-American Commission, the representatives and the State attached to their principal briefs (*supra* paras. 1, 5 and 6). In addition, the Court received the affidavits of the witnesses and expert witnesses listed in this section, on the topics mentioned below:

1) *Marcelo Arámbulo,* witness proposed by the representatives, who testified on the alleged responsibility of the Central Bank of Uruguay, its alleged failure to exercise comptrollership, and other alleged illegal acts that occurred as a result of the assistance provided to some of the institutions in trouble during the 2002 crisis;

2) *Victor Rossi*, witness proposed by the representatives, who testified on the actions of the Parliamentary Investigating Commission created during the 2002 crisis;

3) *Julio Herrera*, witness proposed by the representatives, who testified on the approval process of Law No. 17,613 and, in particular, on the intentions of the Legislature when adopting this law and its article 31;

4) *Fernando Barrán,* witness proposed by the State, who testified on the circumstances surrounding the 2002 financial crisis in Uruguay, the performance of the Central Bank of Uruguay, the measures adopted during this crisis, the consolidated global monitoring regime, and the operations of the *Banco de Montevideo S.A*. as a broker in providing clients with products of the Trade & Commerce Bank;

5) *Jorge Xavier*, witness proposed by the State, who testified on the situation of the *Banco de Montevideo S.A.* before and after its intervention and suspension of activities, as well as the way in which the said bank operated in providing its clients with products of the Trade & Commerce Bank in the Cayman Islands;

6) *Rosolina Trucillo*, witness proposed by the State, who testified on the situation of the *Banco de Montevideo S.A.* before and after its intervention and suspension of activities, as well as the way in which the said bank operated in providing its clients with the product of Trade & Commerce Bank in the Cayman Islands, and

7) *Julio de Brun,* witness proposed by the State, who testified on the actions of the Board of the Central Bank, when he presided this institution, with regard to the petitions filed under article 31 of Law No. 17,613.

18. As regards the evidence rendered at the public hearing, the Court received the testimony of the following persons:

1) *Julio Cardozo*, witness proposed by the representatives, who testified on the approval process of Law No. 17,613 and, in particular, on the intentions of the Legislature when adopting this law and its article 31;

2) *Augusto Durán Martínez*, witness proposed by the State, member of the Advisory Commission created by article 31 of Law No. 17,613, who testified on the functioning of this committee, the criteria adopted to determine the admissibility or rejection of petitions, and the administrative procedure regime to which the contestation of its decisions was subject under both the administrative and the jurisdictional channels;

3) *Nél ida Mabel Daniele*, expert witness proposed by the Inter-American Commission, specialist in human rights and administrative law, who testified on the guarantees

required in administrative proceedings, the guarantees that must be applied by *ad hoc* courts in administrative proceedings, and the guarantees required to determine the rights of the individual in light of the American Convention, and

4) *Daniel Hugo Martins*, expert witness proposed by the State, specialist in administrative law, who testified on the legal regime of the Central Bank of Uruguay, the Contentious-Administrative Tribunal, and the Judiciary: their institutional status and powers, the system and procedure to appeal their actions, and the administrative and jurisdictional proceedings regime.

B. Admission of the evidence

19. In its final written arguments, the State indicated that the evidence consisting of testimony and documents concerning the alleged violations of Articles 21 and 24 of the Convention argued by the representatives was "not pertinent," because said alleged violations were not part of the purpose of the instant case. Furthermore, when presenting the documentary evidence requested by the President of the Court in his Order of January 31, 2011 (*supra* paras. 7 and 8), which consisted in an expert appraisal prepared by Marcelo Arámbulo for a domestic criminal proceeding relating to the alleged responsibility of the authorities of the Central Bank of Uruguay for the 2002 banking crisis in Uruguay, the State indicated that "the facts to which said expert report refers [were] outside the purpose of these proceedings"; consequently, it should be considered that "the evidence offered [...] at the respective procedural opportunity was not pertinent." Similarly, with regard to certain documents submitted by the representatives together with their final written arguments, Uruguay indicated "the absolute inadmissibility and inappropriateness of the presentation of two criminal judgments concerning two former officials of the Central Bank of Uruguay," because "the specific acts that resulted in these criminal judgments [...] do not bear the slightest relation" to the facts of the instant case.

20. In this regard, the Court finds that, in order to rule on the State's observations, it must determine, in the respective prior considerations of this judgment (*infra* paras. 32 to 41), whether or not the facts that these documents and testimony seek to prove are part of the purpose of the case. To this end, the Court will determine the factual framework of this case and then rule on the admissibility of the said evidence.

B.1 Admission of the documentary evidence

21. In the instant case, as in others, the Court grants probative value to those documents presented opportunely by the parties which were not contested or opposed and the authenticity of which was not questioned.[13] The documents requested by the Court or its President as helpful evidence (*supra* para. 12) are incorporated into the body of evidence in application of the provisions of Article 58 of the Rules of Procedure.

22. The Court notes that any evidence submitted outside the appropriate procedural opportunities is not admissible, except when it falls within the exceptions established in Article 57(2) of the Rules of Procedure; namely, *force majeure,* serious impediment or if it is evidence that refers to an event which occurred after said the procedural opportunities. In the instant case, the Court admits *ex officio*, under Article 58 of the Rules of Procedure, the documents that were forwarded by the parties, outside the appropriate procedural opportunities, which were not contested or opposed and the

[13] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 1, para. 140; *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 32, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 18.

authenticity of which was not questioned, exclusively to the extent that it finds them pertinent and useful to determine the facts and their possible juridical consequences.

23. The Court observes that, in its briefs with observations of May 6 and June 15, 2011 (*supra* para. 13), the State submitted observations on the final written arguments of the Commission and the representatives, as well as additional arguments and evidence that the Court had not requested. In their observations of June 15, 2011, the representatives asked that Uruguay's observations on its final written arguments and those of the Commission be "rejected as inadmissible because no procedural opportunity had been established for their presentation." In this regard, the Court notes that the parties were asked to submit observations on the information and attachments forwarded by the parties "in response to the questions raised by the judges of the Court at the end of the public hearing [...] and by the President of the Court in a note of the Secretariat dated March 8, 2011." The parties were also advised that "[a]ny other additional argument w[ould] not be considered by the Court." Hence, the Court finds that said additional arguments submitted by the State in its briefs of May 6 and June 15, 2011, are not admissible and, accordingly, the Court will not take them into consideration in its decision.

24. In addition, the Court takes note that, on February 4, 2011, the representatives forwarded a decision of the United Nations Human Rights Committee adopted on October 19, 2010, in relation to an individual petition filed by Juan Peirano Basso, and asked that "it be added as evidence," because "it explained clearly some essential aspects that were relevant to prove the violation of [the] rights [of the alleged victims]." The representatives indicated that, since they had presented their pleadings and motions brief in September 2010, they "did not have access to this document at the time, which was only adopted in October that year." Regarding this documentary evidence, the State indicated that, "under the provisions of Article 57(2) of the Rules of Procedure of the Court […], it was inadmissible, because the document bears no relation to the purpose of these proceedings [since] the facts to which the said decision refers are unrelated to the purpose of these proceedings"; and that such "evidence is time-barred." In this regard, first, the Court reiterates what it indicated above, when it stated that it is for this Court to determine in the respective prior consideration (*infra* paras. 32 to 41) whether or not the facts related to this document are part of the factual framework of the case. Second, the Court finds that, since the said decision of the United Nations Human Rights Committee was adopted after the representatives had submitted their pleadings and motions brief, the aforementioned documentary evidence complies with the formal requirements for its admissibility as evidence concerning a supervening fact under Article 57(2) of the Rules of Procedure, and incorporates it into the body of evidence to be assessed according to the rules of sound judicial discretion and bearing in mind the objections raised by the State.

25. The representatives observed that the State's presentation of the decision of the Supreme Court of Justice deciding the remedy of cassation in the case of the representative and alleged victim María del Huerto Breccia "is time-barred, since it was submitted outside the time frame that the Court granted the State for this purpose." In this regard, the Court observes that this evidence was submitted by the State in response to a request by the President that it forward a copy of the domestic judgments that had been delivered following the presentation of its answering brief (*supra* para. 11). Although the State submitted this judgment seven days after the time limit to submit the helpful evidence had expired, this was because the judgment was handed down several days after the expiry of the time limit. In addition, the Court has verified that the said domestic judgment was delivered five months after the State submitted its answering brief on November 26, 2010 (*supra* para. 6). Based on the foregoing, the Court considers that the said documentary evidence complies with the formal requirements for its admissibility as evidence on a supervening fact, in accordance with

Article 57(2) of the Rules of Procedure, and incorporates it into the body of evidence to be assessed according to the rules of sound judicial discretion.

26. Following the public hearing, the Commission and the State forwarded written versions of the expert opinions provided by the expert witnesses summoned to testify in the instant case, which were distributed to the other parties. The Court admits these documents insofar as they refer to the purpose opportunely defined by the President of the Court for the respective expert opinions (*supra* para. 18), because it finds them useful for this case and they were not contested and their authenticity and veracity were not questioned.

B.2. Admission of the testimonial and expert evidence

27. With regard to the testimony of the witnesses and the opinions given in the public hearing and by sworn statements, the Court finds them pertinent only insofar as they are in keeping with the purpose defined by the President of the Court in the Order requiring them (*supra* paras. 7, 17 and 18). They will be assessed in the corresponding chapter, together with the other elements of the body of evidence and taking into account the observations made by the parties.[14]

28. The State, in its observations on the affidavits forwarded by the representatives, alleged that they "do not comply with the Court's requirements, because they are not freely made statements with subsequent questions, but rather direct responses to questions asked by [the representatives]." In this regard, the Court observes that, in a communication of January 14, 2011, the State consulted the Court about the form and method for preparing the affidavits requested by the President of the Court in the order of January 31, 2011 (*supra* para. 7). In this regard, in a note of the Court's Secretariat of January 14, 2011, the State was advised that the affidavits "should consist of the written transcript of the statement made freely by the deponent before a notary public on the purpose of the testimony […] defined by the President of the Court in the Order with the respective request" for an affidavit, together with the "answers to the questions formulated by the opposing party to the party that has offered [the witnesses]," in accordance with 50 of the Court's Rules of Procedure.

29. Regarding the State's observations concerning the structure of the affidavits presented by the representatives, the Court considers that there are no treaty-based or regulatory restrictions to their content according to Article 50 of the Court's Rules of Procedure, as long as they refer only to the purpose defined by the Court or its President and include the answers to the questions raised by the opposing party. Although the State was advised that the affidavits consisted of a statement made freely by the deponent, there is nothing that prevents this statement being made in the form of questions and answers with the party who proposes the deponent. In addition, the Court observes that, when forwarding the questions for the witnesses proposed by the State, the representatives also submitted questions addressed to the witnesses they themselves had proposed. With regard to such questions, the representatives were advised that they could formulate the questions addressed to their witnesses directly or that the questions could be included by the said witnesses in their statements, without the need for the Court's intervention. The State was informed of this. Therefore, the Court does not find the State's observation concerning the structure of the affidavits presented by the representatives admissible, and decides to admit them, while indicating that their probative value will be considered in the pertinent section of this judgment, in the context of the body of evidence presented and according to the rules of sound judicial discretion.

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[14] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of Contreras et al. v. El Salvador, supra* note 12, para. 38, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 24.

30. Lastly, the Court notes that the representatives asked that certain aspects of the testimony given by the witnesses Rosolina Trujillo and Julio de Brun "not be taken into account." However, the Court finds that the representatives' observations relate to the content of these two statements, and that they are not contesting their admissibility, but rather refer to matters of probative value.[15] Based on the foregoing, the Court admits these statements, although their probative value will be considered only in relation to the part that is precisely in keeping with the purpose duly defined by the President of the Court (*supra* para. 17), taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion. Thus, the representatives' observations will be considered, as appropriate, when examining the merits of the dispute.

V
PRIOR CONSIDERATIONS

31. In this chapter, the Court will formulate some considerations regarding the facts that are the purpose of this case, the determination of the alleged victims, and how it will deal with the State's arguments on the "failure to exhaust domestic remedies."

A. Regarding the facts that are the subject of this case

Arguments of the parties

32. In its application brief in this case, the Commission included the presentation of the facts, as established in Article 34(1) of the Court's previous Rules of Procedure applicable to this case with regard to "the presentation of the case before the Court," as established in Article 79(2) of the Court's current Rules of Procedure (*supra* para. 4).

33. In the chapter on "Facts" in the pleadings and motions brief, the representatives indicated that they "fully agree with what the Inter-American Commission has described in paragraphs 28 to 95 of its application brief with regard to the facts, and the conclusions it draws from them," and also stated that, "in order not to create unnecessary duplication, [they] would merely outline [their] point of view on the facts, emphasizing the elements [they] deemed most relevant for the Court to consider, and to justify [their] subsequent petition; otherwise, referring to what the Commission had described so well."

34. In its answering brief and its brief with final arguments, the State affirmed that the representatives of the alleged victims were trying to introduce elements that "do not form part of the facts invoked by [the Commission] as the purpose of the […] application," and this "was not admissible in light of Articles 44 and 61 of the Convention […] and Articles 35(3) and 40(2)(a) of the Court's Rules of Procedure." The State indicated that "by expanding the purpose of the proceedings, the alleged victims are trying to reincorporate" aspects relating to the alleged violations of Articles 21 (Right to Property)[16] and 24 (Right to Equal Protection)[17] of the Convention, "which had already been excluded by the Commission in its Report on Merits."

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[15] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 43; *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010. Series C No. 218, para. 86, and *Case of Abrill Alosilla et al. v. Peru. Merits, reparations and costs*. Judgment of March 4, 2011. Series C No. 223, para. 47

[16] In the "Purpose" of the pleadings and motions brief, the representatives asked the Court to declare that Uruguay had violated Article 21 of the Convention, in relation to Article 1(1) thereof, "owing to its absence of due diligence and its omission of protection in relation to the private fraud committed by the Peirano Group." Also, in the brief's legal considerations, they indicated that, by acting "in to discriminatory manner

35. Regarding the State's arguments (*supra* para. 34), the representatives of the alleged victims indicated in their brief with final arguments that Uruguay was interpreting Article 61 of the American Convention and Article 40 of the Court's Rules of Procedure erroneously. They stated that, although they had to respect the factual framework established by the Commission, "in the petitioner's opinion, there was nothing to prevent that said factual framework resulting in the violation of other rights from those considered by the [Inter-American Commission]." The representatives maintained that "they had not introduce[d] a different case to the one submitted by the [Inter-American Commission], but rather […] had merely considered that the facts described in the matter gave rise to the violation of more rights that those understood by the [Inter-American Commission]."

Considerations of the Court

36. To decide this point, the Court bases itself on its consistent case law. This Court has established that the Inter-American Commission's application brief constitutes the factual framework for the proceedings before the Court, so that it is not admissible to argue new facts that differ from those set out in the said brief, without prejudice to describing those that explain, clarify or reject the facts mentioned in the application, or those related to the claims of the plaintiff.[18] The exception to this principle concerns facts that are classified as supervening; information on such facts may be sent to the Court at any stage of the proceedings before the delivery of the judgment.[19] Furthermore, the alleged victims and their representatives may invoke the violation of rights other than those included in the application provided they relate to the facts contained in that document, inasmuch as the alleged victims are the holders of all the rights embodied in the Convention.[20] In brief, it is for the Court to decide, in each case, on the admissibility of arguments related to the factual framework in order to safeguard the procedural balance of the parties.[21]

37. In application of these criteria, the Court has verified that the factual framework of this case includes the administrative procedures before the Central Bank of Uruguay that decided the petitions of the alleged victims in relation to article 31 of the Law to "Strengthen the Financial System" approved on December 21, 2002, as well as the

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within the framework of the Advisory Commission with regard to the depositors of the *Banco de Montevideo* who had TCB certificates of deposit," it had violated "the principle of due judicial guarantees and of equality; and, as to direct result of this, also the right to property." In addition, regarding the latter, in their final written arguments, they indicated that "the result of the incorrect application of criteria by the [Advisory Commission] was that [their] savings were not returned [… which] constitutes the violation of the use and enjoyment of [their] private property."

17 In the "Purpose" of the pleadings and motions brief, the representatives asked the Court to declare that Uruguay had violated Article 24 of the Convention, in relation to Article 1(1) thereof, by "applying in an arbitrary and discriminatory manner certain rules of law during the proceedings before the Advisory Commission, that resulted in the inclusion in the benefits of Law 17,513 of only 22 depositors, as well as assisting certain offshore banking operations in the Uruguayan financial market in to discriminatory manner."

18 *Cf. Case of Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153; *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011 Series C No. 224, para. 32; *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2011. Series C No. 227, para. 42, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 52.

19 *Cf. Case of Five Pensioners v. Peru*, *supra* note 18, para. 154; *Case of Torres Millacura et al. v. Argentina*, *supra* note 18, para. 52, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 27.

20 *Case of Five Pensioners v. Peru*, *supra* note 18, para. 155; *Case of Torres Millacura et al. v. Argentina*, *supra* note 18, para. 52, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 27.

21 *Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 134, para. 58; *Case of Vera Vera et al. v. Ecuador*, *supra* note 18, para. 32, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 18, para. 52

appeals for annulment of these decisions of the Central Bank before the Contentious-Administrative Tribunal, in application of the said norm.[22]

38. The Court has verified that, in their pleadings and motions brief, the representatives included facts that are not limited to explaining or clarifying the facts set out by the Inter-American Commission in the application, but rather they introduced facts that differ from those described in the latter.

39. Consequently, the following facts indicated by the representatives with regard to the conduct of the Central Bank of Uruguay, do not fall within the factual framework of this case: all the facts relating to the obligation to control and supervise financial institutions in Uruguay; all the facts relating to the "economic management of Uruguay in the face of the crisis," and to "the private fraud committed by the Peirano group"; as well as regarding the measures taken by the Central Bank in relation to the economic and financial difficulties of the *Banco Comercial* during the said banking crisis of 2002.

40. The representatives did not present any explanation to justify the inclusion of those facts in their pleadings and motions brief. To the contrary they asserted that their description of the facts fell within the factual framework set out by the Inter-American Commission (*supra* para. 33). The Court has verified that, in the proceedings before the Inter-American Commission, some of the alleged facts described in the preceding paragraph were the subject of a ruling by the Commission in its Report on Merits No. 107/09, when examining the alleged violations of Articles 21 and 24 of the Convention. However, when determining the facts, the Inter-American Commission found that the above-mentioned facts alleged by the representatives had not been proved and concluded that the State had not violated the said articles of the Convention. The Commission did not include the said facts alleged by the representatives in the application it submitted to the Court.

41. Based on the foregoing considerations, the Court will not rule on the alleged facts described by the representatives that do not form part of the factual framework of this case (*supra* paras. 37 to 39) and, consequently, will not rule on the allegations of violations to the American Convention related to these facts. As indicated, the Court will rule on or will take into account those facts that explain, clarify or reject the facts presented by the Inter-American Commission. The last hypothesis includes the facts introduced by the State to reject the alleged violation of the right to judicial protection

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[22] In the chapter entitled "Purpose of the application," the Inter-American Commission asked the Court to conclude and declare that:

> a. The Uruguayan State is responsible for its failure to provide the [alleged] victims with an impartial hearing for their claims by either the Advisory Commission or the Contentious-Administrative Tribunal, and thus violated the right to a fair trial set forth in Article 8(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the [alleged] victims; and
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> b. The State failed to provide to simple and prompt recourse for an examination of all the issues of fact and of law related to the dispute before it, and thereby violated the right to judicial protection set forth in Article 25(1), read in conjunction with Article 1(1) of the American Convention, to the detriment of the [alleged] victims.

Similarly, in the introduction to the application, the Commission indicated that it submitted this case against Uruguay:

> for its international responsibility arising from the failure to provide to group of depositors of the *Banco de Montevideo* […] with an impartial hearing for their claims, either by the Advisory Commission created under Law 17,613, the "Financial System Reform Law" […] or by the Contentious-Administrative Tribunal, concerning the transfer of their funds from the *Banco de Montevideo* […] to the Trade and Commerce Bank […] without consulting them; and the failure to provide the victims with to simple and prompt recourse to examine all the issues of fact and of law concerning the dispute before it" (para. 1).

because it failed to "provide a simple and prompt remedy to examine all the factual and legal issues related to the dispute before it." In this regard, Uruguay presented factual and legal elements concerning the appeal for annulment before the Contentious-Administrative Tribunal, as well as regarding "[other] judicial remedies […] that exist under Uruguayan law." Finally, with regard to the evidence proposed by the representatives to support the alleged facts that do not form part of the factual framework of this case, the Court takes into account the State's observations as regards their lack of pertinence or inadmissibility (*supra* paras. 19 and 22) and decides to admit them in the understanding that it will only take them into account to the extent that they refer to the purpose of this case, bearing in mind the factual framework determined in this chapter.

B. Regarding the determination of the alleged victims

42. The Court recalls that, in its consistent case law since 2007,[23] it has established that the alleged victims must be named in the application, and must correspond to the determination made in the Inter-American Commission's report under Article 50 of the Convention. In addition, according to Article 34(1) of the Court's previous Rules of Procedure applicable to this case (*supra* para. 4), it corresponds to the Commission rather than the Court to identify the alleged victims precisely and at the opportune procedural moment in a case before the Court.[24] As a general rule, legal certainty requires that all the alleged victims are duly identified in both briefs and it is not possible to add new alleged victims in the application.[25]

43. The Court also notes that the instant case does not comply with any of the assumptions under Article 35(2) of the Court's Rules of Procedure that could justify the identification of alleged victims following the application or the submission of the case.

44. Under the provisions of Article 34(1) of the Court's previous Rules of Procedure, the Inter-American Commission included the names of the alleged victims in this case in the application. The Commission indicated that they are "a group of depositors of the *Banco de Montevideo*" and, concerning their individualization, it specified that "[d]uring the processing of the case before the Commission, the account holders of 708 accounts were identified, of a group of more than 1,400 depositors of the *Banco de Montevideo*." In the first footnote of the application, the Commission listed the names of the alleged victims, "identified by savings accounts."

45. In the pleadings and motions brief, the representatives of the alleged victims argued the international responsibility of Uruguay to their detriment "and also to the detriment of the group of depositors victims that they represent," indicating that they were presenting the list of the 419 "depositors" they represented.

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[23] Since the *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2007. Series C No. 168, paras. 65 to 68, and the *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, paras. 224 to 225. The Court adopted these judgments during the same session. See also, *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011 Series C No. 221, para. 32, and *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, paras. 79 to 80*; Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 110; *Case of Chitay Nech et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 25, 2010. Series C No. 212, para. 44, and *Case of Vera Vera et al. v. Ecuador*, supra note 18, para. 28.

[24] *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2006. Series C. No. 148, para. 98; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 23, para. 79, and *Case of Vera Vera et al. v. Ecuador, supra* note 18, para. 28.

[25] *Cf. Case of Radilla Pacheco v. Mexico*, *supra* note 23, para. 110; *Case of the Dos Erres Massacre v. Guatemala*, *supra* note 24, para. 20, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 23, para. 44.

46. Regarding the determination of the alleged victims, on the instructions of the President of the Court, the Inter-American Commission was asked to forward an individualized list of the persons it had indicated as alleged victims in its application, because it had only presented them by bank accounts in the application brief (*supra* para. 44) and the number and complete name of the individuals related to some of those accounts was unclear. During the public hearing, the Inter-American Commission explained that some of the accounts "are held jointly […] or there is more than one person on the account" and, in its brief with final arguments, it individualized "the 717 persons who compose the group of [alleged] victims in the case, whose names are contained on the original list included in both the Report on Merits and in the application." The Commission presented an attachment to its final written arguments with the "[l]ist of the [alleged] victims in the case identified individually."

47. The Court has also verified that, in the pleadings and motions brief, the representatives had included 44 people as alleged victims who were not on the list of alleged victims of the Inter-American Commission. In this regard, on the instruction of the President of the Court, the representatives and the Inter-American Commission were asked to submit an explanation or opinion in this regard (*supra* para. 12 to 13). The Inter-American Commission did not respond to this request. Nevertheless, subsequently, when submitting observations on information forwarded by the State, the Inter-American Commission indicated that, "regarding the State's observation that there were individuals included as victims in the brief with pleadings and motions and arguments, […] who had not been included on the list in the application," in the petitions relating to the reparations, it had requested a measure[26] by which "those persons who are part of said group and who have not necessarily been identified as victims in this case" would benefit. For their part, the representatives explained, in their brief with final arguments that "44 people were added as alleged victims, because [the representatives] had not only been able to identify them but also locate them after the [Inter-American] Commission had submitted its application."

48. When presenting its observations in this regard, the State affirmed that the people added by the representatives, who were not on the Inter-American Commission's lists (*supra* para. 46), "are not […] only 44, but rather 61," and presented a list of 66 people. In addition, the State alleged that, under the provisions of Articles 61(1) of the Convention and 35(1) of the Court's Rules of Procedure, these people "are not part of the alleged victims whose case has been submitted to the consideration of the Court in the instant proceedings."

49. Based on the body of evidence, and taking into account the information and clarifications requested of the parties regarding the determination of the alleged victims (*supra* paras. 11 and 14), the Court has verified that the alleged victims indicated in the Report on Merits and in the application consist of 718 persons, even though, the Inter-American Commission had indicated that the application referred to "717 individuals." Moreover, based on the evidence in the case file, as well as the State's observations on alleged victims, the Court has verified that the representatives added 56 people[27] in

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[26] In this regard, the Commission asked that the State be ordered to establish "a suitable and effective mechanism […] so that the persons named as victims in the instant case and the other members of the group of more than 1,400 depositors have some recourse and the opportunity to prove whether they meet the criteria that the applicable law establishes for them to qualify to receive the compensation provided for in Law 17,613."

[27] The 56 individuals added by the representatives are: (1) Abdala Silvera or Silveira, Helena Teresa; (2) Acosta Martínez, Walter Camilo; (3 Ariano, Cono; (4) Azambuya Moreira, Gulnara Urbana; (5) Barbieri, María Teresa; (6) Bauer Ferraro, Federico; (7) Bauer Ferraro, Ileana; (8) Bolioli, Carlos Omar; (9) Braceras Lussich, Adriana; (10) Buczek, Mario; (11) Cancela, Diana; (12) Suárez, Walter; (13) Curti Casagrande, Adrián Enrique; (14) Del Castillo, Lila; (15) Delfino, Rose Mary; (16) Demicheri Jalife, Estela; (17) Fernández, Guillermo; (18) Ferraro López, Ileana; (19) Ganger, Juan; (20) Ganz, Noel; (21) Goldberg, Judith; (22) Guevara de la Serna, Juan Martin; (23) Jasina, Jessica; (24) Larcebeau, María Mónica; (25) Tejería, Estela;

their pleadings and motions brief who were not included on the Inter-American Commission's list. Therefore, in application of the Court's constant jurisprudence as well as Article 34(1) of the Court's previous Rules of the Procedure, the said 56 people will not be considered alleged victims in this case.

50. Based on the foregoing, the Court has established that 718 persons will be considered as alleged victims in this case, who were indicated as such by the Inter-American Commission in the application and who coincide with those indicated in the Report referred to in Article 50 of the American Convention.

51. The Court has noted that, with regard to 22 alleged victims included in the application, the Commission indicated their names incorrectly. This has led to situations such as the State understanding that the representatives had added certain individuals as alleged victims when, in fact, they are the same people indicated by the Commission with their names appearing incorrectly.[28] The Court will take into account the evidence

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(26) Lorenzo Otero, Álvaro Ricardo; (27) Marinelli, Indolfo Hector; (28) Mauri, Jessica Alba; (29) Mere, Juan José; (30) Neves Aldaya, Miriam Nelly; (31) Notero, Álvaro; (32) Ois Castro, Martin Olimar; (33) Olivier, Mariela Marisa; (34) Padilla, Washington Omar; (35) Pereira Martínez, Eduardo; (36) Pereyra de Pugliese, Elsa Raquel; (37) Pérez Habiaga, Ricardo Gabriel; (38) Piazza Forno, Susana; (39) Pumar Bravo, Fabián; (40) Raiberti, Mónica Marta; (41) Ramis, Norberto Francisco; (42) Rivas Ferraro, Gonzalo; (43) Rivoir Bein, Zulma Mary; (44) Rodríguez Suarez, Miguel Ángel; (45) Rovira Legnazzi, Zapican; (46) Schmithals Scharnweber, Erika; (47) Schmithals Scharnweber, Irene; (48) Señorano Siemens, José María; (49) Grudzien, Elizabeth; (50) Siccardi, Osiris; (51) Skliro, María; (52) Taño Feijoo, Javier; (53) Triver, Fabián; (54) Ventos, Pedro; (55) Vera, Adriana, and (56) Zas, Ramón Leonel. In addition, the Court verified that, of the 66 individuals who Uruguay indicated were not included by the Inter-American Commission, 12 of them were named by the latter as alleged victims in its application and subsequently individualized in the list added by the Inter-American Commission together with its final written observations. These alleged victims are as follows: (1) Fortunata Carreño, (2) Anna Ganger, (3) José Enrique González Amaro, (4) María Lerma Tejería, (5) Stella Mazzoni, (6) Carlos Mezquita, (7) Micaela Modesta Núñez, (8) Jorge Humberto Sena, (9) Teresa Caligaris, (10) Pedro Federico Ventós Coll, (11) Esmeralda Verlini and (12) María Teresa Verlini. Also, regarding the alleged victim, Carlos Mezquita, the Court has verified that the way in which he was indicated by the Inter-American Commission, as "Mezquita, Revello," in fact included two people: "Carlos Mezquita" and "Mónica Revello," according to Central Bank file No. 2003/0470 provided by the State. The Court considers that both these persons were indicated as alleged victims by the Inter-American Commission. *Cf.* Carlos Mezquita and Mónica Revello (File No. 2003/0470) (file of attachments to the State's final written arguments, volume I, attachment 3, folios 30101 to 30104).

[28] The Court has verified that the following alleged victims indicated by the Inter-American Commission and the representatives, with some differences in the names, are the same person: (1) "Acuña, Amalia" and "Antuña, Amalia", who the representatives and the Inter-American Commission have confirmed are the same person and who appears in the Central Bank's decision as "Amalia Antuña"; (2) "Amo, D'Alessandro José" and "Amo, José Luis", who appears in the Central Bank file as "José Luis Amo D'Alessandro" and in the respective decisions as "José Amo"; (3) "Barreiro, Gustavo" and "Barreiro, Elvis Gustavo", who the representatives and the Inter-American Commission have confirmed is the same person and who appears in the Central Bank's decision as "Elvis Barreiro"; (3) "González Amaro, José" and "González Amaro, Enrique", who appears in the Central Bank file as "José Enrique González Amaro" and in the respective decision as "José González Amaro"; (4) "Modesta, Nuñez Micaela" and "Núñez, Micaela Modesta", who appears in the Central Bank's decision as "Micaela Modesta Nuñez"; (5) "Caligares, Teresa" and "Silka Caligaris, Teresa", who appears in the Central Bank's decision as "Teresa Caligaris"; (6) "Berlini, Esmeralda" and "Verlini, Esmeralda", who the Court understands is the same person and who appears in the Central Bank's decision as "Esmeralda Verlini"; (7) "Berlini, María Teresa" and "Verlini, María Teresa", who the Court understands is the same person and who appears in the Central Bank's decision as "María Teresa Verlini"; (8) "Casavieja, Luis Pablo" and "Casavieja, Pablo", who appears in the Central Bank file as "Luis Pablo Casavieja" and in the respective decision as "Luis Casavieja"; (9) "Díaz Cabana, Eduardo" and "Diaz Cavanna, Eduardo", who appears in the respective Central Bank's decision as "Eduardo Díaz Cabana"; (10) "Denissow, Ana María" and "Dennisow, Ana María", who appears in the Central Bank's decision as "Ana María Denissow"; (11) "Everett, Oscar" and "Evert, Oscar", who appears in the Central Bank's decision as "Oscar Everett Villamil"; (11) "Kahyaian, Alberto" and "Kahiaian, Minas Alberto", whose Central Bank file reveals that his complete name is "Minas Alberto Kahiaian Kevorkian", and who appears in the respective Central Bank's decision as "Alberto Kahiaian"; (12) "Karamanukian, José" and "Karamanukian, Diego José", who appears in the Central Bank's decision as "José Karamanukian"; (13) "Luzardo, Rosa" and "Luzardo Safi, María Rosa", who appears in the Central Bank's decision as "María Rosa Luzardo"; (14) "Mendoza, Wilfredo Luis" and "Mendoza, Luis Wilfredo", who the Court understands is the same person; (15) "Rodríguez, Fernanda" and "Rodríguez, M. Fernanda", who appears in the Central Bank's decision as "María Fernanda Rodríguez"; (16) "Roelsgaard, Niels Nelson" and "Roelsgaard, Niels Piter", who appears in the Central Bank's decision as "Niels Peter Roelsgaard Papke"; (17) "Scotti Ponce de León, Andrés" and "Scotti, André", who appears in the Central Bank's decision as "Andrés Scotti"; (18) "Schermam, Dora" and "Sherman, Dora", who the Court understands is the same person, and who appears in the table provided by

provided to the case file to include the correct names of these alleged victims. Furthermore, it will take into account the State's observations regarding the list of alleged victims and the names included by the representatives in their pleadings and motions brief.

C. Regarding the alleged "failure to exhaust domestic remedies"

52. Given that the State referred to the "failure to exhaust domestic remedies" in the chapter entitled "The relevant factual framework for these proceedings" of its answering brief, the Court finds it appropriate to establish previously that, since the State did not clearly file a preliminary objection in this regard, its arguments on this matter will be analyzed by the Court when determining the facts of this case and when ruling on the alleged violations of Articles 8 and 25 of the American Convention.

53. In its answering brief, the State did not clearly file a preliminary objection. However, in the chapter on "The relevant factual framework for these proceedings," Uruguay alleged, *inter alia*, that "[a]ll those who submitted petitions to the Central Bank of Uruguay, and whose petition to be considered a depositor of the *Banco de Montevideo S.A.*, was denied, were legally and procedurally empowered to contest the decisions that prejudiced them and to appeal for their annulment before the Contentious-Administrative Tribunal." In this regard, the State indicated that "only 379 [alleged victims] filed legal actions […] against the Central Bank of Uruguay or the Uruguayan State […, and this] constitutes a failure to exhaust domestic remedies, which is a requirement to appear before the Inter-American Court of Human Rights, according to the provisions of Article 46(a) of the Convention." Furthermore, it indicated that "of those who filed judicial actions, only 172 did so against the *Banco de Montevideo S.A.* […] and, at present, eight of them had obtained a favorable judgment. In addition, it indicated that "only 38 [alleged victims] filed an appeal for annulment of the negative decision under art. 31 of Law No. 17,613 before the Contentious-Administrative Tribunal; hence, [the State] does not understand the grounds on which the other 'alleged victims' of the 708 parties hereto are arguing before this Court a supposed prejudice owing to the absence of procedural guarantees in the proceedings before the Contentious-Administrative Tribunal."

54. It should be underlined that, in its conclusions in the answering brief, the State first asked the Court to rule on the factual framework of this case (*supra* para. 6) and then referred to "the material aspects to be decided in these proceedings," indicating that it "contested all the claims submitted by the Commission in the application it submitted to the Court and the facts on which they were based, as well as the claims and facts alleged by the alleged victims in their brief with pleadings, motions and evidence." In this regard, the State asserted that Articles 8(1), 25(1), 24 and 21 of the American Convention had not been violated and, in the pleadings in its answering brief, it asked the Court to reject the claims concerning reparations. In its conclusions, the State did not refer to any preliminary objection on which it had requested the Court to rule.

55. In this regard, since the State did not clearly file a preliminary objection, when its answering brief was sent to the Inter-American Commission and the representatives, they were not granted the 30-day period established in Article 42(4) of the Court's Rules of Procedure to present observations on preliminary objections. If Uruguay had

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the State on petitions before the Central Bank under article 31 as "Schermann, Dora"; (19) "Soria, Luis Alfredo" and "Soria, Alfredo", who appears in the Central Bank's decision as "Luis Soria"; (20) "Supervielle, Mercedes" and "Supervielle, María Mercedes", who appears in the Central Bank's decision as "María Mercedes Supervielle Casaravilla"; (21) "Valiño, Ricardo" and "Valdiño, Ricardo", who the Court understands is the same person, and (22) "Ventos Coll, Pedro" and "Ventos, Federico Pedro", whose Central Bank file reveals that his complete name is "Pedro Federico Ventós Coll."

considered that the Court should have understood that it had filed a preliminary objection and that this period for observations should be granted, it should have advised the Court when it forwarded its answer, but it did not. It was only recently, during the public hearing in this case, that the State asserted that it had filed a preliminary objection in the answering brief and that, "although it had not included a special chapter entitled 'preliminary objection,' it had mentioned that many of the individuals represented by the Commission lacked legitimacy, because they had not exhausted the domestic remedies."

56. According to this Court's Rules of Procedure, in its answering brief the State should file its preliminary objections, as well as refer to the alleged facts and the claims concerning the merits and reparations made by the Inter-American Commission and the representatives of the alleged victims. Since preliminary objections are not filed in a previous brief, separate from the one where the State must answer the merits of the case, the State must file its preliminary objections clearly, so that they are not mistaken for its arguments to contest the facts and claims.

57. Furthermore, the Court notes that, in its answering brief, the State indicated, fundamentally, that the final negative decision issued in the administrative procedure before the Central Bank of Uruguay "constituted an administrative act that could be contested," and regarding which it was possible to file an appeal for annulment before the Contentious-Administrative Tribunal, but that only 38 alleged victims filed that judicial remedy. In this regard, the Commission and the representatives argued that the remedy of annulment was neither appropriate nor effective to resolve the claims of the alleged victims and that, by failing to provide a remedy "that was able to examine all the factual and legal issues related to the dispute," the State had violated Article 25 of the Convention.

58. The Court finds that, in the circumstances of the instant case, the analysis of the domestic remedies available and filed is directly related to the merits of the alleged violations of Articles 8 and 25 of the Convention. In cases in which States have filed the objection of failure to exhaust domestic remedies and the analysis of such remedies "is closely related to the merits,"[29] the Court's case law has been consistent in analyzing the arguments relating to the preliminary objection together with the other issues concerning the merits.[30] Consequently, the Court finds that, in the instant case, even if Uruguay had, in its answering brief, clearly filed a preliminary objection, it would have been necessary to analyze the corresponding arguments of the parties in connection with the merits of the case, in order to determine whether Articles 8 and 25 of the American Convention had been violated.

59. Based on the above, the Court establishes that the information and arguments presented by the State concerning the remedies available in the domestic jurisdiction, their use by the alleged victims in this case, and their effectiveness, will be considered when determining the facts of the instant case and when ruling on the alleged violations of Articles 8 and 25 of the American Convention.

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[29] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Fairén Garbi and Solís Corrales v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 2, para. 90; and *Case of Castañeda Gutman v. Mexico. Preliminary objections, Merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 34.

[30] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 96; *Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits*. Judgment of May 6, 2008. Series C No. 179, para. 45, and *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 35.

RIGHTS TO JUDICIAL GUARANTEES,[31] JUDICIAL PROTECTION,[32] AND EQUAL PROTECTION,[33] IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS [34]

60. Taking into account the alleged violations and the factual framework of this case (*supra* paras. 37 to 41), in this chapter, the Court will: (A) determine the relevant proven facts for understanding and settling the dispute; (B) analyze the judicial guarantees in the procedure before the administrative body (the Board of the Central Bank) responsible for deciding the petitions under article 31 of Law No. 17,613 and in the judicial proceedings before the Contentious-Administrative Tribunal which decided the corresponding appeals for annulment, and (C) analyze the alleged lack of judicial protection owing to the alleged ineffectiveness of the remedy before the said Administrative Tribunal and to the alleged inexistence of "a simple and prompt remedy to examine the factual and legal issues related to the dispute before it." Regarding the arguments concerning violations to guarantees of due process, the Court will examine together in the said section (B), those applicable to both the Central Bank and the Contentious-Administrative Tribunal, and will examine separately, in section (C), the alleged violations in the proceedings before the Contentious-Administrative Tribunal.

A. Proven facts in relation to the alleged violations of the guarantees of due process and judicial protection

61. Before determining the relevant facts to decide this case, the Court finds it pertinent to state that a group of clients of a private bank in Uruguay allege that they are victims of violations of due process and judicial protection. This is in the context of a remedy created by the State to deal with their claims concerning their right to be recognized as depositors of the said financial institution at the time of its dissolution, even though their funds do not appear registered in an account or deposit with this bank.

A.1. Context of the banking crisis in Uruguay

62. Towards the end of 2001, the Uruguayan banking sector was perceived to be reasonably healthy because, with some exceptions it was adequately capitalized, it had an acceptable level of liquidity, and it did not have a significant exposure to the public

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[31] Article 8(1) of the American Convention (Right to a Fair Trial) stipulates that:

1. Every person has the right to a hearing, with due guarantees and within to reasonable time, by to competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of to criminal nature made against him or for the determination of his rights and obligations of to civil, labor, fiscal, or any other nature.

[32] Article 25(1) of the American Convention (Right to Judicial Protection) establishes 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.

[33] Article 24 of the Convention (Right to Equal Protection) stipulates that:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

[34] El Article 1(1) of the American Convention (Obligation to Respect Rights) provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

sector.[35] At that time, the Uruguayan banking sector was highly "dollarized" with a significant presence of non-resident depositors.[36] At December 2001, the total deposits in the banking system equaled 83% of Uruguay's gross domestic product in 2001; of these, 90% were foreign currency deposits. Of these deposits in foreign currency, 47% were held by non-residents.[37] At the end of 2001, deposits of more than one billion United States dollars entered the Uruguayan banking system from Argentina.[38]

63. In addition, in December 2001, as a result of capital controls imposed by the Argentine Government and deposit freezes on the bank accounts of Argentina's nationals (known as the "*corralito*"), Argentines began withdrawing their deposits from Uruguay.[39] Subsequently, during the first half of 2002, there was a crisis of confidence in the Uruguayan banking system.[40] Beginning in February 2002, a prolonged withdrawal of deposits began owing to the fear that the events that preceded and followed the Argentine default at the end of 2001 would be repeated.[41] By July 2002, a cumulative 37.6% of the total deposits had been withdrawn and the Uruguayan Central Bank lost 79% of its international reserves.[42] By the end of 2002 the Uruguayan banking system had lost approximately 40% of its total deposits,[43] the level of non–resident deposits had decreased by 65%, and the Government controlled approximately 70% of all deposits in the banking system due to bank interventions.

64. As a result of the banking crisis in Uruguay, three financial institutions had liquidity problems and were finally suspended and dissolved: *Banco de Montevideo*, *Banco La Caja Obrera* and *Banco Comercial*, the latter being one of the country's largest private banks. [44]

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[35] *Cf.* World Bank. "An Analysis of the 2002 Uruguayan Banking Crisis." Policy research working paper. No. WPS 3780, December 2005 (file of attachments to the application, volume I, attachment 1, folio 1995).

[36] *Cf.* World Bank. "An Analysis of the 2002 Uruguayan Banking Crisis," *supra* note 35 (folio 1996).

[37] *Cf.* World Bank. "An Analysis of the 2002 Uruguayan Banking Crisis," *supra* note 35 (folio 1996). According to witness Julio de Brun, the percentage of depositors in foreign currency "at that time [was] over 80%" and, between December 2001 and July 2002, this fell by 40%. Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1094). In their affidavits, the witnesses Jorge Xavier and Rosolina Trucillo, also agreed when indicating that, at that time, to capital flight occurred in which "more than 40% of the deposits in the system" were lost. Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1122) and affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folios 1135). Also in his affidavit, the witness Fernando Barrán referred to "damages of almost 50% […] of the deposits in the system." Affidavit of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1169).

[38] *Cf.* Inter-American Development Bank. "Uruguay. Banking System Sector Strengthening Program (UR-0150). Loan proposal (file of attachments to the application, volume I, attachment 2, folio 2035).

[39] *Cf.* World Bank. "An Analysis of the 2002 Uruguayan Banking Crisis," *supra* note 35, (file of attachments to the application, volume I, attachment 1, folios 1997 to 1999) and of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1169).

[40] *Cf.* Affidavit of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1169) and affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folios 1122 and 1123).

[41] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1094).

[42] *Cf.* World Bank. "An Analysis of the 2002 Uruguayan Banking Crisis," *supra* note 35 (folio 1998). See also: Affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1135).

[43] *Cf.* Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1122); Affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1135); Affidavit of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1169), and intervention of Senator Alberto Couriel in the sessions of December 20 and 21, 2002, of the Senate (file of attachments to the answer, volume II, attachment 20, folio 13233).

[44] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1099) and World Bank. "An Analysis of the 2002 Uruguayan Banking Crisis," *supra* note 35 (folios 1997 to 1999).

A.2. Facts related to the *Banco de Montevideo,* the procedure under article 31 of Law No. 17,613, and the alleged victims in this case

A.2.a) Specific situation of the *Banco de Montevideo*

65. The *Banco de Montevideo* was a private Uruguayan financial intermediation institution, part of the Velox Group or Peirano Group.[45] Other members of the group were the *Banco Velox S.A.* in Argentina, the *Banco Alemán del Paraguay* and the Trade & Commerce Bank (hereinafter also "TCB") in the Cayman Islands.[46] Also, at the end of 2001, the *Banco de Montevideo* acquired 99.83% of the shares of the *Banco La Caja Obrera.*[47]

66. Up until December 2001, the *Banco de Montevideo* was in a solid economic and financial position and, in appearance, was profitable and growing.[48] Meanwhile, the Trade & Commerce Bank was a bank with a license to conduct banking activities granted by the Cayman Islands, represented in Uruguay by *TCB Mandatos S.A*.[49]

67. The assets of the *Banco de Montevideo* had "considerable exposure in Argentina, so that the conversion to *pesos* and the restriction on the export of capital imposed in that country seriously affected its liquidity and solvency.[50] In addition, as of January, 2002, the situation of the *Banco de Montevideo* was exacerbated by the increasing financial support that this financial institution was providing to the Trade & Commerce Bank, which was also suffering from a severe outflow of deposits as an indirect result of the "*corralito*" in Argentina.[51] This exposure of the *Banco de Montevideo* in relation to the Trade & Commerce Bank did not entail a violation of the general legal or regulatory framework, but was "undesirable from a prudential point of view," because it was excessive in relation to the net worth of the *Banco de Montevideo*. Consequently, the Central Bank of Uruguay requested an "intensive supervision" of the *Banco de Montevideo* in February 2002.[52] From that time on, the Central Bank issued a series of

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[45] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1097); writ of indictment "Peirano Basso, Jorge *et al.*" of October 18, 2006, presented by the Public Prosecution Service and the Prosecutor to the Seventh Criminal Judge of First Instance (file of attachments to the application, volume I, attachment 4, folio 2072); file No. 2002/0267 before the Central Bank of Uruguay entitled "*Banco de Montevideo* – Increase of the risk in companies connected with the Velox Group." (file of attachments to the answer, volume I, attachment 7, folios 12445 and 12446), and brochure on the Velox Group (file of appendices to the application, volume I, Appendix 3(A), folios 210 to 234).

[46] *Cf.* Table of companies connected with the Peirano Group, contained in the file entitled "*Banco de Montevideo* – Increase of the risk in companies connected with the Velox Group" (file of attachments to the answer, volume I, attachment 7, folio 12445) and writ of indictment "Peirano Basso, Jorge *et al.*", *supra* note 45 (folio 2072).

[47] *Cf.* Opinion of expert witness Marcelo Arámbulo Letouquet in the case filed in relation to the authorities of the Central Bank of Uruguay before the Eighth Criminal Court (merits file, volume III, folios 940 to 946); affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1097), and Decision D/350/2002 of the Board of Directors of the Central Bank of Uruguay of June 21, 2002 (file of attachments to the application, volume I, attachment 8, folio 2158)

[48] *Cf.* Affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1133)

[49] *Cf.* Affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1129), and certificate of the Department of Inspection of Banks of and Trust Companies of and for the Cayman Islands of May 6, 1993 (file of attachments to the answer, volume XIII, attachment 31, folios 19683 19687).

[50] Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1097).

[51] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1097); Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1116), and Affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1133).

[52] *Cf.* Decision P/16/2002 of the President of the Central Bank of Uruguay of February 25, 2002 (file of attachments to the application, volume I, attachment 3, folio 2070); Decision D/322/2002 of the Board of Directors of the Central Bank of Uruguay of June 9, 2002 (file of attachments to the application, volume I,

specific instructions to the *Banco de Montevideo* to improve its economic and financial situation.[53] Due to the failure of the *Banco de Montevideo* to comply with the requirements of the Central Bank, the consequent increase in the risk assumed by the *Banco de Montevideo* in relation to related enterprises, the deterioration in the finances and net worth of the *Banco de Montevideo*,[54] as well as the situation of the Uruguayan financial system in general,[55] on June 9, 2002 the Central Bank appointed an overseer in the *Banco de Montevideo*, who would have "maximum authority to veto any type of operation" with any physical or legal person connected to the said bank.[56] The same day, the Central Bank also appointed an overseer for the *Banco La Caja Obrera.* [57]

68. On June 21, 2002, the Central Bank decided to intervene the *Banco de Montevideo,* substituting all its statutory authorities, but without closing down its activities.[58] In the same resolution, the Central Bank extended this decision to the *Banco La Caja Obrera.*[59] On July 30, 2002, the Central Bank decided to suspend the activities of the *Banco de Montevideo* and the *Banco La Caja Obrera* totally for 60 days,[60] a period that was extended until the end of December 2002.[61] Finally, on December 31, 2002, the Central Bank ordered the dissolution and liquidation of the *Banco de Montevideo*, due to its negative net worth.[62] In the same decision, pursuant to the provisions of article 24 of Law 17,613, the "Bank Asset Recovery Fund of the *Banco de Montevideo"* was established, called the "*Banco de Montevideo* – Bank Asset Recovery Fund." This Fund would be administered by the Central Bank, and would comprise "all the rights, obligations, bonds, guarantees and even liquid assets of the dissolved entity," which were transferred to the said Fund "automatically as of the date of [this] decision."[63]

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attachment 7, folio 2151); Affidavit of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1171); and Affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1130).

53 *Cf.* Decision D/199/2002 of the Board of Directors of the Central Bank of Uruguay of April 25, 2002 (file of attachments to the application, volume I, attachment 6, folios 2148 and 2149).

54 *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1097).

55 *Cf.* Affidavit of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1173); affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folios 1135 and 1136), and affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1122).

56 *Cf.* Decision D/322/2002 of the Board of Directors of the Central Bank of Uruguay, *supra* note 52 (folio 2152).

57 *Cf.* Decision D/322/2002 of the Board of Directors of the Central Bank of Uruguay, *supra* note 52 (folio 2153).

58 *Cf.* Decision D/350/2002 of the Board of Directors of the Central Bank of Uruguay of June 21, 2002 (file of attachments to the application, volume I, attachment 8, folio 2158). According to the testimony of the witness Jorge Xavier, who was named the overseer, "the first time the authorities of the BM failed to comply with to veto that had been imposed" was verified on June 11, 2002, regarding to transfer of funds to pay for to Banco Velox operation. *Cf.* Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1115).

59 *Cf.* Decision D/350/2002 of the Board of Directors of the Central Bank of Uruguay, *supra* note 58 (folio 2158).

60 *Cf.* Decision D/454/2002 of the Board of Directors of the Central Bank of Uruguay of July 30, 2002 (file of attachments to the application, volume I, attachment 9, folio 2160).

61 *Cf.* Decisions of the Board of Directors of the Central Bank of Uruguay: D/656/2002 of September 24, 2002, D/746/2002 of October 24, 2002, D/817/2002 of November 14, 2002, D/862/2002 of November 29, 2002, D/884/2002 of December 13, 2002, and D/931/2002 of December 27, 2002, in which the suspension of activities of the *Banco de Montevideo* was extended successively (file of attachments to the answer, volume I, attachment 6, folios 12410 to 12415).

62 *Cf.* Decision D/933/2002 of the Board of Directors of the Central Bank of Uruguay of December 31, 2002 (file of attachments to the application, volume I, attachment 10, folios 2163 and 2164).

63 *Cf.* Decision D/933/2002 of the Board of Directors of the Central Bank of Uruguay of December 31, 2002, second and third operative paragraphs (file of attachments to the application, volume I, attachment 10, folio 2164).

A.2.b) Operations in the *Banco de Montevideo*

69. The *Banco de Montevideo* offered its clients, through its Private Banking Department, different investment instruments issued by both public and private entities.[64] These instruments included shares in Trade & Commerce Bank's certificates of deposit[65] which it had been offering "at least since 1996."[66] In 2001, these shares in certificates of deposit, together with other similar products from other international entities of the Velox Group, represented "no more than a quarter" of all the investments managed by the *Banco de Montevideo's* Private Banking [Department].[67] In particular, with regard to the alleged victims in this case, three methods were used to place funds in the Trade & Commerce Bank: (i) through *TCB Mandatos* (*supra* para. 65); (ii) by the client opening an account directly with the Trade & Commerce Bank, through the *Banco de Montevideo*; a situation in which the *Banco de Montevideo* acted as broker and charged a fee for the transfer made in the client's name, and (iii) by the *Banco de Montevideo* setting up a certificate of deposit in the Trade & Commerce Bank, of which it later offered shares to its clients, while the shares in the global certificate of deposit issued by the Trade & Commerce Bank remained in the custody of the *Banco de Montevideo.* In this last case, the shares were sold by the *Banco de Montevideo* for more than the value of the global deposit that the said bank held in the Trade & Commerce Bank.[68]

70. The sale of shares in certificates of deposit set up by the *Banco de Montevideo* in the Trade & Commerce Bank, together with the deposits made by the *Banco de Montevideo* in the Trade & Commerce Bank, were operations within the legal framework in force at the time because, even though these institutions were related entities, they did not have directors in common.[69] The sale of certificates of deposit or shares in them,

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[64] *Cf.* Affidavit of the witness Rosolina Trucillo of February 16, 2011 (merits file, volume III, folio 1134) and Affidavit of the witness Jorge Xavier of February 16, 2011 (merits file, volume III, folio 1116).

[65] *Cf.* Affidavit of the witness Rosolina Trucillo of February 16, 2011 (merits file, volume III, folio 1134); Affidavit of the witness Jorge Xavier of February 16, 2011 (merits file, volume III, folio 1117), and report of January 28, 2003, the Private Banking Department of the *Banco de Montevideo* (file of attachments to the pleadings and motions brief, volume I, attachment 6, folio 12122).

[66] *Cf.* Affidavit of the witness Jorge Xavier of February 16, 2011 (merits file, volume III, folio 1116). According to a letter addressed by the *Banco de Montevideo* to the Central Bank on March 13, 2002, the shares in the deposit certificates of the Trade & Commerce Bank had been offered to clients of the *Banco de Montevideo* "since 1997." *Cf.* Communication of March 13, 2002, of the *Banco de Montevideo* to the Central Bank contained in file No. 2002/0267 before the Central Bank of Uruguay entitled "*Banco de Montevideo* – Increase of the risk of companies linked to the Velox Group" (file of attachments to the answer, volume I, attachment 7, folio 12504).

[67] *Cf.* Affidavit of the witness Jorge Xavier of February 16, 2011 (merits file, volume III, folio 1117). In addition, witness Jorge Xavier explained that the Private Banking Department "focuses on clients who manage to certain amount of investments that are intended to diversify their savings placing them in assets that offer to better return and that are abroad as to way of accessing better benefits for their resources[; in addition t]here are fiscal and confidentiality reasons that justify these decisions, since investments in assets abroad are not subject to the country's tax laws." *Cf.* Affidavit of the witness Jorge Xavier of February 16, 2011 (merits file, volume III, folios 1116 and 1117).

[68] *Cf.* Proceedings entitled "Da Pena Marcela Adriana *v. Banco de Montevideo* in liquidation *et al.* – damages." File No. 2-22368/2006. Judgment No. 21 of the First Court of First Instance for insolvency proceedings of November 24, 2008, (file of attachments to the answer, volume IV, attachment 27, folios 14458 and 14459).

[69] According to witness Fernando Barrán, the position of the Superintendence of Financial Intermediation Institutions, prior to the events that occurred in 2002, was that these placements in to related company did not constitute violations, because they did not have senior personnel in common and, according to the witness, this was reflected in the regulatory framework in force in 2002, "which did not prohibit banking institutions from holding active positions with related banking or non-banking institutions." *Cf.* Affidavit of Fernando Barran dated February 16, 2011 (merits file, volume III, folio 1177). In addition, witness Rosolina Trucillo testified that the granting of credits among related companies was not illegal and indicated "[i]n fact the credit that can be given to related companies is regulated (risk ceilings)," while what is illegal is granting credits among companies with directors in common. *Cf.* Affidavit of Rosolina Trucillo dated February 16, 2011 (merits

issued by other financial institutions including the Central Bank, was and is a usual practice of financial institutions in Uruguay.[70]

71. Moreover, the certificates of deposit or the shares in them were often offered by the *Banco de Montevideo* based on the condition that the client could withdraw all his funds at any time before the date of maturity.[71] However, in an e-mail sent by the General Manager of the *Banco de Montevideo* on February 25, 2002, the bank's officials were instructed to renew the deposits and investments automatically (including the Trade & Commerce Bank certificates of deposit), unless the client communicated directly with the *Banco de Montevideo* indicating the contrary.[72] In addition, also by e-mail, the early buyback of deposits or investments with later dates of maturity was prohibited, "without exception," because of the situation that the Uruguayan financial system was experiencing.[73]

72. By paying off the Trade & Commerce Bank's obligations with those who had acquired the said shares in deposits, the *Banco de Montevideo* was granting this institution a credit; consequently, as of June 20, 2002, while it was being overseen (*supra* para. 67), the *Banco de Montevideo* ceased lending financial resources to the Trade & Commerce Bank on the date of maturity of the certificates of deposit issued by that institution.[74]

73. On July 5, 2002, a decision of the High Court of the Cayman Islands ordered the provisional liquidation of the Trade & Commerce Bank, and this became final in August 2002.[75] At the time of the liquidation, the *Banco de Montevideo* managed and had custody of US$97,000,000.00 (ninety-seven million United States dollars) in credits corresponding to clients of the *Banco de Montevideo* with regard to the Trade & Commerce Bank.[76]

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file, volume III, folio 1137). See also affidavit of Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1118)

[70] *Cf.* Affidavit of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1177); affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1134).

[71] *Cf., inter alia,* the files before the Central Bank of the following persons: Raúl Montero (File No. 2003/0469) (file of attachments to the application, volume XVI, attachment 12 (J), folio 11785); Clara Jasinski (File No. 2003/0637) (file of attachments to the application, volume III, attachment 12 (B), folios 3482 to 3484), and Marta Cázeres (File No. 2003/0598) (file of attachments to the application, volume IV, attachment 12 (B), folios 3820 to 3821).

[72] *Cf.* E-mail of February 25, 2002, from Marcelo Guadalupe, General Manager of *Banco de Montevideo* and e-mail of March 5, 2002, from Javier Carlevaro, of the Branches Department of *Banco de Montevideo* (file of attachments to the application, volume VIII, attachment 12, folios 6680 and 6681). In addition, in an e-mail of April 29, 2002, regarding the renewal of TCB certificates of deposit, it was required that they should be documented "without fail, the day they matured" and it was "reiterate[d] that the deposits of clients who have not contacted the Bank must be renewed […] automatically." *Cf.* e-mail of April 29, 2002, on the renewals documentation of the Trade & Commerce Bank (file of attachments to the application, volume VIII, attachment 12, folios 6682 to 6687).

[73] *Cf.* E-mail of February 25, 2002, from Marcelo Guadalupe, General Manager of *Banco de Montevideo* (file of attachments to the application, volume VIII, attachment 12, folio 6680). In this regard, to subsequent e-mail indicated that the prohibition of early buy-back was in force, even when "the practice of the market and of our bank in particular has been to inform the client that, if he needed liquidity at any moment, the buy-back option existed; however this is under normal market conditions, which do not operate today." E-mail of Javier Carlevaro with no recorded date, in response to Marcelo Guadalupe's e-mail (file of attachments to the application, volume VIII, attachment 12, folio 6683).

[74] *Cf.* Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1119).

[75] *Cf.* Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folios 1120 and 1123).

[76] *Cf.* Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1123).

74. Before the intervention of the *Banco de Montevideo*, there had been no reports of complaints by clients owing to products of the Trade & Commerce Bank or the Velox Investment Company, another company related to the Peirano or Velox Group.[77]

A.2.c) Law No. 17,613 to strengthen the financial system

75. In parallel to the specific measures adopted with regard to the *Banco de Montevideo* and other financial institutions, the State adopted legal measures to deal with the systemic crisis experienced by the Uruguayan financial system.[78] Among these measures, the State enacted Law No. 17,613 "to strengthen the financial system" (hereinafter "Law 17,613"),[79] which was adopted by the Legislature on December 21, 2002. This law established rules for protecting and strengthening the financial system.[80] Law 17,613 granted powers to the Central Bank, as liquidator of the financial intermediation entities, to safeguard the rights of the depositors in these entities, protecting their savings, for reasons of general interest.[81]

76. Thus, Chapter III of this law established a series of norms applicable to the liquidation of the financial intermediation institutions whose activities were suspended at the date the law was promulgated,[82] in order to "reduce the impact on society of the simple application of the current rules," and to rescue as many assets as possible belonging to the suspended financial institutions so as to defend the rights of the creditors.[83] In order "to protect savings, based on reasons of general interest," article 27 of the law authorized the Executive to allocate part of the sums owed to it by the liquidated institutions to offer more favorable settlements to certain categories of depositors, or to depositors of up to certain amounts, from the non-financial private sector; to this end, priority would be given to "depositors" who held checking accounts, savings accounts and fixed term deposits in the entities affected.[84] In this regard, the State, using part of the resources that corresponded to it in the said institutions, would provide a complement to the said depositors, up to the first US$100,000.00 (one hundred thousand United States dollars) or its equivalent in another currency.[85] This

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[77] *Cf.* Affidavit of the witness Rosolina Trucillo dated February 16, 2011 (merits file, volume III, folio 1134). According to witness Jorge Xavier, he began to receive complaints from clients concerning the possibility of recovering their investments in TCB, once the provisional liquidation of TCB became known. *Cf.* Affidavit of Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1120).

[78] *Cf.* Affidavit of the witness Fernando Barrán dated February 16, 2011 (merits file, volume III, folio 1180).

[79] *Cf.* Law No. 17,613 on "Strengthening the financial system" (file of attachments to the application, volume I, attachment 11, folios 2177 to 2190).

[80] *Cf.* Testimony of the witness Julio César Cardozo Ferreira before the Inter-American Court during the public hearing in this case.

[81] Law No. 17,613 on "Strengthening the financial system" (file of attachments to the application, volume I, attachment 11, folio 2180).

[82] These institutions were the *Banco de Montevideo*, *Banco de la Caja Obrera,* the *Banco Comercial* and the *Banco de Crédito*. However, when the law was enacted, the latter was being bought out, so that the suspension would probably have been lifted. Taking this possibility into account, article 37 was added to Law 17,613 specifically referring to this financial entity. *Cf.* Record of the Senate sessions on December 20 and 21, 2002 (file of attachments to the answer, volume II, attachment 20, folio 13226).

[83] *Cf.* Article 22 of Law 17,613 on "Strengthening the financial system" (file of attachments to the application, volume I, attachment 11, folios 2182 and 2183).

[84] *Cf.* Article 27 of Law 17,613 on "Strengthening the financial system" (file of attachments to the application, volume I, attachment 11, folio 2183).

[85] *Cf.* Article 27 of Law 17,613 on "Strengthening the financial system" (file of attachments to the application, volume I, attachment 11, folio 2183). Witness Julio de Brun explained that this law authorized the Executive Branch to set up to sort of "deposit insurance to *posteriori"* which allowed the State to use its credits with the Banks of *Montevideo, Caja Obrera* and *Comercial* to ensure for those "with term deposits in the said institutions, to total recovery of their credits, up to a maximum of one hundred thousand dollars or its equivalent in national currency." Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1099).

meant that the said depositors of the liquidated institutions had the right to receive from the State a complement to their proportional share of the respective Recovery Fund, up to (between the proportional share and that of the State) a maximum nominal amount of US$100,000.00 (one hundred thousand United States dollars) or its equivalent in another currency.[86]

77. Additionally, due to measures taken by a group of clients of the *Banco de Montevideo*, who were not registered as depositors in the accounts ledgers of the said bank because they owned shares in other financial institutions,[87] article 31 was added, which was not in the original bill sent by the Executive to the Legislature.[88] Article 31 stipulated the following:[89]

> Article 31. The Central Bank of Uruguay is hereby authorized to grant depositors of the *Banco de Montevideo* and the *Banco La Caja Obrera*, whose deposits have been transferred to other institutions without their consent, the same rights enjoyed by other depositors of these Banks.
>
> To that end, and by a well-founded resolution, the Central Bank of Uruguay shall establish a commission that shall function for an extendible period of 60 (sixty) days.

78. One of the main purposes of Law 17,613 was to authorize the Executive to establish a new banking institution with the "healthy" assets of the suspended financial entities: *Banco de Montevideo*, *Banco La Caja Obrera* and *Banco Comercial.*[90] The rights of the depositors in those entities was exercised through a certificate of deposit in the "healthy" institution to be created with the "good" assets of the said banks;[91] while the remaining assets of those banks remained in the so-called "Bank Asset Recovery Fund," a mechanism similar to a trust fund.[92] Article 24 of Law 17,613 ordered the creation of the Bank Asset Recovery Funds, based on all the rights and obligations of the financial entities whose activities were suspended at the time of the suspension of their activities.[93] The creditors of the Bank Asset Recovery Funds were the State, certain depositors in the respective banks, and other creditors of different categories, such as "the holders of negotiable obligations of the *Banco de Montevideo* and the *Banco*

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[86] Opinion 04/525 of the Notarial Legal Department of the Central Bank of Uruguay of June 15, 2004 (file of attachments to the application, volume VII, attachment 12, folios 6225 and 6226).

[87] *Cf.* Judgment No. 138 of the Contentious-Administrative Tribunal of May 8, 2008, in proceedings entitled "Dendrinos, Daniel *v.* Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folios 14368 to 14374), and Judgment No. 315 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Gigli, María *v.* Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15192 to 15199).

[88] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folios 1099 and 1100); Intervention of Senator Gallinal in the session of the Treasury Chamber of the Senate of May 29, 2003, during the discussion of the matter of the "depositors of the *Banco de Montevideo*" and the visit of the Central Bank authorities (file of attachments to the application, volume XVI, attachment 12, folios 12056 and 12057); and Testimony of the witness Julio César Cardozo Ferreira before the Inter-American Court during the public hearing in this case.

[89] Article 31 of Law 17,613 on "Strengthening the financial system" (file of attachments to the application, volume I, attachment 11, folio 2184).

[90] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folios 1098 and 1099) and Intervention of Senator Alberto Brause in the Senate's sessions of December 20 and 21, 2002 (file of attachments to the answer, volume II, attachment 20, folios 13226 and 13228).

[91] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1099); Intervention of Senator Gallinal in the Senate's sessions of December 20 and 21, 2002 (file of attachments to the answer, volume II, attachment 20, folio 13235), and Intervention of Representative Amorín Batlle in the session of December 26, 2002, of the Chamber of Representatives (file of attachments to the answer, volume II, attachment 20, folio 13223).

[92] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1099).

[93] Article 24 of Law 17,613 on "Strengthening the financial system" (file of attachments to the application, volume I, attachment 11, folio 2183).

Comercial," all of which would be shareholders in the corresponding Recovery Fund in proportion or prorated to their credits against the respective bank.[94]

*A.2.*d) Creation and operation of the Advisory Commission of the Board of the Central Bank

79. Pursuant to article 31 of Law 17,613 (*supra* para. 77), the Board of the Central Bank of Uruguay created the "Advisory Commission – art. 31, Law No. 17,613"[95] (hereinafter "the Advisory Commission") by Resolution D/37/2003 of January 17, 2003. According to this resolution, the said commission must "advise the Board of the Central Bank of Uruguay, insofar as the legislator granted the latter the authority to determine the status as depositor of the *Banco de Montevideo S.A* (in liquidation) and *Banco La Caja Obrera S.A.* (in liquidation), in the conditions established in the first paragraph of [article 31 of Law 17,613]."[96] The purpose of the Advisory Commission was to make recommendations, "but its decisions were not binding for the Board [of the Central Bank], which could diverge from them for well-founded reasons."[97]

80. The Advisory Commission was composed of three jurists,[98] with technical profiles, "acknowledged experience in both the public and private sphere, and extensive knowledge and experience in public and banking law."[99] The Advisory Commission used banking law as the basic law, and administrative law for procedural purposes.[100]

81. The Advisory Commission's mandate, which was initially for 60 consecutive days, was extended numerous times, so that the Commission was in operation from February 2003 until at least October 2004.[101] According to the Central Bank's file on the Advisory Commission, these extensions were required because the number of petitions received

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[94] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1099) and Intervention of Representative Amorín Batlle in the session of December 26, 2002, of the Chamber of Representatives (file of attachments to the answer, volume II, attachment 20, folio 13222). Senator Gallinal also indicated this, only when referring to the third category of creditors, the possible holders of negotiable obligations, he limited this to the "holders of Eurobonds" or "those who hold Bonds." *Cf.* Intervention of Senator Francisco Gallinal in the Senate sessions of December 20 and 21, 2002 (file of attachments to the answer, volume II, attachment 20, folio 13235).

[95] *Cf.* Decision D/37/2003 of the Board of the Central Bank of January 17, 2003 (file of attachments to the answer, volume XIII, attachment 30, folios 19545 and 19546).

[96] *Cf.* Decision D/37/2003 of the Board of the Central Bank, first considerandum, supra note 95 (folio 19545).

[97] *Cf.* Decision D/37/2003 of the Board of the Central Bank, second considerandum, *supra* note 95 (folio 19545); and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[98] *Cf.* Decision D/37/2003 of the Board of the Central Bank, first operative paragraph, *supra* note 95 (folio 19546).

[99] Brief with answers of the members of the Advisory Commission before the 19th Criminal Judge of First Instance in proceedings entitled "BARBANI, Alicia *et al. v.* DURAN MARTINEZ, Augusto *et al.* Complaint." File No. 2-59680/04 (file of attachments to the answer, volume II, attachment 21, folio 13238), and Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[100] *Cf.* Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[101] No irrefutable evidence was submitted regarding the date on which the Advisory Commission terminated its function. According to the resolutions that extended its mandate, the Advisory Commission worked until October 2004. However, there are elements in the file that would appear to indicate that the Advisory Commission could have continued working after October 2004. *Cf.* Decisions D/175/2003, D/361/2003, D/490/2003, D/660/2003, D/782/2003, D/1605/2003, D/255/2004, D/721/2004, D/954/2004, and D/1355/2004 of March 26, June 4, July 31, October 1, November 27 and December 30, 2003; and of February 26, April 29, June 30 and August 26, 2004, in the Central Bank of Uruguay's file on the Commission's constitution (file of attachments to the answer, volume XIII, attachment 30, folios 19582 to 19625). In to brief dated September 6, 2006, presented by Uruguay to the Inter-American Commission on Human Rights, it was affirmed that the Board of the Central Bank adopted the decisions "between December 30, 2003, and December 28, 2005" (brief with appendices to the application, volume III, Appendix 3 (C), folio 890).

by this body "far exceeded the projections, which, at the start, were estimated to be around 300 cases, [and also because of the] complex examination required for each file."[102] The Advisory Commission had a "special mission-based" nature, so that, when its mandated ended, it dissolved.[103]

A.2.e) Procedure under article 31 of Law No. 17,613

82. Those who were considered holders of placements in the *Banco de Montevideo* (in liquidation), whose funds had been transferred to other institutions without their consent, had until January 31, 2003, to make the pertinent claim before the Central Bank of Uruguay under article 31 of Law 17,613.[104]

83. According to the resolution creating the Advisory Commission, "the general principles for administrative proceedings set out in the Rules of Administrative Procedure of the Central Bank of Uruguay would be used to substantiate the claims before the Commission," and "the evidence would be assessed in accordance with the provisions of the General Procedural Code."[105]

84. The procedure was initiated by the submission of a written petition to the Central Bank, to which the interested party or parties had to attach all the documentation supporting their claim as "an essential requirement for their own interest."[106] Subsequently, based on the administration's *ex officio* investigative powers,[107] the Advisory Commission sent the file to the *Banco de Montevideo* (in liquidation) or the *Banco La Caja Obrera* (in liquidation), so that they could add any documentary records and information on the client and his operations with the respective bank.[108] Then, the file was sent to the Financial Institutions Superintendence, where a technical official examined it and produced a written assessment of whether the petition complied with the requirements of article 31.[109] Following the report, the file was forwarded to the Advisory Commission for its consideration, and the Commission prepared its decision, which required the favorable vote of the absolute majority of its members, after which this was forwarded to the Board of the Central Bank, for consideration.[110]

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[102] *Cf.* The Central Bank of Uruguay's file on the Commission's constitution (file of attachments to the answer, volume XIII, attachment 30, folios 19580 and 19588).

[103] *Cf.* Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[104] *Cf.* Decision D/933/2002 of the Board of the Central Bank of Uruguay of December 31, 2002, twenty-seventh operative paragraph, subparagraph 7), section (c) (file of attachments to the application, volume I, attachment 10, folio 2175).

[105] Decision D/37/2003 of the Board of the Central Bank, third and fourth operative paragraphs, *supra* note 95 (folio 19546).

[106] Decision D/37/2003 of the Board of the Central Bank, third operative paragraph, *supra* note 95 (folio 19546) and brief with answers of the members of the Advisory Commission ante the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13241).

[107] Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[108] *Cf.* Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13241); fourth operative paragraph of Decision D/37/2003 of the Board of the Central Bank, *supra* note 95 (folio 19546); Testimony of the witness Augusto Durán Martínez during the public hearing in the instant case, and communication of the members of the Advisory Commission addressed to the President of the Central Bank of Uruguay of March 24, 2003 (file of attachments to the answer, volume XIII, attachment 30, folio 19581).

[109] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13241) and Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[110] *Cf.* Decision D/37/2003 of the Board of the Central Bank, sixth operative paragraph, *supra* note 95 (folio 19546); Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of

85. If the Advisory Commission's opinion was favorable to the petitioner, a draft decision was drawn up receiving the petition and this draft was forwarded to the Central Bank Board so that it could adopt the respective decision.[111] If the Advisory Commission's opinion concluded that the petitioner could not be considered a beneficiary of article 31 of Law 17,613, a draft decision was prepared rejecting the petition and, in accordance with article 79 of the Central Bank's Rules of Procedure in force at the time,[112] the draft resolution was made available to the petitioner for 10 days, so that he could formulate observations. If the petitioner had not objected to the draft decision when the time limit expired, a second draft decision was prepared and forwarded to the Central Bank Board so that it could adopt the final decision. To the contrary, if the petitioner contested the unfavorable draft decision or made observations on it, the Advisory Commission re-examined the case and sent the Central Bank Board a further draft decision so that the latter could adopt the decision it deemed appropriate.[113]

86. According to article 74 of the Central Bank's Rules of Administrative Procedure in force at the time,[114] any type of evidence was admissible and the petitioners had different opportunities to present evidence, or the Advisory Commission could require it *ex officio.*[115] One of these opportunities was precisely when formulating observations on the draft decision, when the petitioner could offer any type of evidence, which was

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First Instance, *supra* note 99 (folio 13242), and Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[111] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13242) and Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[112] Article 79 of the Rules of Administrative Procedure of the Central Bank of Uruguay, in force when the Advisory Commission was operating, established the following:

> ARTICLE 79 (Examination by the interested parties). Once the preliminary investigation has been completed, or its time limit has expired and when, from the available information, it is possible that to decision may be made that is contrary to the petition that was filed, or it has been contested, before issuing to decision, it must be made available for examination for ten days to the person or persons to whom the proceedings refer.
> When examining the decision, the interested party may request that supplementary evidence be received, and this must be provided within five days and as established in the preceding articles.
> When there is more than one party to examine the decision, the time limit shall be common to all of them and shall be calculated from the day following the last notification.
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> Source: Article 75 of Decree No. 500/91.
>
> Administrative Rules of Procedure of the Central Bank of Uruguay, issued by RES D/624/94 of November 15, 1994, and published in Official Gazette No. 25,399 of November 16, 1999 (file of appendixes to the Commission's application, volume III, appendix 3, folio 1345)

[113] Brief with additional answers of the members of the Advisory Commission (file of attachments to the answer, volume II, attachment 21, folio 13242); testimony of Augusto Durán Martínez during the public hearing.

[114] Article 74 of the Central Bank Rules of Administrative Procedure of the Central Bank of Uruguay, applied to the facts of the instant case, established the following:

> ARTICLE 74: (Means of evidence) The relevant facts for the decision in to procedure may be authenticated by any means of evidence that it not prohibited by law.
> The evidence shall be assessed in accordance with the rules contained in the General Procedural Code.
>
> Source: Article 70 of Decree No. 500/91.
>
> Administrative Rules of Procedure of the Central Bank of Uruguay, issued by RES D/624/94 of November 15, 1994, and published in Official Gazette No. 25,399 of November 16, 1999 (file of appendixes to the Commission's application, volume III, appendix 3, folio 1343)

[115] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13242) and testimony of the witness Augusto Durán Martínez before the Inter-American, *supra* note 99 (folio 13238); affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1103), and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

admitted, unless it was considered inadmissible because it was inappropriate, irrelevant or against the law.[116]

87. If testimonial evidence was offered, the petitioner was responsible for ensuring the appearance of the witness with the list of questions to be asked.[117] To receive the evidence of witnesses, "testimonial hearings" were held with the presence of the witness or witnesses, the petitioner, his lawyer (if he had one) and one or more members of the Advisory Commission.[118] In addition, to ensure the truth of the testimony, witnesses had to be sworn in.[119] The members of the Advisory Commission took turns to attend these hearings of witnesses owing to "the numerous hearings that had to be held"[120] – around 70.[121] The evidence provided in the instant case reveals that very few of the alleged

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[116] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folios 13239 and 13245); testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case. Article 75 of the Rules of Administrative Procedure of the Central Bank of Uruguay, applied to the facts of the instant case, established the following:

> ARTICLE 75: (Probative measures). The Central Bank of Uruguay may order *ex officio* the probative measures that it deems necessary to clarify the facts about which it must issue a decision.
> If a party has made a request, it must order the opening of a prudential period of no more than 10 days for gathering the evidence, so that all measures that legally admissible and relevant to the matter being processed may be taken.
> The decision of the Central Bank of Uruguay that rejects the processing of a piece of evidence because it considers it inadmissible, inadequate or irrelevant shall be duly founded, shall be issued by the head of the office of the Bank where the proceedings is being investigated and may be subject to the corresponding administrative remedies.
> [...]
>
> Source: Article 71 of Decree No. 500/91.
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> Administrative Rules of Procedure of the Central Bank of Uruguay, issued by RES D/624/94 of November 15, 1994, and published in Official Gazette No. 25,399 of November 16, 1999 (file of appendixes to the Commission's application, volume III, appendix 3, folio 1344)

[117] Article 76 of the Central Bank Rules of Administrative Procedure of the Central Bank of Uruguay, applied to the facts of the instant case, established the following:

> ARTICLE 76: (Testimonial evidence). The person proposing testimonial evidence shall be responsible for the appearance of the witnesses in the place, on the date and at the time established by the Central Bank of Uruguay. If the witness does not appear without a justified reason, his testimony shall be excluded.
> The Central Bank of Uruguay, notwithstanding the list of questions submitted by the party, may question witnesses freely and, in case of contradictory statements, may order confrontations, even with the interested parties.
> The parties or their defense lawyers may contest leading, biased or trick questions and, when the witnesses have completed their statements, may cross-examine them and ask for any rectifications they consider necessary to conserve the accuracy and truth of the statement. The official in charge shall at all times retain the control of the proceedings, may ask new questions, reject any question he deems inadequate, unnecessary, prejudicial or offensive to the witness, as well as terminate the questioning.
>
> Source: Article 72 of Decree No. 500/91
>
> Administrative Rules of Procedure of the Central Bank of Uruguay, issued by RES D/624/94 of November 15, 1994, and published in Official Gazette No. 25,399 of November 16, 1999 (file of appendixes to the Commission's application, volume III, appendix 3, folio 1344)

[118] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13242 and 13243) and testimony of the witness Augusto Durán Martínez before the Inter-American during the public hearing in this case.

[119] Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1111), and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[120] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13243) and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[121] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13241) and testimony of the witness Augusto Durán Martínez before the Inter-

victims offered testimonial evidence. Most of the testimony offered was received[122] and, in several cases, this evidence was not processed due to circumstances that could be attributed to the party proposing the testimony.[123]

88. Following the reception of the new evidence, the Advisory Commission examined the file with the new probative elements, prepared a new draft decision and forwarded it to the Central Bank's Board so that the latter could adopt the decision it deemed appropriate.[124] Subsequently, the Central Bank's Board evaluated the draft decision, to endorse the Advisory Commission's opinion, to disagree with it, or to order other measures, and then issued the corresponding decision.[125] Following notification, the petitioner had 10 days to file an appeal to annul the decision, pursuant to article 131 of the Central Bank's Rules of Procedure and articles 317 and 318 of the Constitution.[126]

89. If the petitioner filed an appeal to annul the decision of the Board of the Central Bank, the General Secretariat forwarded it to the Advisory Commission.[127] On that occasion, the petitioner could again offer evidence.[128] Following the processing of the respective evidence or, if evidence was not offered, after the appeal had been filed, the case was re-examined, taking into account the arguments set out in the appeal, based

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American Court during the public hearing in this case. For his part, witness Julio de Brun stated that "[m]ore than 100 petitioners provided witnesses." Affidavit of witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1110).

[122] *Cf.* the following are cases of alleged victims whose evidence is in the file of attachments to the State's final written argument, attachments 2 and 3: Gutiérrez Galiana, Eduardo (File No. 2003/0876) (folios 22091 and 22092); Pitetta Antúnez, Luis Alberto (File No. 2003/0711) (folio 22700); Braceras Lussich, Elina and Rafael Enrique Braceras Lussich (File No. 2003/0707) (folio 22898); Neuschul Perles, Franklin (File No. 2003/0527) (folio 26084); Perles Ullman de Neuschul, Gisela (File No. 2003/0526) (folio 26147); Fernández González, Daniel (File No. 2003/0353) (folio 28714); Meerhoff, Enrique (File No. 2003/0301) (folio 29431); Giambruno De Amicis, Clara Augusta (File No. 2003/0284) (folio 30131); Roelsgaard Papke, Niels (File No. 2003/0608) (folios 30198 and 30199); Pastorino Peccotiello, José Ángel (File No. 2003/0545) (folio 30257); De Marco, Juan (File No. 2003/0536) (folio 30271); Abal Bordachal, Mario Héctor and María Virginia Abal Gemelli (File No. 2003/0646) (folio 30355); Lijtenstein Jasinski, Fabiana (File No. 2003/0639) (folio 30378); Barbani, Alicia (File No. 2003/0624) (folio 30381); Muccia García, Víctor (File No. 2003/0943) (folio 30398); Sienra Fattoruso, José Enrique (File No. 2003/0804) (folio 30518); Adinolfi Castellano, Julio Alberto (File No. 2003/0988) (folio 30676); Neuschul, Thomas Máximo (File No. 2003/1524) (folio 31347); Da Pena Pepoli, Marcela (File No. 2003/1522) (folio 31349), and Díaz Vidal, Eduardo and Lola Varela Cambre (File No. 2003/1520) (folio 31354).

[123] *Cf.* the following are cases of alleged victims whose evidence is in the file of attachments to the State's final written argument, attachments 2 and 3: De Luca Sarmoria, Vilma (File No. 2003/0710) (folio 22741), and Zanoni, María Cristina (File No. 2003/0397) (folio 27649); Ramos, Magela (File No. 2003/0471) (folio 30099); Da Silva Gaibisso, Hugo José (File No. 2003/0758) (folio 30303); Santisteban Tristán, José Pedro (File No. 2003/0662) (folio 30353); Alicia Recalde (File No. 2003/1177) (folio 30875); Cavajani, Nicida (File No. 2003/0216) (folio 31272); Pizza, Martha (File No. 2003/4028) (folio 31277), and Liliana Barcarcel (File No. 2003/4025) (folio 31282).

[124] *Cf.* Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13244).

[125] *Cf.* Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13244) and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[126] *Cf.* Articles 317 and 318 of the 1967 Constitution of the Oriental Republic of Uruguay, with the amendments introduced by plebiscite on November 26, 1989, November 26, 1994, December 8, 1996, and October 31, 2004 (file of attachments to the answer, volume I, attachment 12, folio 12866).

[127] In Decision D/758/2004 of May 11, 2004, the Board of the Central Bank of Uruguay extended the authority to study and examine the administrative remedies presented against the Board's decisions "that did not admit the petitions submitted" under article 31 of Law 17,613. Decision D/758/2004 of the Board of the Central Bank of Uruguay of May 11, 2004 (file of attachments to the answer, volume XIII, attachment 30, folio 19612).

[128] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13245) and affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1104).

on which a draft decision was prepared and forwarded to the Board of the Central Bank for its consideration.[129]

90. According to the Central Bank's records, approximately 500 appeals were filed to annul the decisions of its Board.[130] The alleged victims in the instant case filed appeals to annul the Central Bank's initial decision in 163 cases, all of which were rejected by the Board of the Central Bank.[131] In addition, based on the right of petition established

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[129] *Cf.* Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13245).

[130] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13245).

[131] *Cf.* the following are cases of alleged victims whose evidence is in the file of attachments to the State's final written arguments, attachments 2 and 3: Kahiaian, Alberto (File No. 2003/0806) (folios 21810 and 21811); Gutierrez Galiana, Eduardo (File No. 2003/0876) (folios 22091 and 22092); Eminente Cohem, Fabio (File No. 2003/0867) (folios 22219 and 22220); Espasandín Villas Boas, Pablo Gabriel (File No. 2003/0725) (folios 22370 and 22371); Espasandín, Nelson (File No. 2003/0723) (folios 22425 and 22426); Espasandín Villas Boas, Ana Laura (File No. 2003/0722) (folios 22464 and 22465); Braceras, Elina and Rafael Enrique Braceras Lussich (File No. 2003/0707) (folios 22898 and 22899); Etchevarne, Miguel Angel (File No. 2003/0703) (folios 23084 and 23085); Notero, Angel and Alba Bonifacino (File No. 2003/0696) (folios 23265 and 23266); Vázquez, Gustavo (File No. 2003/0693) (folios 23367 and 23368); Rial Mérola, Jorgelina (File No. 2003/0690) (folios 23511 and 23512); Dendrinos Saquieres, Daniel (File No. 2003/0689) (folios 23583 and 23584); Bergara, Amilcar (File No. 2003/0686) (folios 23680 and 23681); Guimaraens, Antonio and Griselda Marisa Urtiaga Guorise (File No. 2003/0682) (folios 23755 and 23756); Martínez, Ana María (File No. 2003/0670) (folios 24046 and 24047); Fazio, Sergio (File No. 2003/0659) (folios 24339 and 24340); Rodríguez, Julio (File No. 2003/0658) (folios 24403 and 24404); Pascual, Carlos (File No. 2003/0657) (folios 24475 and 24476); Azparren, Ana (File No. 2003/0586) (folios 25349 and 25350); Maisaonave, Milka (File No. 2003/0583) (folios 25460 and 25461); Bergamino, Raúl (File No. 2003/0575) (folios 25600 and 25601); Puente, Alberto (File No. 2003/0571) (folios 25677 and 25678); Villarreal, Fernando (File No. 2003/0569) (folios 25735 and 25736); Puente, Jesús (File No. 2003/0568) (folios 25788 and 25789); García, Bernabé (File No. 2003/0567) (folios 25847 and 25848); Unanua, Alejandra (File No. 2003/0566) (folios 25909 and 25910); Moretti, Jorge (File No. 2003/0442) (folios 26908 and 26909); Neuschul Perles, Franklin (File No. 2003/0527) (folios 26094 and 26095); Perles Ullman de Neuschul, Gisela (File No. 2003/0526) (folios 26147 and 26148); Bara, Walter (File No. 2003/0525) (folios 26198 and 26199); Leite, Carlos (File No. 2003/0518) (folios 26302 and 26303); Bolla, Mauro(File No. 2003/0517) (folios 26345 and 26346); Litchman, Gladys (File No. 2003/0405) (folios 27389 and 27390); Israel Creimer for Gianna Contín (File No. 2003/0398) (folios 27609 and 27610); Alejandro López Núñez (File No. 2003/0376) (folios 28156 and 28157); Fernández González, David Hugo (File No. 2003/0353) (folios 28731 and 28732); Ventos, Pedro and María Andrea Pesce (File No. 2003/0332) (folios 28921 and 28922); Etchevers Mion, Jorge Alberto (File No. 2003/0328) (folios 28996 and 28997); White, Douglas (File No. 2003/0319) (folios 29121 and 29122); Godín, Hugo (File No. 2003/0317) (folios 29251 and 29252); Meerhoff, Enrique (File No. 2003/0301) (folios 29443 and 29444); Saquieres Garrido, Nelly and Miguel Angel Rubio Saquieres (File No. 2003/0298) (folios 29607 and 29608), and Glaser Breithbarth, Marion Carlota (File No. 2003/0294) (folios 29701 and 29702); Piñeyro, María (File No. 2003/0480) (folios 30088 and 30089); Castro Etchart, Gustavo (File No. 2003/0278) (folios 30138 and 30139); Schaich, Rodolfo (File No. 2003/0266) (folios 30157 and 30158); González, Alfredo (File No. 2003/0614) (folios 30178 and 30179); Pérez Soto, Walter (File No. 2003/0611) (folios 30190 and 30191); De la Fuente, María del Carmen (File No. 2003/0609) (folios 30196 and 30197); Roelsgaard Papke, Niels Peter (File No. 2003/0608) (folios 30200 and 30201); Everett Villamil, Oscar and Marta Flocken (File No. 2003/0601) (folios 30214 and 30215); Real de Azúa, María Jesús (File No. 2003/0556) (folios 30245 and 30246); Fabro, María (File No. 2003/0552) (folios 30253 and 30254); Dogliotti Guimaraens, Elida Yolanda (File No. 2003/0542) (folios 30267 and 30268); Acher, Isaac (File No. 2003/0506) (folios 30276 and 30277); Da Silva Gaibisso, Hugo José (File No. 2003/0758) (folios 30303 and 30304); Iglesias, Sergio (File No. 2003/0753) (folios 30308 and 30309); Marcos Marra, Eduardo (File No. 2003/0744) (folios 30313 and 30314); Paseyro, Alfredo (File No. 2003/0735) (folios 30324 and 30325); Platero, Gustavo (File No. 2003/0685) (folios 30340 and 30341); D´Amico, Aldo and Elvira Richino (File No. 2003/0642) (folios 30372 and 30373); Lijtenstein, Fabiana (File No. 2003/0639) (folios 30379 and 303780); Muccia García, Víctor (File No. 2003/0943) (folios 30399 and 30400); Gagliardani Giuffra, Federica (File No. 2003/0920) (folios 30420 and 30421); Figueroa, Luis (File No. 2003/0913) (folios 30428 and 30429); González, Mario (File No. 2003/0872) (folios 30437 and 30438); Barquin, Ignacio (File No. 2003/0856) (folios 30452 and 30453); Crestino, Nelly (File No. 2003/0848) (folios 30466 and 30467); Nuesch, María for Libonati, Carmen (File No. 2003/0846) (folios 30472 and 30473); Canen, Guillermo (File No. 2003/0809) (folios 30506 and 30507); Bochi Paladino, Juan José (File No. 2003/0806) (folios 30511 and 30512); Sienra Fattoruso, José Enrique (File No. 2003/0804) (folios 30519 and 30520); Panella, Cristina (File No. 2003/0783) (folios 30549 and 30550); Raúl Favrín for Blanca Casella (File No. 2003/1082) (folios 30574 and 30575); Favrin, Raúl (File No. 2003/0108) (folios 30579 and 30580); Lorenzo, Gonzalo and Fernando Lorenzo (File No. 2003/1066) (folios 30585 and 30586); Lorenzo, Nelson (File No. 2003/1065) (folios 30591 and 30592); Leoncini, Fernando (File No. 2003/1052) (folios 30604 and 30605); De Crescenzo, Fernando Francisco (File No. 2003/1022) (folios 30633 and 30634); Brit, María (File No. 2003/1008) (folios 30654 and 30655); Weiss Bayardi, Mauricio (File No. 2003/1005) (folios 30659

in article 318 of the Constitution, the appellants could present new petitions, after having exercised the appeal for annulment, or when the time limit for filing it had expired, and the administration had the obligation to rule on them.[132]

A.2.f) Procedure of the Advisory Commission and of the Board of the Central Bank in application of article 31 of Law 17,613

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and 30660); Lorenzo, José (File No. 2003/996) (folios 30665 and 30666); Sosa, Nicolás (File No. 2003/0983) (folios 30689 and 30690); Rama, Leandro and Florencia Rama (File No. 2003/0981) (folios 30696 and 30697); Pérez Bogao, Zulma (File No. 2003/0963) (folios 30713 and 30714); Pérez, Atahualpa (File No. 2003/0960) (folios 30722 and 30723); Marenales, Jorge (File No. 2003/0950) (folios 30737 and 30738); Zunza Ramírez, Rodolfo Antonio (File No. 2003/0947) (folios 30742 and 30743); Díaz Videla, Rafael (File No. 2003/0946) (folios 30747 and 30748); Alzaradel, Rita (File No. 2003/1227) (folios 30778 and 30779); García, María Delia (File No. 2003/1226) (folios 30783 and 30784); María de la Luz Silvarredonda for Leroy, Jean (File No. 2003/1224) (folios 30790 and 30791); Lingeri Olsson, Manuel Roberto (File No. 2003/1221) (folios 30794 and 30795); Karamanukian, José (File No. 2003/1194) (folios 30811 and 30812); Barreiro, José (File No. 2003/1193) (folios 30816 and 30817); Alvez, Gloria (File No. 2003/1192) (folios 30821 and 30822); Rodriguez, Dorval (File No. 2003/1191) (folios 30826 and 30827); Dura, Daniel and Martín Sarro (File No. 2003/1187) (folios 30836 and 30837); Irigoin, Graciela (File No. 2003/1185) (folios 30841 and 30842); Steiermann, Ellen (File No. 2003/1184) (folios 30846 and 30847); Cortabarría, Raquel (File No. 2003/1183) (folios 30851 and 30852); Carreño Martínez, Fortunata Esther (File No. 2003/1182) (folios 30856 and 30857); Valdez, René (File No. 2003/1181) (folios 30861 and 30862); Karamanukian, Juan (File No. 2003/1179) (folios 30868 and 30869); Yelen, Fabián (File No. 2003/1178) (folios 30873 and 30874); Alicia Recalde (File No. 2003/1177) (folios 30875 and 30876); Vidal, Nora (File No. 2003/1176) (folios 30883 and 30884); Sere Marquez, Antonio María (File No. 2003/1131) (folios 30918 and 30919); Guzzini García, José María (File No. 2003/1108) (folios 30929 and 30930); Haiber, Ursula (File No. 2003/1105) (folios 30939 and 30940); Pelufo Acosta and Lara, Carmen (File No. 2003/1030) (folios 31004 and 31005); La Cava, Carlos María (File No. 2003/1466) (folios 31013 and 31014); Patteta, Graciela (File No. 2003/1456) (folios 31030 and 31031); Trigo, Angel (File No. 2003/1432) (folios 31052 and 31053); De León San Martín, Aida (File No. 2003/1423) (folios 31080 and 31081); Cerda Trillo, Rubén (File No. 2003/1417) (folios 31100 and 31101); Alvarez, Néstor (File No. 2003/1414) (folios 31106 and 31107); Sisa, Florentina (File No. 2003/1411) (folios 31111 and 31112); Abellá Demarco, María Cristina (File No. 2003/1408) (folios 31117 and 31118); Abellá Demarco, Rafael (File No. 2003/1407) (folios 31122 and 31123); Montefiori, María Cristina (File No. 2003/1401) (folios 31146 and 31147); Cholaquidis, Elizabeth (File No. 2003/1405) (folios 31127 and 31128); Diaz, Nilda (File No. 2003/1403) (folios 31136 and 31137); Barreiro, Elvis (File No. 2003/1394) (folios 31165 and 31166); Luzardo, María Rosa (File No. 2003/1402) (folios 31141 and 31142); Fernández, José (File No. 2003/1396) (folios 31160 and 31161); Faccio, Héctor (File No. 2003/1390) (folios 31176 and 31177); Faccio, Diego (File No. 2003/1389) (folios 31181 and 31182), Horvath, Raúl (File No. 2003/1310) (folios 31249 and 31250); Cavajani de Tabárez, Nicida (File No. 2003/0221) (folios 31266 and 31267); Cavajani de Tavarez, Nicida (File No. 2003/0216) (folios 31272 and 31273); Pizza, Marha (File No. 2003/4028) (folios 31277 and 31278); Liliana Barcarcel (File No. 2003/4025) (folios 31282 and 31283); Cavanna, José (File No. 2003/4014) (folios 31292 and 31293); Roure, Pablo (File No. 2003/1582) (folios 31309 and 31310); Beimeras, Leonardo (File No. 2003/1581) (folios 31318 and 31319); Alonso, Roberto (File No. 2003/1508) (folios 31380 and 31381); Da Pena Pepoli, Marcela (File No. 2003/1522) (folios 31351 and 31352); Díaz Cabana, Eduardo (File No. 2003/1519) (folios 31360 and 31361); Donner, Rubén (File No. 2003/1518) (folios 31366 and 31367); Guerra Vergara, Martín (File No. 2003/1512) (folios 31375 and 31376); Gigli, María (File No. 2003/1494) (folios 31403 and 31404); Lorieto de Souza, Virginia (File No. 2003/1489) (folios 31408 and 31409); Rodríguez, Luis (File No. 2003/1480) (folios 31416 and 31417); Rial, Gladys (File No. 2003/1478) (folios 31426 and 31427); Croce Urbina, Gabriel and María de las Mercedes Paullier Milans (File No. 2003/1477) (folios 31432 and 31433); Gustavo José Bertolini (File No. 2003/1468) (folios 31437 and 31438); Zanandrea, Mirta Elena (File No. 2003/0543) (folios 30262 and 30263), and Bochi Paladino, Nelson (File No. 2003/0759) (folios 30298 and 30299). Lastly, *cf.* the cases of Neuschul Pérez, Thomas Máximo (File No. 2003/1524) (file of attachments to the application, volume V, attachment 12 (C), folios 4444 and 4445), and Clara Volyvovic (File No. 2003/0999) (file of attachments to the application, volume IX, attachment 12 (E), folios 7873 and 7874).

[132] Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13246). See also, *inter alia*, the files of the following alleged victims: Barbani, Alicia (File No. 2003/0624) (file of attachments to the application, volume II, attachment 12 (A), folios 3009 to 3010); Pérez Soto, Walter (File No. 2003/0611) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30190); Pereira Da Silva, Probo (File No. 2003/0776) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30562); Cotelo, Ramón W. (File No. 2003/0953) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30727); Kouyoumdjian, José (File No. 2003/1429) (file of attachments to the State's final written arguments, volume II, attachment 3, folio 31057); Suárez, Álvaro (File No. 2003/0695) (file of attachments to the State's final written arguments, volume I, attachment 2, folio 23293); Martínez, Ana María (File No. 2003/0670) (file of attachments to the State's final written arguments, volume I, attachment 2, folio 24046), and Puente Caamaño, Jesús (File No. 2003/0568) (file of attachments to the State's final written arguments, volume I, attachment 2, folio 25788).

91. The Central Bank received 1,426 petitions under article 31 of Law 17,613, regarding which it re-examined approximately 500 files owing to the filing of appeals for annulment against the initial decisions or to new petitions.[133] Of these 1,426 petitions, 22 obtained a favorable opinion from the Advisory Commission and a favorable decision from the Board of the Central Bank.[134] In the instant case, 539 alleged victims filed petitions before the Central Bank, all of which were rejected.[135]

92. When initiating its mandate, the Advisory Commission noted the existence of three major groups of petitioners: (i) those they classified as "TCB direct"; (ii) the petitioners who had invested in investment funds, and (iii) those who had acquired shares in Trade & Commerce Bank certificates of deposit. The group classified as "TCB direct" included the petitioners who had deposited directly with Trade & Commerce Bank or contracted directly with that bank, through the office of its representative in Montevideo or through *Banco de Montevideo* (*supra* para. 69). In the latter case, the *Banco de Montevideo* acted as an intermediary and some type of account in the *Banco de Montevideo* was frequently used, in which the money was be deposited for transfer to Trade & Commerce Bank. [136] The second group of petitioners consisted of those whose

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133 *Cf.* File on the constitution of the Advisory Commission of the Central Bank of Uruguay, *supra* nota 102 (folios 19611 and 19626) and brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance,, *supra* nota 99 (folios 13245 and 13246). By Decision D/758/2004 of May 11, 2004, the Board of the Central Bank of Uruguay extended the authority to study and examine the administrative remedies filed against the Board's decisions "that did not admit the petitions submitted" under article 31 of Law 17,613. Decision D/758/2004 of the Board of the Central Bank of Uruguay, *supra* nota 127 (folio 19612).

134 Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case. According to the body of evidence in the file, the said 22 cases belong to the following persons: (1) Rolando Massoni, Martha Moreira and Sandra Massoni (File No. 2003/0228) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11771 to 11774); (2) Kurt Bauer (File No. 2003/1329) (file of attachments to the application, volume XV, attachment 12 (I), folios 11150 to 11153); (3) Ernesto Llovet (File No. 2003/0952) (file of attachments to the application, volume XV, attachment 12 (I), folios 11350 to 11353); (4) Emilio Villamil Ramos and Elsa Marialli García (File No. 2003/0532) (file of attachments to the application, volume XV, attachment 12 (I), folios 11590 to 11593); (5) Carmen García Pardo (File No. 2003/0908) (file of attachments to the application, volume VII, attachment 12 (D), folios 6445 to 6451); (6) María del Carmen Bacigalupe and Julio Alberto Soler (File No. 2003/0221) (file of attachments to the application, volume III, attachment 12 (B), folios 3375 to 3436); (7) María Julia Boeri Bottero and María del Rosario Delmonte Boeri (File No. 2003/0708) (file of attachments to the application, volumes V and XIII, attachments 12 (C) and 12 (G), folios 4982 to 5070 and folios 9561 to 9640); (8) Graciela Cabrera D'Amico (File No. 2003/0880) (file of attachments to the application, volume X, attachment 12 (E), folios 8588 to 8663); (9) Gabriel Deus Rodríguez (File No. 2003/1045) (file of attachments to the application, volume VII, attachment 12 (D), folios 6215 and 6216); (10) Lucía Guiambruno (File No. 2003/0327) (file of attachments to the State's final written arguments, volume I, attachment 3, folios 30126 and 30127); (11) José Luis Martín Hernández (File No. 2003/0602) (file of attachments to the application, volume I, attachment 12, folios 2606 to 2619); (12) Rafael Outeiro Silvera and Jorge Peláez Pla (File No. 2003/1339) (file of attachments to the application, volume VIII, attachment 12, folios 6726 to 6729); (13) Álvaro Gerardo Pérez Asteggiante (File No. 2003/0438) (file of attachments to the application, volume XV, attachment 12 (I), folios 10970 to 11035); (14) Erasmo Salvador Petingi Nocella (File No. 2003/0610) (file of attachments to the application, volume II, attachment 12, folios 2637 to 2695); (15) Ximena Camaño Rolando and Ana Laura Camaño Rolando (File No. 2003/0650) (file of attachments to the application, volume I, attachment 12, folios 2315 to 2471); (16) Lucía Piñeyrúa Zeni (File No. 2003/0595) (file of attachments to the application, volume IX, attachment 12 (E), folios 7402 to 7405); (17) Lylianne Edith Urdaneta Magri (File No. 2003/0956) (file of attachments to the application, volume X, attachment 12 (E), folios 8441 to 8444); (18) Néstor Alberto Rosales and Viviana Rivanera de Rosales (File No. 2003/0493) (file of attachments to the application, volume XV, attachment 12 (I), folios 11049 to 11071); (19) Marta Cázeres (File No. 2003/0598) (file of attachments to the application, volume IV, attachment 12 (B), folios 3774 to 3821); (20) Clara Jasinski (File No. 2003/0637) (file of attachments to the application, volume III, attachment 12 (B), folios 3450 to 3490); (21) Raúl Montero (File No. 2003/0469) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11783 to 11786), and (22) Elena Ibarra Acle and Victor Muccia García (File No. 2003/0521) (file of attachments to the application, volume III, attachment 12 (B), folios 3727 and 3728).

135 The Annex to this judgment lists their names and location in the file before the Court of the evidence concerning their petitions before the Central Bank under article 31 of Law 17,613.

136 *Cf.* Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case. According to a Central Bank documents, *TCB Mandatos*, the representative of the TCB in Montevideo, was not authorize to "open account and register the signatures of the clients of the Trade & Commerce Bank." Document issued by the Central Bank of Uruguay on May 18, 2001, under "*TCB Mandatos*

money was in investment funds, known as the "*BM Fondos*" which was operated by a different legal entity, known as *the BM Fondos S.A.,* subject to the investment funds law.[137] The Advisory Commission understood that the petitions related to *BM Fondos*, which constituted approximately 200 files, did not meet the requirements of article 31 of Law 17,613.[138] Most of the petitioners corresponded to the third group of petitioners,[139] who had acquired shares in certificates of deposit, either with or without their consent, which the Central Bank had to determine (*supra* para. 69). In the case of those who had acquired shares in Trade & Commerce Bank certificates of deposit, the *Banco de Montevideo* acted as administrator and custodian of these investments.[140]

93. The Advisory Commission and the Board of the Central Bank understood that article 31 of Law 17,613 established three requirements that petitioners must fulfill in order to receive the same rights as the other depositors in the *Banco de Montevideo* and the *Banco La Caja Obrera*: (i) "be a savings depositor" in the said financial entities, which in some cases was understood as being a depositor in the *Banco de Montevideo* or *La Caja Obrera*; (ii) whose funds had been transferred to other institutions; (iii) without their consent.[141] In addition, they understood that these requirements were cumulative.[142]

94. The main distinction between the different cases was found in regard to verification of the requirement of absence of consent.[143] The Advisory Commission and the Board of the Central Bank understood that consent had been given based on the following elements: (i) the signature of contracts with general instructions for the administration of investments under which *the Banco de Montevideo* was authorized to manage, on behalf of and at the responsibility of the client, placements in securities issued by an offshore institution; (ii) the existence of specific instructions by which the client authorized *the Banco de Montevideo* to buy certificates of deposit or other products; (iii) the proven regularity of using this type of operation, and (iv) the absence of objections or observations by the client on the bank statements that showed the transfer or the placement of deposits in certificates of deposit of the Trade & Commerce Bank.[144]

S.A.- Representative of the Trade and Commerce Bank (Cayman)- Inspection pursuant to Directive No. 9.- March 2001" (file of attachments to the answer, volume XIII, attachment 31, folios 19745 and 19746).

137 Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

138 *Cf.* Communication of the members of the Advisory Commission of March 24, 2003, addressed to the President of the Central Bank (file of attachments to the answer, volume XIII, attachment 30, folio 19580).

139 Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

140 *Cf.* Affidavit of the witness Jorge Xavier dated February 16, 2011 (merits file, volume III, folio 1119) and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

141 *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folios 1101, 1104 and 1105) and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

142 *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1101).

143 *Cf.* Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

144 *Cf.* Testimony of the witness Augusto Durán Martínez during the public hearing in this case, and affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1106). In particular, (i) regarding the signature of general contracts: *cf. inter alia*, the following cases in which the evidence is in the file of attachments to the State's final written arguments, volume I, attachment 3: Pérez, Rumildo and Pérez, Javier (File No. 2003/0594) (folios 30222 to 30224); Castello, Vicente Carlos (File No. 2003/0466) (folios 30105 to 30107); Arieta Apesteguy, María Soledad (File No. 2003/1014) (folios 30638 to 30640); Quintans, María Elvira and Fuentes Quintans, Diego (File No. 2003/1116) (folios 30931 to 30933); Rumassa Causi, Sheila (File No. 2003/0793) (folios 30533 to 30535); Iglesias, Carlos (File No. 2003/0644) (folios 30363 to 30365), and Outerelo, Claudio (File No. 2003/1578) (folios 31339 to 31341). Regarding (ii)

95. When examining petitions filed under article 31 of Law 17,613, the Central Bank, on the recommendation of the Advisory Commission, considered that it did not have the power to examine possible defects in consent, the alleged responsibility of the financial group, or the lifting of the corporate veil (theory of disregard), or to compel witnesses to testify, owing to the administrative nature of the institution and of the procedure in question, since such determinations constituted jurisdictional functions that belonged exclusively to the courts.[145] Indeed, in several decisions corresponding to petitions by alleged victims in the instant case, the Board of the Central Bank found that "the declaration of the annulment of the acceptance of the investment, and any contractual responsibility for the unsuccessful operations carried out that involved error, fraud or negligence, necessarily constitute[d] jurisdictional decisions that exceed[ed] the sphere of the powers granted to the Central Bank of Uruguay under article 31 of Law 17,613."[146] Similarly, in the decisions corresponding to several alleged victims, the Board of the Central Bank expressly stated that "the financial group's liability necessarily constitute[d] a jurisdictional decision that exceed[ed] the sphere of the powers granted to the Central Bank of Uruguay under article 31 of Law 17,613."[147]

96. In the 22 cases that received a favorable decision, the Advisory Commission and the Board of the Central Bank considered that the petitions complied with the three requirements under article 31 of Law 17,613.[148] In particular, it was considered that the

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the existence of specific instructions, *cf.*, *inter alia,* the following cases in which the evidence is in the file of attachments to the State's final written arguments, volume I, attachments 2 and 3: González, Palmira (File 2003/0522) (folios 26230 to 26323); De la Sovera, Nilda (File 2003/0489) (folios 30063 to 30065); Casella, Blanca (File 2003/1082) (folios 30571 to 30573); Birger Nejerman, Lili (File 2003/0485) (folios 30070 to 30072); Fabro, María Raquel (File 2003/0552) (folios 30250 to 30252); Guzzini García, José María (File 2003/1108) (folios 30926 to 30928); and García Santoro, Alejandro (File 2003/0787) (folios 30539 to 30541). Regarding (iii) proven regularity in carrying out these operations, *cf., inter alia*, the following cases in which the evidence is in the file of attachments to the State's final written arguments, volume I, attachment 3: Prevettoni, Gabriela (File 2003/0482) (folios 30079 to 30081); Piñeyro Castellanos, María Inés (File 2003/0480) (folios 30085 to 30087); Nario Alvarez, Álvaro (File 2003/0465) (folios 30108 to 30110); Di Salvo, Crimilda (File 2003/0929) (folios 30404 to 30406); Panella Castro, Cristina (File 2003/0783) (folios 30545 to 30548); García Caban, Ricardo (File 2003/1049) (folios 30606 to 30608), and Reino Berardi, Sebastián (File 2003/1033) (folios 30618 to 30620). Regarding (iv) failure to contest the bank statements, *cf.*, *inter alia*, the following cases in which the evidence is in the file of attachments to the State's final written arguments, volumes I and II, attachment 3: Caballero Lehite, Fernando (File 2003/0613) (folios 30180 to 30182); Everett, Oscar and Flocken, Marta (File 2003/0601) (folios 30211 to 30213); Llana, Francisco (File 2003/0607) (folios 30202 to 30204); Zanandrea, Mirta Elena (File 2003/0607) (folios 30259 to 30261); Cerda, Rubén (File 2003/1417) (folios 31098 to 31100); Abellá Demarco, María Cristina (File 2003/1408) (folios 31113 to 31116), and Lingeri Olsson, Manuel (File 2003/1221) (folios 30792 to 30793).

[145] *Cf.* Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

[146] *Cf., inter alia,* Acevedo Sotelo, Eduardo and Myriam Guillón Alvarez (File No. 2003/0268) (file of attachments to the State's final written arguments, volume I, attachment 3, folios 30152 and 30153); Schaich, Rodolfo (File No. 2003/0266) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30157); Supervielle Casaravilla, María Mercedes (File No. 2003/0616) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30168); De la Fuente, María del Carmen (File No. 2003/0609) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30196); Dogliotti Guimaraens, Elida Yolanda (File No. 2003/0542) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30267); Marcos Marra, Eduardo and Amelia Sperati Soñora (File No. 2003/0744) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30313), and Paseyro, Alfredo (File No. 2003/0735) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30324).

[147] *Cf., inter alia*, Da Silva, Hugo (File No. 2003/0758) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30303); Platero, Gustavo (File No. 2003/0685) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30340); González, Mario (File No. 2003/0872) (file of attachments to the State's final written arguments, volume I, attachment 3, folio 30437); Cavajani, Nicida (File No. 2003/0216) (file of attachments to the State's final written arguments, volume II, attachment 3, folio 31273); Pizza, Martha (File No. 2003/4028) (file of attachments to the State's final written arguments, volume II, attachment 3, folio 31277); Beimeras, Leonardo and María del Carmen Fernández (File No. 2003/1581) (file of attachments to the State's final written arguments, volume II, attachment 3, folio 31318), and Díaz Cabana, Eduardo (File No. 2003/1519) (file of attachments to the State's final written arguments, volume II, attachment 3, folio 31360).

[148] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1104).

transfer of the deposits had occurred without the consent of the respective petitioners because: (i) the petitioners had never given their consent to the said operation; in other words, the consent of the respective petitioner was absent from the start of the operation, because he had given instructions to carry out another operation (for example, place the funds in a fixed-term deposit), which was verified in one case;[149] (ii) the petitioner had not given his consent to the renewal of the respective placement in the Trade & Commerce Bank certificates of deposit, which was verified in 19 cases,[150] or (iii) the withdrawal or early redemption of funds was not allowed, even though consent had been given under that condition, so it was considered that the *Banco de Montevideo* had unilaterally changed the conditions offered; this was verified in two cases.[151] The absence of consent had to be verified prior to the date on which the *Banco de Montevideo*, was intervened; that is, before June 21, 2002[152] (*supra* para. 68).

97. If the petitioner fulfilled the requirements established in article 31 of Law 17,613, he was considered to be a "depositor" and therefore his situation was equated to that of depositors with a checking, savings or fixed–term account in the *Banco de Montevideo* or *La Caja Obrera.* Hence, he had a right to a proportional share of the corresponding Recovery Fund, and was allocated the corresponding means to recover the proportional share; namely, credit certificates in the *Nuevo Banco Comercial* (created with the "healthy" assets of the *Montevideo, Caja Obrera* and *Comercial* Banks), cash or other assets collected by the Fund.[153] Additionally, considering that they were in the same position as the above-mentioned depositors in the *Banco de Montevideo* and *La Caja Obrera*, those who fulfilled the requirements of the said article 31, had the right to receive a complement up to the first US$100,000.00 (one hundred thousand United

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149 *Cf.* Elena Ibarra Acle and Victor Muccia García (File No. 2003/0521) (file of attachments to the application, volume III, attachment 12 (B), folios 3727 and 3728).

150 *Cf.* (1) Rolando Massoni, Martha Moreira and Sandra Massoni (File No. 2003/0228) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11771 to 11774); (2) Kurt Bauer (File No. 2003/1329) (file of attachments to the application, volume XV, attachment 12 (I), folios 11150 to 11153); (3) Ernesto Llovet (File No. 2003/0952) (file of attachments to the application, volume XV, attachment 12 (I), folios 11350 to 11353); (4) Emilio Villamil Ramos and Elsa Marialli García (File No. 2003/0532) (file of attachments to the application, volume XV, attachment 12 (I), folios 11590 to 11593); (5) Carmen García Pardo (File No. 2003/0908) (file of attachments to the application, volume VII, attachment 12 (D), folios 6445 to 6451); (6) María del Carmen Bacigalupe and Julio Alberto Soler (File No. 2003/0221) (file of attachments to the application, volume III, attachment 12 (B), folios 3375 to 3436); (7) María Julia Boeri Bottero and María del Rosario Delmonte Boeri (File No. 2003/0708) (file of attachments to the application, volumes V and XIII, attachments 12 (C) and 12 (G), folios 4982 to 5070 and folios 9561 to 9640); (8) Graciela Cabrera D'Amico (File No. 2003/0880) (file of attachments to the application, volume X, attachment 12 (E), folios 8588 to 8663); (9) Gabriel Deus Rodríguez (File No. 2003/1045) (file of attachments to the application, volume VII, attachment 12 (D), folios 6215 and 6216); (10) Lucía Giambruno (File No. 2003/0327) (file of attachments to the State's final written arguments, volume I, attachment 3, folios 30126 and 30127); (11) José Luis Martín Hernández (File No. 2003/0602) (file of attachments to the application, volume I, attachment 12, folios 2606 to 2619); (12) Rafael Outeiro Silvera and Jorge Peláez Pla (File No. 2003/1339) (file of attachments to the application, volume VIII, attachment 12, folios 6726 to 6729); (13) Álvaro Gerardo Pérez Asteggiante (File No. 2003/0438) (file of attachments to the application, volume XV, attachment 12 (I), folios 10970 to 11035); (14) Erasmo Salvador Petingi Nocella (File No. 2003/0610) (file of attachments to the application, volume II, attachment 12, folios 2637 to 2695); (15) Ximena Camaño Rolando and Ana Laura Camaño Rolando (File No. 2003/0650) (file of attachments to the application, volume I, attachment 12, folios 2315 to 2471); (16) Lucía Piñeyrúa Zeni (File No. 2003/0595) (file of attachments to the application, volume IX, attachment 12 (E), folios 7402 to 7405); (17) Lylianne Edith Urdaneta Magri (File No. 2003/0956) (file of attachments to the application, volume X, attachment 12 (E), folios 8441 to 8444); (18) Néstor Alberto Rosales and Viviana Rivanera de Rosales (File No. 2003/0493) (file of attachments to the application, volume XV, attachment 12 (I), folios 11049 to 11071), and (19) Marta Cázeres (File No. 2003/0598) (file of attachments to the application, volume IV, attachment 12 (B), folios 3774 to 3821).

151 *Cf.* (1) Clara Jasinski (File No. 2003/0637) (file of attachments to the application, volume III, attachment 12 (B), folios 3450 to 3490), and (2) Raúl Montero (File No. 2003/0469) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11783 to 11786).

152 *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1105) and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

153 *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume III, folio 1105).

States dollars) of the joint value of their credits against the *Banco de Montevideo* and *La Caja Obrera*, in accordance with the preference established in article 27 of Law 17,613 (*supra* para. 76).[154]

98. The Advisory Commission's opinion was not binding for the Central Bank Board (*supra* para. 79). However, in every case, the Board of the Central Bank accepted the recommendation made by the Advisory Commission.[155] In the first cases decided favorably, the Central Bank's Board, "although it agreed with the decision recommended by the Advisory Commission, changed the grounds for the decision."[156] All the Advisory Commission's opinions were adopted unanimously by its members, except for one case, in which one of the commissioners attached his dissenting opinion.[157]

99. A group of alleged victims filed a criminal action against the members of the Advisory Commission for alleged abuse of power regarding the latter's actions in relation to the procedure under article 31 of Law 17,613. On November 7, 2005, the Criminal Court of First Instance rejected the prosecutor's claim because it considered, *inter alia*, that no arbitrariness could be noted in the decisions, that the officials had acted within their terms of reference, and that "the task entrusted to them, which was sensitive, controversial and difficult, was carried out within the legal framework, and if there had been any irregularity, it did not fall within the competence of the criminal sphere."[158] This decision was confirmed by a court of appeal on August 14, 2006.[159]

A.2.g) Bills on the interpretation of article 31 of Law 17,613

100. From 2003 to 2010, the Legislature discussed various interpretative bills to define the scope of article 31 of Law 17,613.[160] One of these bills was approved by the Senate

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154 Report on the level of recovery of assets from the liquidation of the *Banco de Montevideo S.A.* (file of attachments to the answer, volume I, attachment, folio 12788); and accounts statement of the *Banco de Montevideo* – Bank Asset Recovery Fund No. 38624 (file of attachments to the answer, volume I, attachment 10, folios 12789 and 12790).

155 *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume IV, folios 1102, 1103 and 1105), and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case.

156 Brief with answers of the members of the Advisory Commission to the 19th Criminal Judge of First Instance, *supra* note 99 (folio 13244), and testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case. *Cf.* decisions of the Central Bank of Uruguay of December 30, 2003, in the cases of Néstor Rosales and Viviana Rivanera (File No. 2003/0493) (file of attachments to the application, volume XV, attachment 12 (I), folios 11070 and 11071); Raúl Montero (File No. 2003/0469) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11785 and 11786); Marta Cázeres (File No. 2003/0598) (file of attachments to the application, volume IV, attachment 12 (B), folios 3820 and 3821), and Clara Jasinski (File No. 2003/0637) (file of attachments to the application, volume III, attachment 12 (B), folios 3489 and 3490).

157 *Cf.* Testimony of the witness Augusto Durán Martínez before the Inter-American Court during the public hearing in this case, and dissenting opinion of Commissioner Tomás Brause Berreta, attached to the draft decision of the Advisory Commission in the case of Carmen García Pardo de Arralde (File No. 2003/0908) (file of attachments to the application, volume VII, attachment 12 (D), folio 6447).

158 Judgment of the 19th Criminal Court of First Instance of November 7, 2005 (file of attachments to the answer, volume II, attachment 22, folio 13347).

159 *Cf.* Judgment No. 245 of the First Criminal Court of Appeal of August 14, 2006, (file of attachments to the answer, volume II, attachment 23, folio 13349 to 13355).

160 *Cf.* Affidavit of the witness Julio Herrera of February 14, 2011 (merits file, volume III, folio 1059 and 1061); testimony of the witness Julio Cardozo before the Inter-American Court during the public hearing in this case, and explanatory statement of Bill interpreting article 31, presented in April 2007, and April 2010, by Representatives Daniel Mañana, Julio Cardozo Ferreira, Rodrigo Goñi Romero, Carlos González Álvarez, Jorge Gandini, Alberto Perdomo Gamarra and Mauricio Cusano, entitled "Clients of the *Banco de Montevideo* and La Caja Obrera whose saving were applied to the acquisition of shares in certificates of deposit of the Trade & Commerce Bank" (file of attachments to the State's final written arguments, volume II, attachment 8, folios 31532 to 31548).

in November 2003,[161] but did not obtain the approval of the majority in the Chamber of Representatives, and thus was not enacted.[162]

A.2.h) Judicial actions following the administrative procedure before the Central Bank

h.1) Appeal for annulment of the decisions of the Central Bank before the Contentious-Administrative Tribunal

101. An appeal for annulment of the decisions of the Board of the Central Bank could be made before the Contentious-Administrative Tribunal,[163] which is a jurisdictional body that is not part of the Judiciary and is independent of the three branches of State.[164] According to article 309 of the Uruguayan Constitution[165] and article 23 of Law No. 15,524,[166] in the appeal for annulment, the plaintiffs have to prove that "the contested administrative acts were contrary to a rule of law or had been issued with misuse, abuse or excess of power."[167]

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[161] *Cf.* Affidavit of the witness Julio Herrera of February 14, 2011 (merits file, volume III, folio 1060 and 1061); bill of June 4, 2003, presented to the Senate by Senator Julio Herrera (file of attachments to the State's final written arguments, volume II, attachment 8, folio 31520); bill entitled "Clients of the *Banco de Montevideo* and La Caja Obrera whose saving were applied to the acquisition of certificates of deposit in foreign financial institutions" approved by the Senate of November 12, 2003 (file of attachments to the State's final written arguments, volume II, attachment 8, folio 31521), and record of the parliamentary processing of Matter No. 22109 concerning the bill presented by Senator Julio Herrera (file of attachments to the State's final written arguments, volume II, attachment 8, folios 31524 and 31527)

[162] *Cf.* Affidavit of the witness Julio Herrera of February 14, 2011 (merits file, volume III, folios 1060 and 1061); Testimony of the witness Julio Cardozo before the Inter-American Court during the public hearing in this case, and record of the parliamentary processing of Matter No. 22109 concerning the bill presented by Senator Julio Herrera (file of attachments to the State's final written arguments, volume II, attachment 8, folios 31525 and 31530).

[163] *Cf.* Expert testimony of Daniel Hugo Martins before the Inter-American Court during the public hearing in this case.

[164] *Cf.* Expert testimony of Daniel Hugo Martins before the Inter-American Court during the public hearing in this case and written report on this testimony submitted on March 4, 2011 (file on merits and possible reparations, volume III, folio 1259).

[165] Article 309 of the Constitution of the Oriental Republic of Uruguay establishes:

> The Contentious-Administrative Tribunal shall hear appeals for annulment of final administrative acts executed by the Administration in the exercise of its functions, which are contrary to a rule of law or involves misuse of power.
> The jurisdiction of the Tribunal shall include also final administrative acts executed by the other organs of State, the departmental governments, the autonomous entities, and the decentralized services.
> The appeal for annulment may only be exercised by the holder of a right or a direct, personal and legitimate interest that has been violated or harmed by the administrative act.

Constitution of the Oriental Republic of Uruguay (file of attachments to the answer, volume I, attachment 12, folio 12864).

[166] Article 23 of Law 15,524 establishes:

> In particular, and without the need for specific details, the following shall be considered the object of the appeal for annulment:
> a) Administrative decisions that are unilateral, treaty-based or of any other nature, issued involving misuse, abuse or excess or power, or violation of a rule of law, understood as any principle of law or constitutional, legislative, regulatory or contractual norm.
> b) Those decisions that can be separated from administrative contracts.
> c) Those decisions that have been issued while the statutory relationship between the State organ and the public official subject to its authority is in force, relating to any type of claim concerning the matter regulated by it, even if it is of a purely financial nature.

Decree Law 15.524, entitled "Regulatory Framework. Administrative Tribunal" (file of attachments to the answer, volume I, attachment 15, folio 13011).

[167] Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13875). See also, *inter alia,* Judgment No. 713 of the Contentious-

102. This appeal can be filed once the administrative remedies have been exhausted, and its purpose is to confirm or annul the administrative act and, should the act be annulled, the interested party can have recourse to the courts to claim reparation for the damage that the said act, which has been declared illegal, may have caused him.[168] However, under article 312 of the Constitution,[169] the interested party may also resort directly to the competent courts to claim reparation for the damage caused by "acts or omission of the administration," without the need to apply previously to the Contentious-Administrative Tribunal.[170]

Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13910); Judgment No. 272 of the Contentious-Administrative Tribunal of June 4, 2007, in proceedings entitled "Notero, Ángel *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VII, attachment 27, folio 16400); Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14474); Judgment No. 477 of the Contentious-Administrative Tribunal of September 3, 2007, in proceedings entitled "Perles, Gisela *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 14875); Judgment No. 16 of the Contentious-Administrative Tribunal of February 5, 2007, in proceedings entitled "Neuschul, Franklin *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 14936 and 14937); Judgment No. 179 of the Contentious-Administrative Tribunal of April 30, 2007, in proceedings entitled "Neuschul, Thomas *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 14959); Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15052), and Judgment No. 726 of the Contentious-Administrative Tribunal of December 17, 2007, in proceedings entitled "Gutiérrez, Eduardo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15150)

168 *Cf.* Expert testimony of Daniel Hugo Martins before the Inter-American Court during the public hearing in this case, and Constitution of the Oriental Republic of Uruguay (file of attachments to the answer, volume I, attachment 12, folio 12866).

169 Article 312 of the Constitution establishes that:

> The action to repair the harm caused by the administrative acts referred to in article 309 shall be filed before the jurisdiction determined by law and may only be exercised by those with legal standing to file an appeal for the annulment of the act in question.
> The appellant may choose between requesting the annulment of the act or reparation for the harm caused.
> If he chooses the former and obtains a judgment annulling the act, he may then file a claim for reparation before the corresponding court. However, he cannot request the annulment if he has first chosen the second option of requesting reparation, whatever the result of the respective judgment. If the judgment of the court confirms the request, and declares that the cause invoked for the annulment is sufficiently justified, a claim may also be made for reparation.

Constitution of the Oriental Republic of Uruguay (file of attachments to the answer, volume I, attachment 12, folio 12865).

170 *Cf.* Expert testimony of Daniel Hugo Martins before the Inter-American Court during the public hearing in this case and written report on this testimony presented on March 4, 2011 (file on merits and possible reparations, volume III, folios 1273 to 1275). In this written report, Mr. Martins explained that the administrative courts of first instance "hear all administrative actions for reparation of patrimony in which a State public person is sued for the damage caused by an administrative act annulled by the [Administrative] Tribunal or annulled administratively owing to illegality, or caused by acts or omissions of the administration, by legislative acts or by jurisdictional acts." In this regard, in the proceedings before the Court, judgments were provided that decided actions filed before these administrative courts of first instance in which, among their claims, the plaintiffs required that they should be recognized as covered by article 31 of Law 17,613 (file of attachments to the answer, volumes III to VII, attachment 27, folios 13562 to 15738). In their arguments before the Inter-American Court, none of the parties made specific reference to these judgments a regards this point. The State only referred more generally and broadly to the fact that actions were filed against the Central Bank of Uruguay in the ordinary jurisdiction, and that the corresponding final judgments that were issued rejected those actions considering that the presumption of lack of service had not been constituted, and no causal relationship had been proved between the harm suffered by the plaintiffs and the facts, acts or possible omissions of the defendants (answering brief of the State, paras. 42 to 46).

103. In the instant case, 39 alleged victims filed appeals for annulment of the decisions of the Central Bank before the Contentious-Administrative Tribunal.[171] To date, the Tribunal has confirmed all the decisions issued by the Central Bank under article 31 of Law 17,613, with the exception of one case of an individual who is not an alleged victim before this Court.[172]

104. According to the Contentious-Administrative Tribunal, article 31 of Law 17,613 is an exceptional norm and, consequently, its interpretation should be restrictive, in the sense that it should cover only those situations in which the requirements set out in article 31 are satisfied cumulatively.[173] These requirements "were intended to cover specific situations, limiting the recognition as a "depositor" of the *Banco de Montevideo* to those who did not know, were unaware of, or had not given their consent for their money to be transferred to the 'Trade & Commerce Bank in the Cayman Islands.'"[174] In

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[171] The following are the alleged victims who filed appeals for annulment: (1) Alzaradel, Rita; (2) Azparren, Ana Beatriz; (3) Barcarcel, Liliana; (4) Canabal Lema, Andrés; (5) Canabal, Andrea; (6) Castro Etchart, Gustavo; (7) Cavajani, Nícida; (8) Cavanna, José Luis; (9) Contin, Gianna; (10) Da Silva Gaibisso, Hugo; (11) Dendrinos Saquieres, Daniel; (12) García Milia, María Delia; (13) Gigli Rodríguez, María Ivelice; (14) Glaser, Marion; (15) Guerra, Martín; (16) Gutiérrez Galiana, Eduardo; (17) Horvath, Raúl; (18) Leroy, Jean; (19) Lijtenstein, Fabiana; (20) Lingeri Olsson, Manuel; (21) Lisbona Vásquez, Gabriel; (22) López Varela, José Jorge; (23) López, Alejandro Rogelio; (24) Neuschul, Franklin; (25) Neuschul, Thomas Máximo; (26) Perles, Gisela; (27) Pizza, Martha; (28) Rama Sienra, Leandro; (29) Rodríguez Lois, Marta; (30) Roure Casas, Pablo Raúl; (31) Roelsgaard Papke, Niels Peter; (32) Rubio Saquieres, Manuel; (33) Rubio Saquieres, Miguel Ángel; (34) Saiquieres Garrido, Nelly; (35) Schipani Élida; (36) Tabárez Corni, Tabaré; (37) Volyvovic, Clara, (38) Notero Ángel, and (39) Bonifacino Alba. The State indicated in its answer that the victim Gladys Píriz Bustamente had also filed an appeal for annulment. However, the Court has verified that the said appeal for annulment is not related to a decision of the Central Bank issued in the context of article 31 of Law 17,613, but seeks the annulment of Decision D/933/2002, issued by the Board of the Central Bank, under article 14 of Law 17,613. *Cf.* Judgment No. 391 of the Contentious-Administrative Tribunal of May 17, 2006, in proceedings entitled "Piriz, Gladys *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 14861 to 14870). In addition, the body of evidence reveals that the alleged victims Ángel Notero and Alba Bonifacino also filed an appeal for annulment against the decision rejecting their petition under article 31 (*infra* note 262).

[172] *Cf.* Judgment No. 580 of the Contentious-Administrative Tribunal of October 17, 2007, in proceedings entitled "Perrone, Alejandro *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the State's final written arguments, volume II, attachment 4, folios 31442 to 31450)

[173] According to the Contentious-Administrative Tribunal these requirements consisted of: "(1) being a depositor in the *Banco de Montevideo* or the *Banco La Caja Obrera*; (2) whose deposits have been transferred to other institutions; (3) without his consent." Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in the case file entitled "Clemata, Jose *et al. v.* the Central Bank. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13876). See also, *inter alia,* judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in the case file entitled "Azparren, Ana *v.* Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13911); Judgment No. 487 of the Contentious-Administrative Tribunal of October 23, 2008, in the case file entitled "Castro, Gustavo *v.* Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14,600); Judgment No. 272 of the Contentious-Administrative Tribunal of June 4, 2007, in proceedings entitled "Notero, Ángel *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VII, attachment 27, folios 16400 and 16401); Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14475); Judgment No. 477 of the Contentious-Administrative Tribunal of September 3, 2007, in proceedings entitled "Perles, Gisela *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 14877); Judgment No. 16 of the Contentious-Administrative Tribunal of February 5, 2007, in proceedings entitled "Neuschul, Franklin *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 14937); Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15053 and 15054), and Judgment No. 726 of the Contentious-Administrative Tribunal of December 17, 2007, in proceedings entitled "Gutiérrez, Eduardo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15150 and 15151).

[174] Judgment No. 659 of the Contentious-Administrative Tribunal of October 4, 2006, in proceedings entitled "Alzaradel, Rita *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13971). See also, *inter alia*, Judgment No. 204 of the Contentious-Administrative Tribunal of June 12, 2008, in proceedings entitled "Leroy, Jean *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15088);

addition, this Tribunal maintained that those depositors who had given their consent to the transfer of funds to offshore banks, or who, by their silence, had consented to the said financial operation should not be protected by the provisions of the said law.[175]

105. Accordingly, the Contentious-Administrative Tribunal considered that the consent required by article 31 of Law 17,613 could be express or implied. Express consent could be given by the petitioners if: (i) they had signed contracts on "General Conditions for the Administration of Investments," in which the *Banco de Montevideo* was granted "broad powers" to carry out on behalf of, and at the order and risk of the client placements in securities issued [by other financial institutions], "exonerating the Bank from any losses that could arise from such operations,"[176] and (ii) they had given specific instructions to the *Banco de Montevideo* requesting the acquisition, administration or renewal of instruments on behalf of, and at the order and risk of the client," so that their placements did not remain idle.[177]

106. Regarding implied consent, the Contentious-Administrative Tribunal indicated repeatedly that, under banking law, both positive banking norms and banking practice are applicable, so that "implied consent, verbal orders by clients, even by telephone, constitute reiterated practice in banking law, which has created the general awareness ("*opinio juris")* of their existence and obligatory nature."[178] Moreover, like the Central

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Judgment No. 408 of the Contentious-Administrative Tribunal of July 25, 2007, in proceedings entitled "Atijas, Vito *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15413), and Judgment No. 578 of the Contentious-Administrative Tribunal of October 17, 2007, in proceedings entitled "Guerra, Martín *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15188).

175 *Cf.* Judgment No. 578 of the Contentious-Administrative Tribunal of October 17, 2007, in proceedings entitled "Guerra, Martín *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15188).

176 *Cf.* Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13881); Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14476); Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13913); Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14476); Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15054), and Judgment No. 317 of the Contentious-Administrative Tribunal of May 13, 2010, in proceedings entitled "Roelsgaard, Niels *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folio 15615).

177 *Cf.* Judgment No. 719 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Horvath, Raúl *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15126); Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13881); Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13913); Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14477), and Judgment No. 719 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Horvath, Raúl *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15126).

178 *Cf.* Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folios 13883 and 13884); Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13916); Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to

Bank (*supra* para. 94), the Contentious-Administrative Tribunal inferred the consent of the petitioners from elements such as: (i) the reception by the petitioners of bank statements, showing the respective operation, without the petitioner objecting or making any observations, as established in article 35 of Law 6,895;[179] (ii) the interest rates enjoyed by the petitioners because of their share in the certificates of deposit or any other product, in the understanding that they enjoyed interest rates that were "considerably higher than those offered on fixed term deposits in the *Banco de Montevideo* […] and significantly higher that market rates,"[180] and (iii) the regular practice or profile of the petitioner.[181]

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the answer, volume IV, attachment 27, folio 14479); Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15058), and Judgment No. 726 of the Contentious-Administrative Tribunal of December 17, 2007, in proceedings entitled "Gutiérrez, Eduardo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15155).

[179] *Cf.* Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folios 13912 and 13914); Judgment No. 487 of the Contentious-Administrative Tribunal of October 23, 2008, in proceedings entitled "Castro, Gustavo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14601); Judgment No. 828 of the Contentious-Administrative Tribunal of December 13, 2006, in proceedings entitled "Lijtenstein, Fabiana *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15068); Judgment No. 204 of the Contentious-Administrative Tribunal of June 12, 2008, in proceedings entitled "Leroy, Jean *et al. v.* the Central Bank of Uruguay. Appeal for annulment": (file of attachments to the answer, volume V, attachment 27, folios 15087 and 15088); Judgment No. 315 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Gigli, María *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15196 and 15197); Judgment No. 435 of the Contentious-Administrative Tribunal of August 22, 2007, in proceedings entitled "Rama, Leandro *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15204); Judgment No. 272 of the Contentious-Administrative Tribunal of June 4, 2007, in proceedings entitled "Notero, Ángel *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VII, attachment 27, folio 16401); Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folios 13878 and 13882); Judgment No. 138 of the Contentious-Administrative Tribunal of May 8, 2008, in proceedings entitled "Dendrinos, Daniel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14373), and Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15055).

[180] *Cf.* Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13913); Judgment No. 315 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Gigli, María *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15197); Judgment No. 435 of the Contentious-Administrative Tribunal of August 22, 2007, in proceedings entitled "Rama, Leandro *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15204 and 15205); Judgment No. 408 of the Contentious-Administrative Tribunal of July 25, 2007, in proceedings entitled "Atijas, Vito *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15412 and 15413); Judgment No. 314 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Roure, Pablo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folio 15607); Judgment No. 292 of the Contentious-Administrative Tribunal of June 6, 2007, in proceedings entitled "Rodríguez, Marta *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folio 15628); Judgment No. 272 of the Contentious-Administrative Tribunal of June 4, 2007, in proceedings entitled "Notero, Ángel *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VII, attachment 27, folio 16402); Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folios 13878 and 13879); Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15055), and Judgment No. 726 of the Contentious-Administrative Tribunal of December 17, 2007, in proceedings entitled "Gutiérrez, Eduardo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15152).

[181] *Cf.* Judgment No. 314 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Roure, Pablo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the

h.2) Actions under the ordinary jurisdiction

107. In addition to the appeals filed under the administrative and contentious-administrative system before the Contentious-Administrative Tribunal, at least 136 alleged victims filed actions under the ordinary jurisdiction against the *Banco de Montevideo* based on, *inter alia*, contractual non-compliances as well as requests for reparation of damages.[182] Of these 136 alleged victims, the Court has the judgments

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answer, volume VI, attachment 27, folio 15607); Judgment No. 292 of the Contentious-Administrative Tribunal of June 6, 2007, in proceedings entitled "Rodríguez, Marta *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15627 and 15628); Judgment No. 272 of the Contentious-Administrative Tribunal of June 4, 2007, in proceedings entitled "Notero, Ángel *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VII, attachment 27, folio 16402); Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13882); Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folio 14477); Judgment No. 719 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Horvath, Raúl *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15127), and Judgment No. 726 of the Contentious-Administrative Tribunal of December 17, 2007, in proceedings entitled "Gutiérrez, Eduardo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15152).

[182] These cases are in the file of attachments to the answer, volumes III to VII, attachment 27, and correspond to the following alleged victims: (1) Alejandro Fontana, Magali Báez Carballido, Néstor Báez Porcile, in proceedings entitled "Colegio and Liceo Pallotti (Father Alejandro Fontana) *et al. v. Banco de Montevideo S.A.* in liquidation *et al.* – Other Proceedings - Recovery of pesos and damages." File No. 2-32639/2005." Judgment No. 34 of the First Court of First Instance for insolvency proceedings of September 24, 2007 (folios 13887 to 13906); (2) Liliana Barcarcel, in proceedings entitled "Oteiza Juan José *et al. v. Banco de Montevideo* S.A. *et al.* – Recovery of pesos – and damages." File No. 21/417/2003." Judgment No. 45 of the First Court of First Instance for insolvency proceedings of December 11, 2007, and Judgment No. 12 of the 7th Civil Court of Appeal of February 13, 2009 (folios 13808 to 13863); (3) Juan José Bocchi Paladino, in proceedings entitled "Bocchi Paladino, Juan *et al. v. Banco de Montevideo et al.* – Damages." File No. 40/190/2003. Judgment No. 7 of the First Court of First Instance for insolvency proceedings of April 7, 2008, and Judgment No. 58 of the 3rd Civil Court of Appeal of March 20, 2009 (folios 13687 to 13709); (4) Enrique Colombo Pampin, Zulma Pérez Bogao, in proceedings entitled "Blanc Sellares, José Osvaldo *et al. v. Banco de Montevideo et al.* – Other Proceedings." File No. 2-14605/2006. Judgment No. 9 of the 2nd Court of First Instance for insolvency proceedings of July 21, 2008, and Judgment No. 108 of the 5th Civil Court of Appeal of September 21, 2009 (folios 14167 to 14199); (5) Beatriz Di Carlo, Daniel Bellesi and Carlos Mazzuchi, in proceedings entitled "Di Carlo Beatriz *et al. v. Banco de Montevideo FRPB et al.* – Corporate lawsuits for liability." File No. 2-16145/2006. Judgment No. 13 of the First Court of First Instance for insolvency proceedings of July 21, 2008, and Judgment No. 108 of the 2nd Civil Court of Appeal of April 29, 2009 (folios 13747 to 14767); (6) María Abal Gemelli, Mario Abal Bordachar, in proceedings entitled "Abal Bordachar, Mario *et al. v. Banco de Montevideo S.A.* (in liquidation) *et al.* – Compliance with contract. Damages." File No. 2-25766/2006. Judgment No. 28 of the Civil Court of First Instance of October 6, 2008, and Judgment No. 100 of the Civil Court of Appeal of September 2, 2009 (folios 14106 to 14129); (7) Elina Braceras and Rafael Braceras in proceedings entitled "Braceras Lussich, Elina *et al. v. Banco de Montevideo* in liquidation *et al.* – Other Proceedings." File No. 2-25767/2006. Judgment No. 22 of the First Court of First Instance for insolvency proceedings of December 2, 2008, and Judgment No. 169 of the 2nd Civil Court of Appeal of May 26,, 2010, (folios 13563 to 13604); (8) María del Huerto Breccia and Carlos La Cava, in proceedings entitled "Breccia, María del Huerto *et al. v. Banco de Montevideo S.A.* (in liquidation) *et al.* – Other Proceedings - Compliance with contract plus damages." File No. 2-25768/2006. Judgment No. 42 of the 2nd Court of First Instance for insolvency proceedings of December 23, 2008, Judgment No. 3 of the 2nd Civil Court of Appeal of February 10, 2010, and Judgment No. 1299 of the Supreme Court of Justice of May 2, 2011 (folios 14130 to 14166 and merits file, volume V, folios 1722 to 1726); (9) Juan José Baraza, Verónica Baril Korgan, Adolfo Batista, Esteban Bentancour, Bernardo Erramun, Julio Vinnotti, Raúl Horvath and Gerardo Ariano, in proceedings entitled "Buenaventura Sotelo, Rubén *et al. v. Banco de Montevideo S.A.* in liquidation *et al.* – Damages." File No. 2-22807/2006. Judgment No. 17 of the 2nd Court of First Instance for insolvency proceedings of November 4, 2009, and Judgment No. 304 of the 3rd Civil Court of Appeal of October 21, 2010 (folios 13919 to 13964); (10) Gustavo Bertolini, Lita Bigoni Baccani, Hugo Da Silva Gaibisso, Bernardo Erramun, Nelson González, Horacio Parodi, Carlos Pascual Knaibl, Claudia Rovira Aparicio and Lilián Elena Schettini, in proceedings entitled "Sarubbi Rampoldi, Juan Nelson *et al. v. Banco de Montevideo S.A. et al.* – Preparatory measures, recovery of pesos." File No. 3-229/2003. Judgment No. 2 of the Civil Court of First Instance of February 5, 2010, (folios 13711 to 13746); (11) Gustavo Barreiro and José Barreiro in proceedings entitled "Barreiro Díaz Jorge Walter *et al. v. Banco de Montevideo S.A.* in liquidation *et al.* – Recovery of pesos and Damages." File No. 2-26754/2006. Judgment No. 10 of the Civil Court of First Instance of July 30, 2010 (folios

13788 to 13806); (12) Gabriel Sorensen, Saúl Issac Acher, Graciela Aleman, Alfonso Amoroso, Nelson Botto, Helga Buseck Ehrlich, Fernando Caballero Lehite, José Antonio Etchart, Gerardo Garland, Bazzano, Mario González, María Lerma Tejería, Hilda Méndez Fernández, Leonardo Merletti, Alba Moreno Pardie, Elbio Poggio Odella, Laura Quintana Andreoli, Anabela Quintero, Pablo Rivas, Daniel Rodríguez, Alejandro Szasz, Susana Szasz and Verónica Villa, in proceedings entitled "Sorensen Sarute, Gabriel *et al. v. Banco de Montevideo S.A.* (in liquidation) *et al.* – Non-exceptionable nature of legal status." File No. 2-24344/2006. Judgment No. 13 of the 2nd Court of First Instance for insolvency proceedings of September 2, 2010 (folios 14028 to 14060); (13) Alba Fernández, in proceedings entitled Fernández Alba *et al. v. Banco de Montevideo* S.A. *et al.* Recovery of pesos. Damages." File 2-12593/2006, Judgment No. 2 of the First Court of First Instance for insolvency proceedings of February 9, 2010 (folios 14226 to 14239); (14) Maria Rosa Luzardo and Nilda Díaz Santana, in proceedings entitled "Zafi, Ma. Rosa *et al. v. Banco de Montevideo S.A.* in liquidation *et al.* – Damages." File No. 2-25200/2006. Judgment No. 12 of the First Court of First Instance for insolvency proceedings of August 6, 2010, (folios 14351 to 14367); (15) Luis Julio Demicheri and Alvaro Julio Demicheri, in proceedings entitled "Demicheri, Luis Julio and Alvaro Julio *v. Banco de Montevideo S.A.* and B.C.U. – Recovery of pesos. Damages." File No. 41-172/2003. Judgment No. 9 of the 2nd Court of First Instance for insolvency proceedings of June 11, 2007, and Judgment No. 110 of the 3rd Civil Court of Appeal of May 23, 2008 (folios 14376 to 14400); (16) José Luis Cavanna, in proceedings entitled "Cavvana José *et al. v. Banco de Montevideo et al.* - Damages. Paulian Action." File No. 41-542/2004. Judgment No. 42 of the 12th Civil Court of First Instance of September 8, 2008, and Judgment No. 284 of the 3rd Civil Court of Appeal of September 24, 2010 (folios 14515 to 14583); (17) Nicida Cavajani, in proceedings entitled "Cavajani Nicida *et al. v. Banco de Montevideo et al.* – Damages." File No. 30-490/2002. Judgment No. 39 of the 6th Civil Court of First Instance of August 14, 2009 (folios 14585 to 14596); (18) Gabriel Castellano, in proceedings entitled "Castellano Gabriela *et al. v. Banco de Montevideo* in liquidation *et al.* – Damages." File No. 2-695/2005. Judgment No. 14 of the First Court of First Instance for insolvency proceedings of April 19, 2007, and Judgment No. 51 of the 1st Civil Court of Appeal of March 26, 2008 (folios 14603 to 14636); (19) Teresa Caligaris, in proceedings entitled "Caligaris Rocha Teresa Silka *v. Banco de Montevideo S.A.* – Central Bank of Uruguay – Precautionary measure Damages." File No. 41-154/2003. Judgment No. 8 of the 2nd Court of First Instance for insolvency proceedings of June 7, 2007, and Judgment No. 157 of the 7th Civil Court of Appeal de August 6, 2008 (folios 14727 to 14757); (20) Julia Elvira Fiori Esteche and Carla Gramática, in proceedings entitled "Fiori Esteche Julia Elvira *et al. v. Banco de Montevideo S.A.* (in liquidation) *et al.* – Recovery of pesos." File No. 2-49969/2005. Judgment No. 33 of the 2nd Court of First Instance for insolvency proceedings of October 29, 2008, and Judgment No. 192 of the 2nd Civil Court of Appeal of June 9, 2010, (folios 14758 to 14790); (21) Martha Pizza, in proceedings entitled "Pizza Nogueira Martha *v. Banco de Montevideo S.A. et al.* –Damages." File No. 32-371/2003. Judgment No. 4 of the First Court of First Instance for insolvency proceedings of March 12, 2008, and Judgment No. 279 of the 7th Civil Court of Appeal of December 5, 2008 (folios 14817 to 14860); (22) Probo Pereira Da Silva, in proceedings entitled "Pereira Da Silva Probo *v. Banco de Montevideo S.A.* (in liquidation) *et al.* –Reimbursement of funds. Damages." File No. 2-60855/2004. Judgment No. 17 of the 2nd Court of First Instance for insolvency proceedings of September 1, 2008, and Judgment No. 178 of the 4th Civil Court of Appeal of July 22, 2009 (folios 14883 to 14909); (23) Jose Magni, in proceedings entitled "Magni José v. BM Funds AFISA –Damages." File No. 133-573/2004. Judgment No. 52 of the 21st Departmental Magistrate's Court of the Capital of September 30, 2004, and Judgment No. 102 of the 13th Civil Court of First Instance of December 12, 2005 (folios 15012 to 15030); (24) Fabiana Lijtenstein, in proceedings entitled "Lijtenstein Jasinski Fabiana *v. Banco de Montevideo S.A.* (in liquidation) *et al.* –Recovery of pesos and Damages." File No. 2-26975/2006. Judgment No. 4 of the First Court of First Instance for insolvency proceedings and Judgment No. 215 of the 4th Civil Court of Appeal of September 29, 2010 (folios 15070 to 15082); (25) Carlos Leite, in proceedings entitled "Leite Rivero Carlos *v. Banco de Montevideo* (in liq) *et al.* – Compliance with contract. Damages." File No. 2-25764/2006. Judgment No. 1 of the First Court of First Instance for insolvency proceedings of March 9, 2009, and Judgment No. 89 of the 3rd Civil Court of Appeal of April 13, 2010 (folios 15091 to 15119); (26) Leonardo Viera, in proceedings entitled "Viera López, Leonardo Marcel v. Trade Commerce Bank *et al.*. Recovery of pesos based on non-compliance with contract and Damages." File No. 2-31144/2006. Judgment No. 9 of the First Court of First Instance for insolvency proceedings of April 9, 2007, and Judgment No. 4 of the 5th Civil Court of Appeal of March 5, 2008 (folios 15417 to 15438); (27) Baltasar Sánchez Labrador, in proceedings entitled "Labrador Puñal Dorinda *et al. v. Banco de Montevideo et al.* Recovery of pesos and Damages." File No. 40-187/2003. Judgment No. 17 of the First Court for insolvency proceedings of May 31, 2007; Judgment No. 66 of the 5th Civil Court of Appeal of June 4, 2008, (folios 15579 to 15602); (28) María Mercedes Supervielle Casaravilla, in proceedings entitled "Supervielle Ma. Mercedes *v. Banco de Montevideo et al.* Damages." File No. 2-25759/2006. Judgment No. 20 of the First Court of First Instance for insolvency proceedings of November 20, 2008, and Judgment No. 168 of the 2nd Civil Court of Appeal of May 26, 2010 (folios 15439 to 15480); (29) Marta Rodríguez Lois, in proceedings entitled "Rodríguez Lois, Marta Beatriz *v. Banco de Montevideo* in liquidation *et al*. Damages." File No. 2-26958/2006. Judgment No. 19 of the First Court of First Instance for insolvency proceedings of October 8, 2008 (folios 15631 to 15646); (30) Carlos Scherschener, in proceedings entitled "Scherschener, Carlos *et al. v. Banco de Montevideo S.A.* in liquidation *et al.* Other Proceedings - Recovery of pesos and Damages, Unlawful Enrichment and Abuse of Process, Declaration of Economic Situation, Disregard, Declaration of Solidarity." File No. 2-18880/2006. Judgment No. 12 of the 2nd Court of First Instance for insolvency proceedings of August 20, 2009, and Judgment No. 102 of the 2nd Civil Court of Appeal of April 21, 2010 (folios 15517 to 15578); (31) Nelson Espasandín, Pablo Espasandín Villas Boas and Ana Laura Espasandín Villas Boas, in proceedings entitled "Espasandin Alvarez, Nelson Adriano *et al. v.* Central Bank of Uruguay *et al.* Act." File No. 2-41576/2004. Judgment No. 53 of the 2nd Administrative Court of First Instance of November 5, 2008 (folios 14259 to 14299); (32) Eduardo Manuel Díaz Vidal, Eduardo Díaz Cabana and Lola

concerning 128 of them, which refer to 41 cases, because many of them filed joint actions. In 10 of these cases the *Banco de Montevideo* was found responsible, and in nine of them this was confirmed by a higher court.[183] According to the information provided by the State, these nine cases are "final," or "closed."[184] In addition, in some

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Varela, in proceedings entitled "Díaz Eduardo *et al.* v. Trade and Commerce Bank *et al.*" Precautionary measure." File 110-4/2003. Judgment No. 49 of the 2nd Administrative Court of First Instance of May 10, 2004, and Judgment No. 139 of the 3rd Civil Court of Appeal of June 5, 2006 (folios 14337 to 14343), and (33) Roberto Alonso, María Soledad Arieta Apesteguy, Walter Bara, Ignacio Barquín, Raúl Bergamino, Amilcar Bergara Avila, Mauro Bolla, Fernando Bonilla, Blanca Casella, Gonzalo Castagna, Ramón W Cotelo, Aldo D´Amico, Miguel Etchevarne, Oscar Everett, María Raquel Fabro, Raúl Favrin, Marta Flocken, Marta Gil, Alfredo González Rodríguez, Antonio Guimaraens, Yoko Hachiuma Yoshida, Carlos Iglesias, Sergio Iglesias, Minas Alberto Kahiaian Kevorkian, Alberto Ledoux, José Raúl Lorenzo, Beatriz Manaro, Ana María Martínez, Cristina Panella Castro, Vito Pascaretta, Atahualpa Pérez Rodríguez, Walter Pérez Soto, María Jesús Real de Azúa, Rodolfo Schaich, Nicolás Sosa, Gustavo Vázquez, Mirta Elena Zanandrea, in proceedings entitled "Iglesias, Sergio *et al. v.* Central Bank of Uruguay. Liability for omission." File No. 110-258/2002. Judgment No. 81 of the 2nd Administrative Court of First Instance of September 28, 2006, Judgment No. 235 of the 7th Civil Court of Appeal of October 10, 2007, and Judgment No. 869 of the Supreme Court of Justice of December 15, 2008 (folios 15679 to 15697). In addition, the following filed complaints against the *Banco de Montevideo:* Paulina Isabel Adrién, Jorgelina Rial Merola, Vivián Barretto, Marcela da Pena, Jose Ángel Pastorino, Nelson Bocchi Paladino, Jorge Marenales Escrich and Eduardo Gutiérrez Galiana, whose cases and judicial decisions are described in the footnote below. The State indicated, in attachment 5 to its final written arguments, that the alleged victims Marion Glaser, María Delia García Milia, Jean Leroy, Maria Cristina Abellá Demarco, José Corredoira, Eduardo Durán, Niels Peter Roelsgaard Papke and Perla Kogan also filed proceedings in the ordinary jurisdiction against the *Banco de Montevideo*, which have been closed. However, the said judgments were not provided to the Court. Also, in the said attachment 5 and in attachment 26 to the answer, the State indicated other judicial actions filed by different alleged victims against the *Banco de Montevideo*, which have not been "closed," and regarding which the Court has no information about the stage of their processing. Furthermore, in addition to the judgments mentioned above, the Court received decisions corresponding to actions filed by the alleged victims before the ordinary jurisdiction against the Central Bank of Uruguay for alleged "lack of service." In this regard, the Court recalls that facts relating to "the monitoring, supervisions and control of the financial entities in Uruguay" by the Central Bank do not form part of the factual framework of this case, and neither does the "management of Uruguay's finances when confronting the [2002 banking] crisis (*supra* para. 39 and 41). Consequently, the Court will not take the said decisions into account since they refer to the alleged responsibility of the Central Bank based on those reasons.

[183] The said cases are in the file of attachments to the answer, volumes III to VII, attachment 27, and correspond to the following alleged victims: (1) Paulina Isabel Adrién, in proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of Pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007, Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008, and Judgment No. 275 of the Supreme Court of Justice of June 26, 2009 (folios 13973 to 14027); (2) Jorgelina Rial Merola, in proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 6 of the First Court of First Instance for insolvency proceedings of March 22, 2007, Judgment No. 23 of the 5th Civil Court of Appeal of March 12, 2008, and Judgment No. 138 of the Supreme Court of Justice of May 29, 2009 (folios 15289 to 15363); (3) Vivián Barretto, in proceedings entitled "Grudzien Burstyn *et al. v. Banco de Montevideo et al.* – Other Proceedings." File No. 25-551/2002. Judgment No. 38 of the First Court of First Instance for insolvency proceedings of October 18, 2006, and Judgment No. 154 of the 5th Civil Court of Appeal of December 6, 2007 (folio 13768 to 13786); (4) Marcela da Pena, in proceedings entitled "Da Pena Marcela Adriana *v. Banco de Montevideo* in liquidation *et al.* – Damages." File No. 2-22368/2006. Judgment No. 21 of the First Court of First Instance for insolvency proceedings of November 24, 2008, and Judgment No. 61 of the 2nd Civil Court of Appeal of March 25, 2010 (folios 14444 to 14468); (5) José Ángel Pastorino, in proceedings entitled "Pastorino, José Ángel *v. Banco de Montevideo S.A. et al.* – Recovery of pesos – Damages." File No. 40-149/2003. Judgment No. 48 of the First Court of First Instance for insolvency proceedings of October 31, 2005, and Judgment No. 118 of the 2nd Court of Appeal of May 2, 2007 (folios 14910 to 14931); (6) Nelson Bocchi Paladino and Juan José Bocchi Paladino, in proceedings entitled "Bocchi Paladino, Nelson *et al. v. Banco de Montevideo S.A. et al.* – Preparatory measures." File No. 22-458/2002. Judgment No. 12 of the 2nd Civil Court of First Instance of March 13, 2009 (folios 13655 to 13686); (7) Jorge Marenales Escrich, in proceedings entitled "Marenales Escrich, Jorge *et al. v. Banco de Montevideo S.A.* (in liquidation) *et al.* – Other Proceedings." File No. 2-3004/2006. Judgment No. 8 of the 2nd Court of First Instance for insolvency proceedings of June 30, 2009, and Judgment No. 138 of the 6th Civil Court of Appeal of July 16, 2010, (folios 14964 to 15011); (8) Eduardo Gutiérrez Galiana, in proceedings entitled "Menéndez Ana María *et al. v. Banco de Montevideo S.A. et al.* – Damages." File No. 40/159/2003. Judgment No. 14 of the First Court for insolvency proceedings of August 26, 2010 (folios 15158 to 15181); (9) Marion Glaser, and (10) María Delia García Milia and Jean Leroy. The State indicated in attachment 5 to its final written arguments that, in the cases before the ordinary jurisdiction filed by the alleged victims Marion Glaser, María Delia García Milia and Jean Leroy the Banco de Montevideo was found responsible and the judgments are final. Nevertheless, these judgments were not provided to the Court.

cases, the Trade & Commerce Bank and members of the Peirano family were also found responsible.[185]

108. According to the evidence provided, the Court finds that, in the actions against the *Banco de Montevideo,* the courts of the ordinary jurisdiction examined the consent, the alleged defects in it and/or the said Bank's obligation to provide adequate information, in almost all of the cases in which the petitioners raised these points.[186]

109. In some cases, the defect examined consisted in the failure to comply with the obligation to provide adequate information when the consent was given. In other cases, the courts analyzed the *Banco de Montevideo*'s compliance with its obligation to provide adequate information while the contract was being carried out, as well as under the corresponding consumer protection norms and the commercial code.[187]

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184 According to the State, the cases of the following alleged victims are "final" or "closed": (1) Nelson Bocchi Paladino and Juan José Paladino; (2) Marión Glaser; (3) Paulina Adrien Clavijo; (4) Jorge Marenales Escrich; (5) María Delia García Milia and Jean Leroy; (6) Marcela da Pena; (7) José Ángel Pastorino; (8) Jorgelina Rial Merola, and (9) Vivián Barretto. *Cf.* List of "Judgments in which *Banco de Montevideo S.A.* (in liquidation) has been sentenced and convicted by a judgment that has been executed to pay those who acquired shares in certificates of deposit issued by TCB Cayman Islands or securities of other of the Group's companies" (file of attachments to the State's final written arguments, volume II, attachment 5, folios 31452 to 31453), and file of actions filed against the *Banco de Montevideo* for investors in TCB that are closed (file of attachments to the State's final written arguments, volume II, attachment 5, folio 31454).

185 *Cf. inter alia,* Proceedings entitled "Bocchi Paladino, Nelson *et al. v. Banco de Montevideo S.A. et al.* – Preparatory measures." File No. 22-458/2002. Judgment No. 12 of the First Court of First Instance of March 13, 2009 (file of attachments to the answer, volume III, attachment 27, folios 13655 to 13686), and proceedings entitled "Cavanna, José *et al. v. Banco de Montevideo et al.* – Damages" File No. 7-325/2003, joindered to proceedings entitled "Cavanna, José *et al. v. Nuevo Banco Comercial et al.* – Damages. Paulian Action" File No. 41-542/2004. Judgment No. 42 of the 12th Civil Court of First Instance of September 8, 2008, and Judgment of the 3rd Civil Court of Appeal of September 24, 2010 (file of attachments to the answer, volume IV, attachment 27, folios 14515 to 14584).

186 The Court notes that the State provided an incomplete copy of the judgment in the case of the victim Fabiana Lijtenstein so that, even though it can be seen that a defect of consent is alleged, it is not possible to confirm that the respective court examined this. *Cf.* Proceedings entitled "Lijtenstein Jasinski, Fabiana *et al. v. Banco de Montevideo S.A.* in liquidation *et al.* Recovery of pesos and Damages." File No. 2-26975/2006. Judgment No. 12 of the First Court of First Instance for insolvency proceedings of August 6, 2010, and Judgment No. 215 of the 4th Civil Court of Appeal of October 1, 2010 (file of attachments to the answer, volume V, attachment 27, folios 15031 to 15082). The Court also notes that a defect of consent was alleged in the case of Nelson Espasandín Álvarez, which was not examined because the only defendants were the Central Bank of Uruguay and the Bank Assets Recovery Fund of the *Banco de Montevideo*, neither of which could be considered responsible for the loss of the funds. Regarding the Central Bank, owing to a "causal relationship between the action of the Administration and the harm suffered," and regarding the Bank Assets Recovery Fund owing to "lack of legal standing to be sued" because it did not have legal status. *Cf.* "Espasandín Álvarez, Nelson Adriano *et al. v.* Central Bank of Uruguay *et al.* Action." File No. 2-41576/2004. Judgment No. 53 of the 2nd Administrative court of November 5, 2008 (file of attachments to the answer, volume V, attachment 27, folios 14259 to 14299).

187 *Cf. inter alia,* Proceedings entitled "Bocchi Paladino, Nelson *et al. v. Banco de Montevideo S.A. et al.* – Preparatory measures." File No. 22-458/2002. Judgment No. 12 of the First Court of First Instance of March 13, 2009 (file of attachments to the answer, volume III, attachment 27, folios 13655 to 13686); Proceedings entitled "Da Pena Marcela Adriana *v. Banco de Montevideo* in liquidation *et al.* – Damages." File No. 2-22368/2006. Judgment No. 21 of the First Court of First Instance for insolvency proceedings of November 24, 2008, and Judgment No. 61 of the 2nd Civil Court of Appeal of March 25, 2010 (file of attachments to the answer, volume III, attachment 27, folios 14444 to 14468); Proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 6 of the First Court of First Instance for insolvency proceedings of March 22, 2007, Judgment No. 23 of the 5th Civil Court of Appeal of March 12, 2008, and Judgment No. 138 of the Supreme Court of Justice of May 29, 2009 (file of attachments to the answer, volume VI, attachment 27, folios 15289 to 15363); Proceedings entitled "Menéndez Ana María *et al. v. Banco de Montevideo S.A. et al.* – Damages." File No. 40/159/2003. Judgment No. 14 of the 1st Court for insolvency proceedings of August 26, 2010 (file of attachments to the answer, volume V, attachment 27, folio 15176), and proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007; Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008, and Judgment No. 275 of the Supreme Court of Justice of June 26, 2009 (file of attachments to the answer, volume III, attachment 27, folios 13973 to 14027).

110. From the judgments provided to the Court in which the *Banco de Montevideo* was found responsible, and that were not overturned by a higher court, it is clear that the civil courts considered that there had been irregularities in the consent given in three cases.[188] According to these decisions, the *Banco de Montevideo* was acting as a broker when purchasing the Trade & Commerce Bank certificates of deposit or shares in them, and the *Banco de Montevideo* had not provided sufficient information to the petitioners during the process of obtaining their consent, because the said Bank knew about the lack of liquidity and subsequent insolvency of the Trade & Commerce Bank, and did not warn its clients of the risks.[189] In particular, in two cases, the corresponding courts stated that "market transparency required adequate information," and that "reticence in this regard is relevant and constituted civil liability."[190] Also, in another case, the respective court of appeal emphasized that "the continuation of the operation that the plaintiffs have been carrying out since April 2001 […] is not sufficient to conclude that they were convinced that their business was with a company other than the *B[anco de] M[ontevideo]*."[191]

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[188] *Cf.* Proceedings entitled "Pastorino, José Ángel *v. Banco de Montevideo S.A. et al.* – Recovery of pesos – Damages." File No. 40-149/2003. Judgment No. 48 of the First Court of First Instance for insolvency proceedings of October 31, 2005 and Judgment No. 118 of the 2nd Court of Appeal of May 2, 2007 (file of attachments to the answer, volume V, folios 14910 to 14931); Proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 6 of the First Court of First Instance for insolvency proceedings of March 22, 2007 (file of attachments to the answer, volume VI, attachment 27, folios 15289 to 15363). In the case of Jorgelina Rial, even though the respective Court of Appeal retained the sentence against the *Banco de Montevideo* (although it reduced it) , it used grounds that were "partially distinct," because it considered that the responsibility of the *Banco de Montevideo* arose from failing to comply with its obligation to provide information as a broker. The Supreme Court of Justice endorsed this assessment of the Court of Appeal and even expressly indicated that "the existence of inducing in error c[ould] not be shared." Proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 23 of the 5th Civil Court of Appeal of March 12, 2008, and Judgment No. 138 of the Supreme Court of Justice of May 29, 2009 (file of attachments to the answer, volume VI, attachment 27, folios 15339 to 15363). See also: Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007, (file of attachments to the answer, volume III, attachment 27, folios 13973 to 14027). In the last case, the respective Court of Appeal expressly established that, since the Banco de Montevideo's failure to comply with the obligation to provide information had been declared, with its consequent obligation to make reparation, "it consider[ed] it unnecessary to make an analysis on the annulment of the contract due to fraud." Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008 (file of attachments to the answer, volume III, attachment 27, folio 14009).

[189] Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007, and Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008 (file of attachments to the answer, volume III, attachment 27, folios 13991 and 13992 to 14027); Proceedings entitled "Pastorino, José Ángel *v. Banco de Montevideo S.A. et al.* – Recovery of pesos – Damages." File No. 40-149/2003. Judgment No. 48 of the First Court of First Instance for insolvency proceedings of October 31, 2005, and Judgment No. 118 of the 2nd Court of Appeal of May 2, 2007 (file of attachments to the answer, volume V, folios 14910 to 14963), and proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 6 of the First Court of First Instance for insolvency proceedings of March 22, 2007 (file of attachments to the answer, volume VI, attachment 27, folios 15289 to 15363).

[190] Proceedings entitled "Pastorino, José Ángel *v. Banco de Montevideo S.A. et al.* – Recovery of pesos – Damages." File No. 40-149/2003. Judgment No. 48 of the First Court of First Instance for insolvency proceedings of October 31, 2005, and Judgment No. 118 of the 2nd Court of Appeal of May 2, 2007 (file of attachments to the answer, volume V, folios 14917 and 14928), and proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 6 of the First Court of First Instance for insolvency proceedings of March 22, 2007 (file of attachments to the answer, volume VI, attachment 27, folio 15309).

[191] Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007, and Judgment No. 275 of the Supreme Court of Justice of June 26, 2009 (file of attachments to the answer, volume III, attachment 27, folio 14007).

111. In five cases in which the *Banco de Montevideo* was found responsible, the respective courts considered that, although the plaintiffs knew or should have known that they were undertaking a risk, they were not informed of its true magnitude, or they were not "warned of the real increase in the risk."[192] In these cases, it was considered that the *Banco de Montevideo* had failed to comply with "the most elementary rules of trust and the obligation to provide information which should regulate the relationship between a bank and its client,"[193] or that it did not act "loyally in its relationship with the client," because it had not provided information as it should have done on "the precarious financial situation of the Trade & Commerce Bank or on its overall liquidity problem, depriving the client of the opportunity to choose another type of placement with less risk."[194] Moreover, the obligation of the *Banco de Montevideo* to provide its clients with "reliable explanatory information" was stressed.[195] In this regard, in a case corresponding to an alleged victim, the Supreme Court of Justice, when confirming the responsibility of the *Banco de Montevideo* for failing to comply with its obligation to provide adequate information to its clients, took into account that "the appellant's decision to invest was preceded by a negligent omission by the Bank that prevented him from knowing the real economic and financial situation of the offshore entities and evaluating the risks of the said investment."[196]

112. Also, in three of the cases in which the *Banco de Montevideo* was found responsible, the respective courts considered that the alleged victims had not given their express consent or authorization, because they had not signed a contract or had given contrary instructions.[197] In one of them the Court of Appeal explained that "it is not

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[192] *Cf.* Proceedings entitled "Pastorino, José Ángel *v. Banco de Montevideo S.A. et al.* – Recovery of pesos – Damages." File No. 40-149/2003. Judgment No. 48 of the First Court of First Instance for insolvency proceedings of October 31, 2005, and Judgment No. 118 of the 2nd Court of Appeal of May 2, 2007 (file of attachments to the answer, volume V, folios 14910 to 14931); Proceedings entitled "Bocchi Paladino, Nelson *et al. v. Banco de Montevideo S.A. et al.* – Preparatory measures." File No. 22-458/2002. Judgment No. 12 of the First Court of First Instance of March 13, 2009 (file of attachments to the answer, volume III, attachment 27, folios 13655 to 13686); Proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract." File No. 40-226/2003. Judgment No. 23 of the 5th Civil Court of Appeal of March 12, 2008, and Judgment No. 138 of the Supreme Court of Justice of May 29, 2009 (file of attachments to the answer, volume VI, attachment 27, folios 15289 to 15363); Proceedings entitled "Marenales Escrich, Jorge *et al. v. Banco de Montevideo S.A.* (in liquidation) *et al.* – Other Proceedings." File No. 2-3004/2006. Judgment No. 138 of the 6th Civil Court of Appeal of July 16, 2010 (file of attachments to the answer, volume V, attachment 27, folios 15002 to 15011), and proceedings entitled "Menéndez Ana María *et al. v. Banco de Montevideo S.A. et al.* – Damages." File No. 40/159/2003. Judgment No. 14 of the First Court for insolvency proceedings of August 26, 2010 (file of attachments to the answer, volume V, attachment 27, folio 15176).

[193] Proceedings entitled "Menéndez Ana María *et al. v. Banco de Montevideo S.A. et al.* – Damages." File No. 40/159/2003. Judgment No. 14 of the First Court for insolvency proceedings of August 26, 2010 (file of attachments to the answer, volume V, attachment 27, folio 15176).

[194] *Cf.* Proceedings entitled "Marenales Escrich, Jorge *et al. v. Banco de Montevideo S.A.* (in liquidation) *et al.* – Other Proceedings ." File No. 2-3004/2006. Judgment No. 138 of the 6th Civil Court of Appeal of July 16, 2010 (file of attachments to the answer, volume V, attachment 27, folios 15002 to 15011); Proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 23 of the 5th Civil Court of Appeal of March 12, 2008, and Judgment No. 138 of the Supreme Court of Justice of May 29, 2009 (file of attachments to the answer, volume VI, attachment 27, folios 15337 to 15363).

[195] Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008, (file of attachments to the answer, volume III, attachment 27, folios 13991 and 13992 to 14027).

[196] Proceedings entitled "Rial Merola, Jorgelina *v. Banco de Montevideo et al.* – Compliance with contract" File No. 40-226/2003. Judgment No. 138 of the Supreme Court of Justice of May 29, 2009 (file of attachments to the answer, volume VI, attachment 27, folio 15355).

[197] Proceedings entitled "Grudzien Burstyn *et al. v. Banco de Montevideo et al.* – Other Proceedings." File No. 25-551/2002. Judgment No. 38 of the First Court of First Instance for insolvency proceedings of October 18, 2006, and Judgment No. 154 of the 5th Civil Court of Appeal of December 6, 2007 (file of attachments to the answer, volume III, attachment 27, folios 13768 to 13654); Proceedings entitled "Da Pena Marcela Adriana *v. Banco de Montevideo* in liquidation *et al.* – Damages." File No. 2-22368/2006. Judgment No. 21 of the First Court of First Instance for insolvency proceedings of November 24, 2008, and Judgment No. 61 of the 2nd Civil Court of Appeal of March 25, 2010 (file of attachments to the answer, volume III, attachment 27, folios 14444

considered that it is usual banking practice or custom that, when acting as broker, this is done without any type of authorization," but rather "the defendant banking entity [*Banco de Montevideo*], which admitted that it had acted as a broker, had the responsibility to verify that, in the contested operations, it had the client's authorization."[198] In this regard, the said court emphasized that the usual practice was that there should be a "commission contract, containing a general authorization to administer the invested funds, or specific authorizations, before, simultaneous with or subsequent to the operations performed, indicating the client's agreement,"[199] and that, since the *Banco de Montevideo* had not been able to prove that it had a general or specific authorization to perform the banking operations contested in the complaint, and thus have permission to administer the plaintiff's funds, it was responsible for the said operation.[200]

113. In this regard, the Court observes that, in several of these cases, the courts took into account the plaintiff's profile in order to determine the existence of consent or of sufficient information.[201] Thus, in one case, the court underlined that the profile of the plaintiffs was not that of an expert investor, but rather of a bank client, and that "[t]he average bank client is unaware of the norms and mechanisms that regulate a complex domain, such as that of finance."[202] Also, the corresponding court of appeal in the said

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to 14468), and Proceedings entitled "Pastorino, José Ángel *v. Banco de Montevideo S.A. et al.* – Recovery of pesos – Damages." File No. 40-149/2003. Judgment No. 48 of the First Court of First Instance for insolvency proceedings of October 31, 2005, and Judgment No. 118 of the 2nd Court of Appeal of May 2, 2007 (file of attachments to the answer, volume V, attachment 27, folios 14910 to 14931).

198 Proceedings entitled "Grudzien Burstyn *et al. v. Banco de Montevideo et al.* – Other Proceedings." File No. 25-551/2002. Judgment of the 5th Civil Court of appeal of December 6, 2007 (file of attachments to the answer, volume III, attachment 27, folio 13782).

199 In this regard, the respective Court of Appeal clarified that "these specific authorizations can be either written or verbal, but generally if they involve movements of significant volumes of funds, they are given in writing at some point. But what is not usual is that all operations, in any case, are carried out based on verbal, general or specific authorizations, without any brokerage contract, because no banking entity would take the risk with any of its clients of this way of proceedings as usual." Proceedings entitled "Grudzien Burstyn *et al. v. Banco de Montevideo et al.* – Other Proceedings." File No. 25-551/2002. Judgment of the 5th Civil Court of Appeal of December 6, 2007 (file of attachments to the answer, volume III, attachment 27, folio 13782).

200 *Cf.* Proceedings entitled "Grudzien Burstyn *et al. v. Banco de Montevideo et al.* – Other Proceedings." File No. 25-551/2002. Judgment of the 5th Civil Court of Appeal of December 6, 2007, (file of attachments to the answer, volume III, attachment 27, folios 13780 to 13786).

201 *Cf. inter alia,* Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007, Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008, and Judgment No. 275 of the Supreme Court of Justice of June 26, 2009 (file of attachments to the answer, volume III, attachment 27, folios 13973 to 14027); Proceedings entitled "Da Pena Marcela Adriana *v. Banco de Montevideo* in liquidation *et al.* – Damages." File No. 2-22368/2006. Judgment No. 21 of the First Court of First Instance for insolvency proceedings of November 24, 2008, and Judgment No. 61 of the 2nd Civil Court of Appeal of March 25, 2010 (file of attachments to the answer, volume III, attachment 27, folios 14444 to 14468); Proceedings entitled "Pastorino, José Ángel *v. Banco de Montevideo* S.A. *et al.* – Recovery of pesos – Damages." File No. 40-149/2003. Judgment No. 48 of the First Court of First Instance for insolvency proceedings of October 31, 2005, and Judgment No. 118 of the 2nd Court of Appeal of May 2, 2007 (file of attachments to the answer, volume V, folios 14910 to 14931); Proceedings entitled "Marenales Escrich, Jorge *et al. v. Banco de Montevideo* S.A. (in liquidation) *et al.* – Other Proceedings." File No. 2-3004/2006. Judgment No. 138 of the 6th Civil Court of Appeal of July 16, 2010 (file of attachments to the answer, volume V, attachment 27, folios 15002 to 15011), and Proceedings entitled "Menéndez Ana María *et al. v. Banco de Montevideo* S.A. *et al.* – Damages." File No. 40/159/2003. Judgment No. 14 of the First Court for insolvency proceedings of August 26, 2010 (file of attachments to the answer, volume V, attachment 27, folio 15176).

202 Proceedings entitled "Da Pena Marcela Adriana *v. Banco de Montevideo* in liquidation *et al.* – Damages." File No. 2-22368/2006. Judgment No. 21 of the First Court of First Instance for insolvency proceedings of November 24, 2008 (file of attachments to the answer, volume III, attachment 27, folio 14456); Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007, and Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008 (file of attachments to the answer, volume III, attachment 27, folios 13984, 13989 and 14008). In this regard, the court of first instance indicated that "the profile of the plaintiffs, according to the testimony received during these proceedings, is not that of an expert investor, but rather of the client of the bank who wants to have his

case underlined that the *Banco de Montevideo* had not proved "that the 'intellectuality' of the plaintiffs was above average, to allow them to be aware of the increased risks of the operation with the TCB." [203] In another of these cases, the court took into account "that these were not professional investors, but merely depositors."[204]

114. Also, in at least six other cases before the ordinary jurisdiction, in which the Banco de Montevideo was not found responsible, the courts examined and confirmed the bank's obligation to provide truthful and complete information to its clients, under either the norms of the Commercial Code, for consumer protection, or the commission contract. However, these cases were dismissed by the courts owing to lack of evidence or because the plaintiffs had not in fact alleged the said situations or non-compliance.[205]

B. RIGHT TO BE HEARD AND GUARANTEES OF DUE PROCESS OF LAW

115. The Court notes that, in this case, no violation has been alleged regarding the creation of the special administrative procedure under article 31 of Law 17,613, or with regard to the requirements established in this norm in order to benefit from it.[206] In the instant case, the Court is called upon to determine whether, in the procedures in which the said norm was applied, the guarantees of due process and judicial protection of the alleged victims were violated. It is not incumbent on this Court to determine whether or not the alleged victims in the instant case comply with the requirements of article 31 of Law 17,613, or whether their petitions should have been considered favorably. Consequently, the different situations in which the alleged victims could be classified as regards the merits of their petitions are not relevant to this Court. These different situations could be relevant in the domestic sphere to determine whether they should be

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money safeguarded so that he can withdraw it and buy a business and, therefore, can be classified as a bank client who has no knowledge of the banking markets and their risks," while the Court of Appeal agreed with the court of first instance that the average bank client is unaware of the norms and instruments that regulate the financial sector.

[203] Proceedings entitled "Adrien Clavijo Paulina *v. Banco de Montevideo* in liquidation *et al.* – Recovery of pesos – Damages." File No. 2-59458/2005. Judgment No. 15 of the First Court of First Instance for insolvency proceedings of April 24, 2007, and Judgment No. 92 of the 2nd Civil Court of Appeal of April 16, 2008 (file of attachments to the answer, volume III, attachment 27, folios 14008).

[204] Proceedings entitled "Marenales Escrich, Jorge *et al. v. Banco de Montevideo* S.A. (in liquidation) *et al.* – Other Proceedings." File No. 2-3004/2006. Judgment No. 138 of the 6th Civil Court of Appeal of July 16, 2010 (file of attachments to the answer, volume V, attachment 27, folio 15005).

[205] *Cf.* Proceedings entitled "Leite Rivero, Carlos *v. Banco de Montevideo* S.A. in liquidation *et al.* – Other Proceedings – Compliance with contract plus Damages." File No. 2-25764/2006. Judgment No. 1 of the First Court of First Instance for insolvency proceedings of March 9, 2009, and Judgment No. 89 of the 3rd Civil Court of Appeal of April 13, 2010 (file of attachments to the answer, volume V, attachment 27, folios 15091 to 15119); Proceedings entitled "Pereira Da Silva, Probo *v. Banco de Montevideo* S.A. (in liquidation) *et al.* – Reimbursement of funds – Damages." File No. 2-60.855/2004. Judgment No. 178 of the 4th Civil Court of Appeal of July 22, 2009 (file of attachments to the answer, volume V, attachment 27, folios 14899 to 14909); Proceedings entitled "Luzardo Zafi, Ma. Rosa *et al. v. Banco de Montevideo* S.A. in liquidation *et al.* – Damages." File No. 2-25200/2006. Judgment No. 12 of the First Court of First Instance for insolvency proceedings of August 6, 2010 (file of attachments to the answer, volume IV, attachment 27, folios 14351 to 14366); Proceedings entitled "Demicheri, Luis Julio and Alvaro Julio *v. Banco de Montevideo S.A*. and Central Bank of Uruguay – Recovery of pesos, Damages." File No. 41-172/2003. Judgment No. 110 of the 3rd Civil Court of Appeal of May 23, 2008 (file of attachments to the answer, volume IV, attachment 27, folios 14391 to 14400); Proceedings entitled "Castellano Martínez, Gabriel *et al. v. Banco de Montevideo S.A.* (In liquidation) *et al.* – Non-compliance with contract. Damages." File No. 2-695/2005. Judgment No. 14 of the First Court of First Instance for insolvency proceedings of April 19, 2007, and Judgment No. 51 of the 1st Civil Court of Appeal of March 26, 2008 (file of attachments to the answer, volume IV, attachment 27, folios 14603 to 14636), and Proceedings entitled "Supervielle, Ma. Mercedes *v. Banco de Montevideo et al.* – Contractual liability." File No. 2-225759/2006. Judgment No. 20 of the First Court of First Instance for insolvency proceedings of November 20, 2008, and Judgment No. 168 of the 2nd Civil Court of Appeal of May 26, 2010 (file of attachments to the answer, volume VI, attachment 27, folios 15439 to 15480).

[206] In this regard, the representatives even stated during the public hearing before the Court that they "had never doubted the legality of the Law, or the contents of article 31."

protected by article 31. The only differentiation between the alleged victims that this Court will take into account in order to rule on the alleged violations of the American Convention is the determination of whether or not they filed a petition before the Central Bank under article 31, and this will allow the Court to determine the victims in this case (*infra* paras. 142 to 147).

116. Article 8 of the American Convention establishes the standards of due process of law, which consists of a series of requirements that must be observed by the procedural instances, so that every person may defend his rights adequately when faced with any type of act of the State that may affect them.[207]

117. According to the provision of Article 8(1) of the Convention, when determining a person's rights and obligations of a criminal, civil, labor, fiscal, or any other nature, "due guarantees" must be observed, which ensure the right to due process in the corresponding proceedings.[208] The failure to comply with one of these guarantees entails a violation of this provision of the Convention.[209]

118. Article 8(1) of the Convention is not applicable only to judges and courts. The guarantees established by this norm must be observed in the different procedures in which State bodies adopt decisions determining a person's rights, because the State also entrusts the function of adopting decisions that determine rights to administrative, collegiate or single-person authorities.[210]

119. The guarantees established in Article 8(1) of the Convention are also applicable to the hypothesis in which a public authority adopts decisions that determine such rights,[211] taking into account that the guarantees inherent in a jurisdictional body cannot be required of the former, but nevertheless it must comply with the guarantees designed to ensure that the decision is not arbitrary.[212]

120. The Court has developed the right to be heard protected by Article 8(1) of the Convention, in the general sense of understanding that everyone has the right to have access to a court or an organ of the State responsible for determining his rights and obligations,[213] which, in certain types of proceedings, must be exercised orally.[214] Furthermore, when ruling on the observance of the guarantees of due process in the

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[207] *Cf. Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27; *Case of Vélez Loor v. Panama*, *supra* note 15, para. 142, and *Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, para. 115.

[208] *Cf. Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights).* Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28; *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala*, *supra* note 11, para. 149; *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of June 23, 2005. Series C No. 127, para. 148, and *Case of Claude Reyes et al. v. Chile. Merits, reparations and costs.* Judgment of September 19, 2006. Series C No. 151, para. 117.

[209] *Cf. Case of Claude Reyes et al. v. Chile*, *supra* note 208, para. 117.

[210] *Case of Claude Reyes et al. v. Chile*, *supra* note 208, para. 118. Also, *cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, paras. 126 and 127.

[211] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001. Series C No. 71, para. 71; *Case of Yatama v. Nicaragua, supra* note 208, para. 149, and *Case of Claude Reyes et al. v. Chile*, *supra* note 208, para. 119.

[212] *Cf. Case of Claude Reyes et al. v. Chile*, *supra* note 208, para. 119.

[213] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 72; *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 101, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 140.

[214] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra* note 213, para. 75.

investigation of human rights violations, the Court has indicated that this entails the State's obligation to guarantee that the victims or their next of kin have "extensive possibilities of being heard" "at all stages of the respective proceedings [so that] they can state their claims and present probative elements, and that these are examined fully and genuinely by the authorities before they make a ruling on the facts, responsibilities, punishments and reparations."[215]

121. In this regard, the European Court of Human Rights has indicated that the requirements that a person "be heard fairly, publicly and within a reasonable time, by an independent and impartial court" can be compared to the right to a fair "trial" or "judicial proceedings." In this regard, the European Court has developed the criterion that fair proceedings presume that the organ responsible for administering justice conducts "a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision."[216]

122. The examination required in the instant case calls for the Court to clarify the scope of the right to be heard established in Article 8(1) of the American Convention. This right entails, on the one hand, a formal and procedural aspect that ensures access to the competent body to determine the right that is claimed, respecting due procedural guarantees (such as the presentation of arguments and the provision of evidence). On the other hand, this right includes a material aspect of protection which means that the State must guarantee that the decision produced by the proceedings satisfies the end for which it was conceived. The latter does not mean that the right must always be granted, but rather that the capacity of the body to produce the result for which it was conceived be guaranteed.

123. Taking into account the alleged violations in the instant case, the Court will examine first the elements relating to the material aspect of the right to be heard in the procedure before the administrative body (the Central Bank), and will then consider the alleged violations of due procedural guarantees in the said administrative procedure and in the judicial proceedings before the Contentious-Administrative Tribunal.

124. The Court notes that the facts of the instant case refer to administrative and judicial proceedings intended, respectively, to apply and review the application of article 31 of Law 17,613. This norm was intended to address the situation of clients of the *Banco de Montevideo* who were not registered as creditors in the bank's accounting records, because they had placements in other financial institutions, by granting them the possibility to claim their inclusion as creditors of the bank with the same rights as those granted to depositors with a checking, savings or fixed term account.

125. This norm stipulated that the same rights that this law provided for the depositors of the *Banco de Montevideo* and the *Banco La Caja Obrera* would be granted to those "depositors" "whose deposits had been transferred to other institutions" "without their consent" (*supra* para. 77). According to the decisions issued by the Board of the Central Bank and the Contentious-Administrative Tribunal, the norm called for three requirements to be fulfilled cumulatively (*supra* para. 93).

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[215] *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, para. 193, and *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 163, paras. 193 and 195. Also, *cf. Case of the Ituango Massacres v. Colombia*, *supra* note 24, para. 296, and *Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 146.

[216] ECHR, *Kraska v. Switzerland*. Judgment of 19 April 1993, Series A No. 254-B. App. No. 13942/88, para. 30; *Van de Hurk v. the Netherlands*. Judgment of 19 April 1994, Series A No. 288. App. No. 16034/90, para. 59; *Van Kück v. Germany*. Judgment of 12 June 2003. App. No. 35968/97, para. 48, 2003-VII, and *Krasulya v. Russia*. Judgment of 22 February 2007. App. No. 12365/03. para. 50.

126. The Court recalls that, under the provisions of article 31 of Law 17,613, two rights should be granted to those who complied with the said requirements: (i) recognition as a creditor of the *Banco de Montevideo* or the *Banco La Caja Obrera*, based on which they became proportional shareholders in the Asset Recovery Fund of the respective bank for the nominal amount that it had been determined was transferred without their consent, and (ii) the right to receive from the State a complement to their proportional share up to (between their own share and the complement provided by the State) a nominal maximum amount of US$100,000.00 (one hundred thousand United States dollars) or its equivalent in other currencies. This last right was recognized to them, because it was considered that their situation was the same as that of the depositors with a checking, savings or fixed term account (*supra* para. 97).

127. In addition to stipulating these rights, the said article 31 created: a special procedure to deal with the petitions of those who considered that they fulfilled the corresponding requirements; and called for the establishment of a technical committee (the Advisory Commission) responsible for examining the petitions and advising the Board of the Central Bank of Uruguay, the administrative body that had to adopt the corresponding decisions (*supra* paras. 77 and 79). The norms contained in the Central Bank's Administrative Rules of Procedure would be applied in this special procedure, while the General Procedural Code would be applied to the assessment of evidence (*supra* para. 83).

128. The Court emphasizes that the body of evidence does not show that the remedies available under the ordinary justice system, which decided the actions against the *Banco de Montevideo,* could apply article 31 of Law 17,613 and determine the rights established therein (*infra* para. 226). This determination needed to be made by the administrative body responsible for the said procedure, which was created especially to respond to the claims of those persons who allegedly complied with the requirements of the said norm.

B.1) Material aspect of the right to be heard in the procedure before the administrative body (the Central Bank)

Arguments of the parties

129. The Court finds that several arguments of the Inter-American Commission and of the representatives are addressed at questioning the effectiveness of the special administrative procedure because it did not allow an adequate examination of the requirement of consent, which they consider to be an essential element for analysis in the procedure under article 31 of Law 17,613. The Court considers that the violations alleged should be examined in relation to the right to be heard in the procedure before the Central Bank.

130. In this regard, the Inter-American Commission argued that the presumption of consent by the Advisory Commission contradicts the principle of the "material truth" of the administrative due process, "making the special remedy created by Congress to resolve this situation illusory and its very existence ineffective." According to the Inter-American Commission, the Advisory Commission did not take into account that many of the certificates were renewed without the client's consent, because the General Manager of the *Banco de Montevideo* gave "instructions [to the *Banco de Montevideo* branch managers] that they should automatically renew all the deposits in order to avoid a hemorrhage of funds." In addition, it indicated that the Advisory Commission made its decisions without analyzing the existence of fraud which, at the time, had been publicly denounced and had resulted in criminal proceedings against the bank's owners and officers.

131. For their part, the representatives indicated that "the Advisory Commission, in a discretionary manner, failed to take into account that the consent of most of the depositors was invalid when it was given." They added that "[t]he Advisory Commission, by admitting that it was not empowered to consider whether the consent was invalid, […] automatically left all the depositors without protection [contrary to] the spirit of article 31 of Law 17,613." In addition, they indicated that the Advisory Commission's actions violated the guarantees of due process because "[t]he depositors ha[d] the right to have [their] problem dealt with integrally and decided within the framework of an impartial Advisory Commission that did not place a limit on its own powers."

132. Uruguay indicated that the concept of the common good had inspired Law No. 17,613 "and determined the State's conduct when creating additional mechanisms to those that already existed," by adding to the existing juridical regime, "an administrative procedure that would provide an additional guarantee to the said petitioners; namely, an administrative body competent to analyze each case by receiving the pertinent evidence and, without the need to resort to the courts, deciding those cases in which it was proved that the legal requirements had been fulfilled." The State added that "[i]f the interested party did not find the [Advisory] Commission's decision satisfactory, he continued to have all the guarantees of an independent jurisdiction." Regarding the reasons why the administrative body had not ruled on the alleged defects of consent and the obligation to inform, Uruguay affirmed that it was not correct to argue that the Advisory Commission had limited its own powers, because "as any public body, its actions were governed by the principle of specialization, and this prevented it from exceeding the mandate established by the legislator"; however, any claim based on another reason could be formulated by the alleged victims through the courts.

Considerations of the Court

133. In December 2002, the State promulgated Law 17,613, seeking to respond to different situations that had arisen as a result of the banking crisis that had occurred in Uruguay that year and the imminent liquidation of several private financial intermediation institutions, including the *Banco de Montevideo* and the *Banco La Caja Obrera*. Under article 31 of this law, the State created a special administrative procedure to determine the rights of "depositors" of these Banks whose savings "had been transferred to other institutions" "without their consent." This procedure would function for a certain time exclusively to decide the rights of those in this situation. The Court has already referred to the two rights that would be determined using this procedure (*supra* para. 126). Consequently, the importance that this special administrative remedy would have in determining the rights of the alleged victims in this case is evident, as well as the significance that the State guarantee that the procedure would be able to satisfy the purpose and the result for which it was conceived.

134. In this regard, the Court has verified that the requirement established in article 31 of Law 17,613, compliance with which was determinant for the petitions to be accepted by the Central Bank, was that the transfers had been carried out "without their consent." The Court has verified the arguments of the Inter-American Commission and the representatives that the said administrative body, when examining this requirement, decided to examine only the elements from which consent could be inferred, but expressly inhibited itself from examining the arguments and evidence that could prove that the consent that had been verified was defective. In this regard, in some of the decisions submitted to the Court, it is clear that the Board of the Central Bank of Uruguay expressly established that "annulment of the acceptance of the investment and of any contractual responsibility for the unsuccessful operations carried out involving error, fraud or serious negligence, necessarily constitute[d] jurisdictional decisions that exceed[ed] the sphere of the powers granted to the Central Bank of Uruguay under article 31 of Law 17,613" (*supra* para. 95). In this regard, the testimony of Mr. Durán Martínez, member of the Advisory Commission, reveals that, in exercising its functions

of analyzing the petitions and advising the Board of the Central Bank, the Advisory Commission acted under the assumption that the analysis of defects of consent was an exclusive function of the courts. For example, this witness indicated that the said Advisory Commission "could not consider a declaration of private intention based on a deception that could possibly invalidate the consent."

135. Regarding the sphere of material protection sought by the said article 31, the Court takes into account the transcripts of the parliamentary discussions provided by the State.[217] In this regard, it is evident that, when the wording "without their consent" was adopted in the said norm, it was considered that the inclusion of the concept of consent was the most appropriate to examine the situation of those they were seeking to protect,[218] because "consent is a legal concept regulated by the Civil Code."[219] At the time, it was considered that, when the norm was applied, the provisions of the Civil Code regulating the invalidity of consent could be taken into account, "when [consent] has been given in error, under duress or as a result of intentional deception."[220] In addition, during the parliamentary discussion of bill 17,613, repeated reference was made to the fact that this law should protect the depositors who had been "deceived."[221]

136. Based on the above, this Court finds that, in order to ensure that the petitioners' claims were heard using this special procedure, it was necessary that the body responsible for deciding the petitions could analyze the consent fully, because the absence of consent was a decisive requirement to accede to the rights established in article 31 of Law 17,613. This analysis included the assessment of all the petitioners' arguments that related to their consent being impaired, such as the defects that could invalidate it and the lack of truthful and complete information from the *Banco de Montevideo* and the *Banco La Caja Obrera*. That analysis should have taken into account not only those elements upon which consent could be based, such as a contract or specific instructions that permitted the transfers, but also those that could invalidate or impair it, such as the alleged defects of consent.

137. The Court considers that, if a complete analysis of consent had been made when deciding the petitions presented under article 31 of Law No. 17,613, the result of the decisions that rejected the petitions might have been different.

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[217] When the State was advised that the documentary evidence regarding the parliamentary discussions was incomplete, in response Uruguay clarified that "[t]he parts of the daily records of the session that have been attached are those that refer, relevantly, to the parliamentary discussion of article 31 of Law 17,613. Hence, we have refrained from attaching the rest of the parliamentary discussions." The State's response to the analysis of the attachments to the answering brief sent to it by the Court's Secretariat (merits file, volume II, folio 747).

[218] This wording was approved unanimously by the committee responsible for drafting the bill and remained unchanged until the final approval of Law 17,613. *Cf.* Typed version of the session of December 20, 2002, of the Senate's Finance Committee established by the Constitution and legislation (file of attachments to the answer, volume II, attachment 20, folio 13216).

[219] Intervention of Senator Millor in the session of December 20, 2002, of the Senate's Finance Committee established by the Constitution and legislation (file of attachments to the answer, volume II, attachment 20, folio 13215).

[220] Senator Millor stated that he "believe[d] that, of these three hypotheses, the one that met the actual situation [of the persons who article 31 was supposed to protect] is the third; in other words that there are individuals who could have been duped by [civil] fraud." *Cf.* Intervention of Senator Millor in the session of December 20, 2002, of the Senate's Finance Committee established by the Constitution and legislation (file of attachments to the answer, volume II, attachment 20, folio 13215).

[221] *Cf.* Intervention of Senator Millor in the session of December 20, 2002, of the Senate's Finance Committee established by the Constitution and legislation (file of attachments to the answer, volume II, attachment 20, folio 13216); Intervention of Senator Gallinal in the 75th special session of the Senate held on December 20 and 21, 2002 (file of attachments to the answer, volume II, attachment 20, folio 13232), a Intervention of Representative Amorín Batlle in the session of December 26, 2002, of the Chamber of Representatives (file of attachments to the answer, volume II, attachment 20, folio 13222).

138. In this regard, the Court finds it relevant to note that judicial proceedings were conducted against the *Banco de Montevideo* in the civil courts (*supra* para. 107). In these proceedings, the courts did not apply article 31 of Law 17,613, but rather decided the actions filed under, *inter alia*, damages or breach of contract. To decide the claims of the plaintiffs, these ordinary courts analyzed the alleged defects of consent and the *Banco de Montevideo's* obligation to provide adequate information, which was the deciding element in finding whether or not consent had been given (*supra* paras. 108 to 114). In addition, the Court notes that, when making their analysis, these courts considered that the personal characteristics of the plaintiffs were relevant (*supra* para. 113). It is pertinent to underline that, in cases involving alleged victims in which the *Banco de Montevideo* was found responsible in the ordinary jurisdiction owing to defects of consent or absence of consent, the courts considered that these situations were constituted because, for example, when the petitioners were giving their consent, the *Banco de Montevideo* had not provided them with sufficient information, or because the clients had not given a general instruction or authorization for the bank to act as a broker on their behalf (*supra* paras. 110 and 111). Furthermore, in at least six cases before the ordinary jurisdiction in which the *Banco de Montevideo* was not found responsible, the courts examined the said bank's obligation to provide full and truthful information to its clients (*supra* para. 114). This analysis made by the courts of the ordinary jurisdiction confirms the relevance of a complete analysis of consent.

139. Regarding the creation of the procedure under article 31 of Law 17,613 in the administrative sphere, it is important to emphasize that, when the bill was submitted to the Senate, it was explained that the idea of including this article was precisely to avoid individuals who would be protected by this norm having "to continue to file judicial actions to defend their rights."[222] The Court understands that this procedure was designed to prevent possible beneficiaries from having to resort to the courts to protect their rights, and to ensure that their petitions were decided as promptly as possible by an administrative body with the required technical capability to analyze their situation.

140. The Court takes note of the State's explanation regarding the limitations imposed by the principle of specialization in Uruguay (*supra* para. 132), as well as the reasons why, under this law, it was decided that the competent body to determine the rights it established would be an administrative rather than a judicial body. In this regard, the Court stresses that article 31 granted rights to certain persons who fulfilled the requirements stipulated in this article. The State could have delegated the determination of these rights to judicial bodies under ordinary proceedings if the latter were the only competent organs to decide on certain aspects of the dispute; but instead it decided to create a special procedure and delegate decisions to an administrative body that allegedly had limitations in this regard. The Court finds that, when creating a special procedure to determine the said rights, Uruguay should have ensured that the body entrusted with determining them had the necessary competence to make a complete analysis of the requirements established in article 31 of Law 17,613.

141. Since, in the instant case, it has been proved that the administrative body decided not to analyze elements that could invalidate or impair consent, the Court finds that this resulted in an incomplete analysis of the third requirement of article 31 of Law 17,613, which had a direct impact on the decision of whether to accept the petitions of the alleged victims. Any determination of whether consent had been given that did not take into account elements that could impair or invalidate it, such as the alleged defects of consent and non-compliance with the obligation to provide complete and truthful information, was incorrect.

[222] Intervention of Senator Gallinal in the 75th special session of the Senate held on December 20 and 21, 2002 (file of attachments to the answer, volume II, attachment 20, folio 13232).

142. The Court concludes that the special administrative procedure was ineffective, in light of what it had to determine (*supra* paras. 133 to 136), because the Central Bank made an incomplete analysis of the merits of the petitions; this meant that the State violated the material sphere of the right to be heard protected by Article 8(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 539 persons who filed a petition under article 31 of Law 17,613, who are listed in the Annex on victims to this judgment.

143. Regarding the names of these 539 victims, the Court has verified some differences or errors in the names indicated by the Inter-American Commission and those that appear in the respective files and decisions of the Central Bank of Uruguay, as well as some names that are repeated on the list forwarded by the Inter-American Commission.[223] To determine and identify the victims in this case, the Court will take

[223] According to the evidence provided, the Court has verified the following differences between the identification made of the alleged victims by the Inter-American Commission and the names that appear in the respective Central Bank's decision: (1) "Ferraro, Soledad", who the Court understands is "María Soledad Ferraro Core", as she appears in the Central Bank's decision; (2) "Bordad, Javier", who the Court understands is "Ignacio Bordad" because, from his Central Bank file, it is apparent that his complete name is "Ignacio Javier Bordad"; (3) "Griffin, Juan", who the Court understands is the person who appears in a Central Bank decision as "Juana Griffin"; (4) "Losada Collazo, Juan", who appears in the Central Bank's decision as "Juan Losada"; (5) "Frabaile, Carlos", who the Court understands is the person who appears in a Central Bank decision as "Carlos Frabasile"; (6) "Castaña, Gonzalo", who the Court understands is the person who appears in a Central Bank decision as "Gonzalo Castagna"; (7) "Delfante, José", who appears in the Central Bank's decision as "Eduardo Delfante", but appeared as "José Delfante" in the table provided by the State on June 15, 2011 (file of petitions under article 31 of Law 17,613 before the Central Bank); (8) "Dura, Rey", who appears in the Central Bank's decision as "Daniel Dura", but appeared as "Rey Dura" in the table provided by the State on June 15, 15 2011 (file of petitions under article 31 of Law 17,613 before the Central Bank); (9) "Guimaraens, Griselda", who appears in the Central Bank's decision as "Griselda Marisa Urtiaga Guorisea", but appears as "Griselda Guimaraens" in the table provided by the State on June 15, 2011 (file of petitions under article 31 of Law 17,613 before the Central Bank); (10) "Santiesteban, Luis Fernando", who the Court understands is the persons who appears as "Luis Santisteban" in the table provided by the State on June 15, 2011 (file of petitions under article 31 of Law 17,613 before the Central Bank); (11) "Pereira, Cecilia", who the Court understands is the person who appears in a decision of the Central Bank as "Cecilia Pereiro"; (12) "Pelufo Biselli, Emilio", who the Court understands is the same person who appears in a decision of the Central Bank as "Peluffo, Emilio"; (13) "Moreira, Marta", who the Court understands is the same person who appears in a decision of the Central Bank under the name "Martha Moreira"; (14) "Mainardi Rial, María", who the Court understands is the same person who appears in the Central Bank's decision as "María Victoria Mainardi"; (15) "Leroy, Yean", who the Court understands is the same person who appears in a decision of the Central Bank as "Jean Leroy"; (16) "Kouyoomdjian, José", who the Court understands is the same person who appears in a decision of the Central Bank as "José Kouyoumdjian"; (17) "Haschke, Erika", who appears in the Central Bank's decision as "Erika Dagmar Haschke"; (18) "Harcevnicov, Jorge", who the Court understands is the same person who appears in a decision of the Central Bank as "Jorge Harcenicow"; (19) "Goigochea, Héctor", who the Court understands is the same person who appears in a decision of the Central Bank as "Héctor Goicochea"; (20) "Gigli Rodríguez, Ma. Iverice", whose file before the Central Bank reveals that he name is e María Ivelice Gigli Rodríguez", and who appears in the respective decisions of the Central Bank as "María Gigli"; (21) "Gavioli Piedrahita, José", who appears in the respective decision of the Central Bank as "José Gavioli"; (22) "Cholaguidis, Elizabeth" who the Court understands is the same person who appears in a decision as "Elizabeth Cholaquidis"; (23) "Barreto Trillo, Vivián", who the Court understands is the person who appears in a decision of the Central Bank as "Vivian Barretto"; (24) "Balcarcel, Liliana", who the Court understands is the same person who appears in the Central Bank's decision as "Liliana Barcarcel"; (25) "Alves Serra, Gloria Renée", who the Court understands is the same person who appears as "Gloria Alvez" the Central Bank's decision; (26) "Alsugaray Rodrígues, Carolina", who the Court understands is the same person who appears in the Central Bank's decision as "Carolina Alzugaray"; (27) "Abella Demarco, Cristina", who the Court understands is the same person who appears in a decision of the Central Bank under the name "Maria Cristina Abellá Demarco"; (28) "Saban Cherasi, Nesim", who the Court understands is the same person who appears in a decision of the Central Bank as "Nesim Selmo Saban"; (29) "Saquieres Garrido, Neli", who the Court understands is the same person who appears in a decision of the Central Bank as "Nelly Saquieres Garrido"; (30) "Abisab Ache, Chemel", who the Court understands is the person who appears in a decision of the Central Bank as "Chemel Abisabb Ache"; (31) "Bengochea San Martín, María", who the Court understands is the same person who appears the Central Bank's decision as "María Luisa Bengochea." Also, according to the information and the observations presented by the parties, the Court has verified the following: (1) the alleged victim indicated by the Inter-American Commission as "Antuna Zumarán, María", corresponds to the person who appears in a decision of the Central Bank as "María Carolina Antuña"; (2) the name of the victim Pierina Ivaldi was repeated on the individualized list presented by the Inter-American Commission, under numbers 79 and 339; (3) the name of the victim María Elvira Quintans was repeated on the individualized list presented by the Inter-American Commission, under numbers 260 and 540; (4) the alleged victim indicated by the Inter-American Commission as "Coronato, Roque", in fact includes two different people, "Roque Coronato Buono"

into account the list of alleged victims indicated by the Inter-American Commission in its application and in its Report on Merits, the individualized list of alleged victims provided by the Inter-American Commission together with its final written arguments, in response to the Court's request (*supra* para. 46), the evidence provided to the case file of this case,[224] and any clarifications that the parties have made in this regard.

144. Furthermore, the Court notes that regarding 179 alleged victims indicated by the Inter-American Commission,[225] it has no information that proves that they filed petitions

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and "Roque Coronato Machín", and both will be considered victims in this case; (5) "Morales, Andrés", who the Court understands is "Gustavo Andrés Morales Cabrera", according to information presented by the State and who appears in the Central Bank's decision as "Gustavo Morales", and (6) "Fernández Fernández, Jorge", who the representatives indicates as "Jorge Adelino Fernández Fernández", the Court understand is the person who appears in file No. 2003/1180 before the Central Bank, where he is called "Jorge A. Fernández" and appears in the Central Bank's decision as Jorge Fernández.

[224] To determine who the victims are, the Court takes into account the evidence provided to the case file that prove that the person who submitted a petition to the Central Bank of Uruguay under article 31 of Law 17,613, including the table provided by the State on June 15, 2011, on petitions before the Central Bank under article 31 of Law 17,613 (merits file, volume V, folios 1910 to 1965).

[225] When responding to the request for helpful evidence made by the President of the Court (*supra* para. 11), the State indicated that "it ha[d] no found in the archives of the Central Bank of Uruguay any file in the [...] name [of 171 person indicated as alleged victims] with an administrative petition under article 31." Based on the observations of the representatives, the State provided four additional files corresponding to alleged victims. Las representatives also added certain information. However, the Court notes that the documentation added regarding the alleged victims María Luisa Lerma Tejería and Nelson Gonzalez Scampini relates to briefs filed against decisions issued by the Central Bank of Uruguay, in relation to the verification of credits of the *Banco de Montevideo*, under article 14 of Law 17,613, so that they do not reveal the filing of petitions before the said Central Bank under article 31 of Law 17,613 by these persons. *Cf.* Annulment brief submitted by Nelson González Scampini *et al.* on January 31, 2003 (merits file, volume V, folios 1813 to 1818), and annulment brief presented by María Luisa Lerma Tejería before the Central Bank of Uruguay on February 10, 2003 (merits file, volume V, folios 1826 to 1830). In addition, from the verification carried out by the Court, it has been verified that, in addition to the alleged victims indicated by the State, no evidence had been provided to this Court concerning 13 other alleged victims. Consequently, according to the body of evidence, the Court does not have evidence that the following 179 individuals, indicated as alleged victims by the Inter-American Commission, filed a petition before the Central Bank under article 31 of Law 17,613: (1) Aboitiz, Aitor; (2) Abramian, Fernando; (3) Abu Arab Maisonnave, Adela; (4) Albanese Mercep, Rúben; (5) Alexander Serrano, Normando; (6) Algorta, Horacio; (7) Amengual, Juan; (8) Ambrogio Catalano, Edgardo; (9) Amparo, Inés; (10) Apai, Ellen; (11) Arbelbide, María Laura; (12) Arin San Martín, María del Rosario; (13) Artigas, Jorge;(14) Bentancur, Rafael; (15) Biermann, Erna; (16) Bluth, Silvina (17) Boada, Ana; (18) Boggia, José; (19) Broglia, Carlos; (20) Brun, Adrián; (21) Brusamarello, Antonio; (22) Calvete, Eduardo; (23) Camacho Pérez, Gabriela; (24) Campoamor, Cristina; (25) Cancro, Adelaide; (26) Carbajal, María Irma; (27) Carballo, Jorge; (28) Casamayou Tort, Roberto; (29) Casarotti, Esteban; (30) Cavanna, Rodolfo; (31) Cohen Abut, Rafael; (32) Corredoira, Rafael; (33) Da Cuña, Luis; (34) D'Allessandro, Julio; (35) De Mosco, Juan; (36) De Vida de Petrolini, María; (37) Delgado, Ramón; (38) Di Giore, José; (39) Díaz, Carolina; (40) Dotta, Lorena; (41) Dotta, Pablo; (42) Dowald, Rúben; (43) Effa, Dietter; (44) Eilender, Diego; (45) Faliveni, Gustavo; (46) Farcic, Antonio; (47) Feibelmann de Vasen, Eva; (48) Ferencich, Ricardo; (49) Fernández, Gustavo; (50) Ferraro, Martín; (51) Ferreyra, Alba; (52) Figueredo, Daniel; (53) Figueroa, Judith; (54) Fitipaldo, Edgardo; (55) Gaibisso, Juan Carlos; (56) Gallo Azambuya, Juan; (57) Ganger, Anna; (58) García Pardo, Josefa; (59) García, Carlos; (60) González, Nelson; (61) Grazu Díaz, Suester Iván; (62) Greco, Oscar; (63) Grezzi, Carlos; (64) Guasque, Nely Miguel; (65) Guekdjián, Alfredo; (66) Guerra Martínez, Leticia; (67) Guntin, Susana; (68) Gutiérrez, Cecilia; (69) Harguindeguy, Raqúel; (70) Heijo, Menafra; (71) Herrero Fratelli, Rodolfo; (72) Irigoyen, Aída; (73) Juan, Nicolás; (74) Kaplun, Gabriel; (75) Krivianski, Isaac; (76) Krivianski, Natalia; (77) Lanza, Regalia Beatriz; (78) Lapetina, Jorge; (79) Larriera, Juan; (80) Lavaggi, Álvaro; (81) Ledoux, Alberto; (82) Lemole Graciarena, Luis; (83) Lerma Tejería, María; (84) Liprandi, Jorge; (85) Litlle, Gordon F.; (86) López Almeida, Walter; (87) López, Álvaro; (88) Machín, Álvaro; (89) Malán Félix, Albina; (90) Marcos Speratti, Eduardo; (91) Marcos Sperati, Natalia; (92) Martínez, Abelardo; (93) Martínez, Rúben Darío; (94) Martínez, Orosman; (95) Massobrio, Virginia; (96) Mazzoli, Marcelo; (97) Mendoza, Wilfredo Luis; (98) Mendoza, Estela; (99) Miller, Karina; (100) Montoro Heguerte, Alejandro; (101) Mora, Juan; (102) Morales García, Walter; (103) Morales, Jorge; (104) Moreira Pannella, Claudia; (105) Moreira, Gonzalo; (106) Moreno Pardie, Alba; (107) Morgade, Diego; (108) Musto, Walter; (109) Nadjarian, Kevork; (110) Normey,Pedro; (111) Olascoaga, Ana María; (112) Ongay, Carmen; (113) Orlander, Rosana; (114) Ortelli, Marcelo; (115) Paseyro Mouesca, Elsa; (116) Pepa, Daniel; (117) Pérez Pérez, Hugo; (118) Pérez, Alejandra; (119) Pérez, Ezequiel; (120) Pérez, Silvia; (121) Perri, Yolanda; (122) Píngaro Harsanyi, Gisele; (123) Pintos Patiño, Jorge; (124) Piovani, Carlos; (125) Pivovar, Gastón; (126) Ponzoni, José Luis; (127) Rabosto, Antonio; (128) Rago, Pedro; (129) Ramos, Hortensia; (130) Ramponi, Graziella; (131) Reguitti, Telma; (132) Reimer, Gustavo; (133) Reixach, Ángela; (134) Renzone, Rogelio Alberto; (135) Ripoll, Stephanie; (136) Roberts, Pablo; (137) Rodríguez Martínez, Yolanda; (138) Rodríguez, Claudio; (139) Rodríguez, José; (140) Rodríguez, Marcel; (141) Rodríguez, Marta; (142) Rovira Aparicio, Claudia; (143) Sacco, Mirta; (144) Sánchez, Baltasar; (145) Sapriza,

before the Central Bank of Uruguay under article 31 of Law 17,613. In this regard, the Court offered the parties several opportunities to present the corresponding evidence, as well as any observations they deemed pertinent with regard to the absence of information on the said alleged victims (*supra* paras. 10 to 14).[226]

145. The Inter-American Commission and the representatives argued that the indication by the State that some individuals identified as alleged victims had not even filed a petition before the Central Bank under the said article 31 was time-barred. In this regard, the Court recalls that, in view of the limited evidence provided by the Inter-American Commission and the representatives with their principal briefs, the President of the Court asked Uruguay, as helpful evidence, to forward the decisions of the Central Bank corresponding to all the alleged victims in the instant case (*supra* paras. 11 to 14). When complying with this request, the State pointed out to the Court that it did not have information regarding all the alleged victims, which meant that some of them had not filed petitions before the Central Bank under article 31 of Law 17,613.[227] The Court notes that the State's observation is not a time-barred argument, because the fact that the said 179 persons have not filed a petition before the Central Bank would imply that the alleged violation regarding which the Court has ruled favorably was not constituted with regard to them (*supra* para. 133 to 142). The Court emphasizes that the identification of the alleged victims by the Inter-American Commission when submitting a case to this Court entails not only the indication of their names, but also requires providing probative elements that allow the Court to verify their status as such. This evidence will vary according to the facts of the case. Consequently, the Court does not admit the time-barred argument presented by the Inter-American Commission and the representatives and, in order to determine the victims will take into account the evidence provided by the parties, either directly or in response to a request for helpful evidence.

146. The Court also observes that, according to the representatives, some of the alleged victims in whose name a petition was lodged before the inter-American human rights system and who were subsequently considered as alleged victims by the Inter-American Commission, are acting as representatives or heirs of those who did file petitions before the Central Bank under the said article 31, or are joint holders of accounts in the *Banco de Montevideo* with victims or individuals who were not included as alleged victims by the Inter-American Commission, and who did file petitions before

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Ana María; (146) Sartori, Miguel; (147) Schiaffino Conti, Carlota; (148) Schiavo, Luis; (149) Secco, Diego; (150) Seco, Valeria; (151) Seré Bonino, María; (152) Sienra, Beatriz; (153) Silva, Juan; (154) Solari, Hebert; (155) Sosa, Jorge; (156) Soto, Amelia María; (157) Spagna, Anna; (158) Steverlynck, Stanislas; (159) Tabárez Corni, Tabaré; (160) Tabárez, Nélida; (161) Testoni, Víctor; (162) Tonar, Mónica; (163) Tormo, Ana María; (164) Torre, José Alberto; (165) Unanua, Raúl; (166) Uriarte, Daoiz; (167) Valdez, Jorge; (168) Valdez, William; (169) Valiño, Ricardo; (170) Valsecchi, Patricia; (171) Valle, Nelly; (172) Vallega, Rodrigo; (173) Varela, Adrian; (174) Varona, Graciela; (175) Viera, Leonardo; (176) Villalba, María Fernanda; (177) Vivo Piquerez, Rafael; (178) Yacobo, Macowinn, and (179) Zanandrea, José Luis.

[226] The representatives observed, with regard to the 171 individuals indicated by the State, that "many of them ha[d] been included irregularly on that list." Owing to this, they indicated that the State "did not have all the correct information as regards these 171 alleged victims, [so that] they c[ould] not be sure that, with regard to [the other] depositors that they represent and who do not have probative documentation, there has not also been an error and/or mislaying of documentation by the Central Bank of Uruguay, taking into account the time that has elapsed." In addition, they observed that "[t]he responsibility for the incomplete files falls on the Central Bank," so that the State should not "take advantage of its own error," bearing in mind the difficulties entailed "to refute the information that the Central Bank is now providing *in extremis*." For its part, the Inter-American Commission indicated that "the State's intention to present [with its final written arguments] a preliminary objection of apparent failure to [exhaust remedies] with regard to 171 victims is totally inadmissible and time-barred."

[227] Regarding the said observations, the State affirmed that it had trusted that the Inter-American Commission "had adequately verified case by case that the alleged victims who appeared before that organ had accredited their legal standing and complied with the prior and essential requirement of exhausting domestic remedies." The State "assumed that the said Commission had carried out these controls fully, [and had therefore] presumed that all those individualized as victims by the Inter-American Commission had, in fact, been petitioners before the Central Bank of Uruguay; whereas it was subsequently verified, that this was not so."

the Central Bank.[228] In this regard, the Court takes notes of the State's argument that the said representations were not specified or even accredited, and also that "administrative petitions are personal," so that if the petition before the Central Bank was not filed in the name of all the holders of an account, only those alleged victims who personally filed petitions under article 31 of Law 17,613 should be considered as such. Based on the purpose of the instant case, as well as the reasons why the Court declared a violation of the material sphere of the right to be heard, the Court notes that it has only considered as victims in this case those persons who filed petitions before the Central Bank under article 31 of Law 17,613, either in person or through a representative, proof of which must exist in the respective file of the Central Bank.[229]

147. Regarding the said 179 alleged victims, the Court concludes that it will not consider them victims in this case, because no evidence was provided to the case file proving their participation in the procedure of which they allege they are victims, bearing in mind the reasons why the Court concluded that there had been a violation of the right to be heard included in Article 8(1) of the American Convention (*supra* paras. 133 to 142). This conclusion does not exclude the future possibility of the State, in good faith, ordering and adopting measures of reparation in favor of these people.

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[228] The following alleged victims are in this situation: (1) Aida Irigoyen, who is acting in representation of her husband Rogelio Torres Ramos, who was a petitioner before the Central Bank under the said article 31 and is a victim in this case; (2) Daniel Figueredo, who is acting in representation of Javier Taño, petitioner before the Central Bank, but who was not indicated as an alleged victim by the Inter-American Commission; (3) Carlos Broglia, whose wife and alleged heir, Adriana Vera, was the one who filed a petition before the Central Bank, but who was not indicated as an alleged victim by the Inter-American Commission; (4) Claudia Moreira Panella, who allegedly is the heir of Cristina Matilde Panella Castro, who was a petitioner before the Central Bank and is a victim in this case; (5) Isaac Krivianski, who is a joint holder of an account with the petitioner before the Central Bank Carolina Krivianski, but who was not indicated as an alleged victim by the Inter-American Commission; (6) Natalia Krivianski, who is also a joint holder of the account with Carolina Krivianski; (7) Beatriz Sienra, who is joint holder of the account of Leandro Rama, who filed a petition under the said article 31 and is a victim in this case; (8) Lorena Dotta, who is joint holder of the account of Martín García, who filed a petition under the said article 31 and is a victim in this case; (9) Miguel Sartori, who is the husband of Alejandra Oliveri, who filed a petition under the said article 31, but was not indicated as an alleged victim by the Inter-American Commission, and (10) Eva Feibelmann de Vasen, who is joint holder of the account of Mara Vasen Feibelmann, who filed a petition before the Central Bank and is a victim in this case. In addition to the cases of alleged victims expressly indicated by the parties, the Court has verified that the following alleged victims are in the same situation: (1) Adela Abu Arab Maisonnave, who is joint holder of the account of Milka Maisonnave, who filed a petition before the Central Bank and is a victim in this case; (2) Juan Amengual, who is joint holder of the account of Rosa Reboa, who filed a petition before the Central Bank and is a victim in this case; (3) Antonio Farcic, who acted in the file before the Central Bank "in representation of Alejandro Farcic", who is the petitioner who appears in the respective decision of the Central Bank, but who was not indicated as an alleged victim by the Inter-American Commission; (4) Adelaide Cancro, who is joint holder of the account of Miguel Cancro, who filed a petition before the Central Bank under the article 31 and is a victim in this case; (5) Josefa García Pardo, who is joint holder of the account of Susana Rodríguez and Vicente Langone, who were petitioners before the Central Bank under the said article 31 and are victims in this case; (6) Raúl Unanua, who is joint holder of the account of Alejandra Unanua, who filed a petition under the said article 31 and is a victim in this case; (7) Reguitti, Telma, who is joint holder of the account of Bara Walter, who filed a petition under the said article 31 and is a victim in this case; (8) Ricardo Valiño, who is allegedly the heir of Jorge Valiño, who was a petitioner before the Central Bank and is a victim in this case, and (9) Rafael Cohen Abut, who is joint holder of the account of Alejandro Abut, petitioner before the Central Bank and a victim in this case.

[229] The foregoing is without prejudice to the determination made under domestic law in relation to the distribution of the share among the joint holders of the same account. In this regard, Opinion No. 04/1056 of the Notarial Legal Advice Office of December 23, 2004, issued in the case of petitioners Rafael Outeiro Silvera and Jorge Peláez Pla (File No. 2003/1339) establishes that "the fact that that the decision of the Board refers to only one of these persons (Mr. Outeiro) does not preclude concluding that the said administrative act is effective over all the funds deposited (as is clear from these proceedings, […]. Regarding the right to the respective share, the same (and correct) criterion should be followed as in the case of any of the depositors of the *Banco de Montevideo S.A.*, who become shareholders of the *Banco de Montevideo* - Bank Assets Recovery Fund: the rights to the share will correspond to the persons whose name is on the bank account that gave rise to the share (and with the same characteristics, administered by either person or jointly)." Opinion No. 04/1056 of December 23, 2004, of the Notarial Legal Advice Office of the Central Bank (file of attachments to the application, volume VIII, attachment 12 (D), folio 6735).

B.2. *Due procedural guarantees before the Central Bank and the Contentious-Administrative Tribunal*

148. The Inter-American Commission and the representatives submitted various arguments on the alleged biased actions of the administrative body and of the Contentious-Administrative Tribunal, which they classified as constituting a "denial of due process." In this regard, they stated that due process had been violated as a result of: (a) an alleged "presumption of consent" by application of "disqualifying criteria"; (b) an alleged new criterion applied arbitrarily by the Advisory Commission of the Central Bank to the benefit of the individuals related to 22 cases accepted; (c) alleged arbitrary and discriminatory treatment, which the Court will examine under the guarantee of the Central Bank's decisions being founded, and (d) an alleged lack of probative elements.

B.2.a) Alleged "presumption of consent" by application of "disqualifying criteria"

Arguments of the parties

149. The Inter-American Commission argued that, although "the central element [of the procedure] was to determine whether or not there had been consent" for the transfer of the funds abroad, the Advisory Commission "adopted its own criteria to interpret [Law 17,613] and decided to presume 'consent'" based on certain elements, that disqualified most of the petitioners. According to the Inter-American Commission, this action meant "eliminat[ing] the possibility of due process by the Advisory Commission as regards its legislative mandate: to determine whether the depositor, with full knowledge and intent, consented to the transfer of his funds to an autonomous offshore bank." The Inter-American Commission affirmed that "the Advisory Commission presumed the legislative 'consent' required by the depositor in the [*Banco de Montevideo*] to the transfer of his funds to the [Trade & Commerce Bank], if one of the following elements existed: (1) a signed contract of 'General Conditions' to allow the *Banco de Montevideo* to administer assets; (2) a specific instruction authorizing the *Banco de Montevideo* to acquire a share in a deposit certificate, or (3) the monthly reception of bank statements clearly establishing that a person had a certificate of deposit in the Trade & Commerce Bank." According to the Inter-American Commission, the existence of only one of these elements was sufficient to disqualify the depositor from recovering his funds.

150. Furthermore, regarding due process before the Contentious-Administrative Tribunal, the Inter-American Commission indicated that this tribunal "mechanically applied the three *per se* disqualifying criteria to reject the claims of all the depositors who sought a judicial remedy," "and failed to conduct an independent and impartial examination of the evidence required under article 31 of Law 17,613." The Inter-American Commission argued that "when the Contentious-Administrative Tribunal received a request for the annulment of the rejection of a claim by the Advisory Commission/Central Bank, it: (i) determined whether a disqualifying criterion existed and then confirmed the rejection of the claim on that basis; (ii) did not inquire whether the depositor had sought not to renew his placement in the TCB certificate of deposit […], and (iii) did not provide the depositor with a fair hearing as regards his claim that his funds had been transferred, without his consent, to an offshore entity that bore no relationship to the *Banco de Montevideo*."

151. The representatives added that article 31 of Law 17,613 was intended to provide a solution to the depositors of the *Banco de Montevideo* who had been fraudulently deceived by this bank. According to the representatives "the confirmation that the depositors' funds had been transferred into TCB certificates of deposit without their consent was an evident presumption, already implicit in the [said] article 31." They stressed that "consent could not be presumed automatically based on supposedly objective 'disqualifying criteria,' without taking into account the situation in which it

occurred; in other words, the existence of possible defects of consent." According to the representatives, the consent of most of the depositors was invalid when it was given, because "it had been obtained by error or by fraud, both of which were reasons to annul consent under Uruguayan law". They argued that the evidence required of the alleged victims to prove the absence of consent in the transfer of their funds to offshore accounts "should [have been] reasonable and objective, and should not [have] constitute[d] an obstacle to the transparent implementation of the procedure established for the recovery of their assets."

152. In this regard, the State explained how the existence or absence of consent was determined in application of article 31 of Law 17,613. It indicated that "the basic norms and principles that regulate any relationship involving a mandate, power of attorney or commission [were applied]: the person exercising the mandate, power of attorney or commission may exercise all the powers that have been conferred on him by the mandate, power of attorney or commission, but may not act against the express instructions of the person granting the mandate, power of attorney or commission, even in the matters covered by the mandate, power of attorney or commission." The State emphasized that, in the wording of article 31 of Law 17,613, the legislator decided "not to declare, in general, that […] the investors in TCB Cayman should be considered as depositors in those banks upon their liquidation." According to the State "[t]he legislator was seeking to limit the recognition as depositors of the *Banco de Montevideo* to those who, being previously depositors in the *Banco de Montevideo S.A.*, did not know, were unaware of and, consequently, had not given their consent for their money to be transferred to TCB Cayman." It was "immaterial to the legislator that they had not understood the risks of the operation […], or that they had not asked about its legal and financial consequences." The State explained that article 31 of Law 17,613 "does not require either express or written consent, but merely consent [so that] verbal consent is valid and implied consent is valid."

Considerations of the Court

153. The analysis of the decisions of the Board of the Central Bank and of the Contentious-Administrative Tribunal reveals that the requirements of article 31 of Law 17,613 were: (1) to be a "depositor" of the *Banco de Montevideo* or the *Banco La Caja Obrera;* (2) whose savings had been transferred to other institutions, and (3) without his consent.

154. Regarding the first requirement, analysis of the documentary, expert and testimonial evidence reveals that the term "depositor" [*ahorrista*] did not have a legal or objective definition that would allow its standardized application. Regarding its interpretation and application by the Central Bank, when testifying before the Court, a member of the Advisory Commission and the Chairman of the Board of the Central Bank at the time of the facts, explained that this involved having a bank deposit.[230] In this regard, commissioner Duran Martínez added that "[c]lassic deposits are: a savings, checking or fixed-term account," and that, in addition, those with a special account known as on-demand deposits for share trading "were also considered depositors." Nevertheless, the Court has verified that, in many cases corresponding to the alleged victims, the Central Bank rejected their claims on the basis, *inter alia*, that the documentation presented by the petitioners did not prove that their savings were placed in the *Banco de Montevideo* in a checking, fixed-term or savings account," so that "it was not appropriate to analyze whether or not there had been express consent to the transfer of their savings to another institution when […] the prior existence of a bank

[230] *Cf.* Affidavit of the witness Julio de Brun dated February 16, 2011 (merits file, volume II, folios 1101 and 1105), and testimony of the witness Augusto Durán Martínez during the public hearing in this case.

deposit, such as those described [above], had not been proved."[231] However, the Court has also verified that these rejections are not based only on the fact that the petitioner did not have one of the said three accounts. For its part, the Contentious-Administrative Tribunal also took into account, in order to verify the first requirement relating to the status as "depositor," that the petitioner had a checking, fixed-term or savings account.[232]

155. Regarding the third requirement, the Court has verified that the Advisory Commission and the Board of the Central Bank understood that consent had been given based on the following elements (*supra* para. 94): (i) the signature of contracts with general instructions for the administration of investments under which *the Banco de Montevideo* was authorized to manage, on behalf of and at the responsibility of the client, placements in securities issued by an offshore institution; (ii) the existence of specific instructions by which the client authorized *the Banco de Montevideo* to buy certificates of deposit or other products; (iii) the proven regularity of using this type of operation, and (iv) the absence of objections or observations by the client on the bank statements that showed the transfer or the placement of deposits in certificates of deposit of the Trade & Commerce Bank.

156. For its part, the Contentious-Administrative Tribunal considered that the consent required by article 31 of Law 17,613 could be express or implied. Like the Central Bank (*supra* para. 155), the Contentious-Administrative Tribunal understood that the petitioners had given consent based on elements such as: (i) signed contracts of "General Conditions for Administration of Investments"; (ii) specific instructions given by clients to the *Banco de Montevideo*; (iii) the reception by the petitioner of bank statements showing the respective operation, without the petitioner raising objections or making observations, as established in article 35 of Law 6,895; (iv) the interest rates enjoyed by the petitioner, for his share in the certificates of deposit or other product, in the understanding that they enjoyed interest rates that were considerably higher than those offered on fixed-term deposits in the *Banco de Montevideo* and were also significantly higher than market rates, and (v) the petitioner's investment profile or regularity in regard to such operations (*supra* paras. 105 and 106). The first two elements were considered elements of express consent and, regarding the others, it indicated that they could constitute forms of implied consent under banking practice. In this regard, the Contentious-Administrative Tribunal indicated repeatedly that, under banking law, both banking norms and banking practice were applicable, so that "implied consent, and verbal orders by the clients, even by telephone, constitute a reiterated practice under banking law that has given rise to general awareness ('*opinio juris')* of their existence and compulsory nature."

157. In this regard, this Court observes that, contrary to the arguments of the representatives, the wording of the norm required verification of the absence of consent in each specific case, which meant that each claim had to be examined individually. Also,

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[231] *Cf. inter alia,* the following cases of alleged victims whose evidence is in the file of attachments to the State's final written arguments, volume I, attachment 3: Schaich, Rodolfo (File No. 2003/0266) (folios 30154 and 30155); De la Fuente, María del Carmen (File No. 2003/0609) (folios 30192 and 30193); Talamini, Alberto and Norma Martínez (File No. 2003/0562) (folios 30239 and 30240); Oxandabarat, Gloria (File No. 2003/0554) (folios 30247 and 30248); Pastorino Pecotiello, José Ángel (File No. 2003/0545) (folios 30255 and 30256); Saturno Barra, Cecilia (File No. 2003/0502) (folios 30278 and 30279), and Lorenzo Fernández, Eugenio (File No. 2003/0718) (folios 30329 and 30330).

[232] *Cf. inter alia*, Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13912); Judgment No. 828 of the Contentious-Administrative Tribunal of December 13, 2006, in proceedings entitled "Lijtenstein, Fabiana *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15064), and Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folios 13876 to 13878).

the Court takes note that, on numerous occasions, the Contentious-Administrative Tribunal stated that article 31 of Law 17,613 was exceptional, so that its interpretation should be restrictive, in the sense that it should only cover those situations in which the requirements established in article 31 were satisfied cumulatively (*supra* para. 104). It further stated that these requirements "sought to cover specific situations, limiting the recognition as a *Banco de Montevideo* depositor to those who did not know, were unaware of, or had not given their consent to their money being transferred [to other institutions]." Also, the parliamentary discussions reveal that the Central Bank was ordered to create a commission to help verify which of the depositors of the *Banco de Montevideo* and the *Banco La Caja Obrera* had really been deceived (*supra* para. 135).

158. Taking in account the above-mentioned elements, the Court finds that, if the intention behind article 31 of Law 17,613 had been to protect all the "depositors" whose funds had been used to acquire certificates of deposit or shares in certificates of deposit of other institutions, as the representatives argue, the wording of the norm would have indicated this. To the contrary, the wording of this article implies the need to determine the absence of consent to the operation in each case.

159. Regarding the arguments of the Inter-American Commission and the representatives concerning the application of presumptions to determine consent, the Court observes that when applying this article, the Board of the Central Bank and the Contentious-Administrative Tribunal do not refer to presumptions of consent. From the decisions provided to the case file of the instant case, the Court has verified that these bodies analyzed or assessed the evidence provided to them to determine whether consent had been given, granting probative value to elements such as signed contracts for the administration of investments or specific instructions, or the absence of objections to bank statements. The Court does not have information, and it is not incumbent upon it, to decide on the legality of the domestic norms or of the banking norms and practice under which these elements could be interpreted as an expression of consent.

160. Hence, the Court concludes that the actions of the said bodies, when ruling on the requirement of absence of consent based on these elements, do not, in themselves, constitute a violation of the alleged victims' guarantees of due process. However, for other reasons, the Court concluded in section B.1 of this chapter that, in the determination of the said requirement, the administrative body violated the material sphere of the victims' right to be heard, because it failed to make a complete analysis (*supra* paras. 133 to 142). Regarding the arguments of the Inter-American Commission and the representatives of the alleged victims that the Contentious-Administrative Tribunal did not analyze the arguments and evidence on defects of consent and the absence of complete and truthful information, the Court will rule in this regard when deciding on the effectiveness of the appeal for annulment before the Contentious-Administrative Tribunal (*infra* paras. 200 to 220).

161. Additionally, regarding the Central Bank's assessment of the failure to contest the bank statements in relation to the requirement of absence of consent, the representatives of the alleged victims argued that "according to banking operational norms, what is accepted in a statement, which is a unilateral document of the bank, is the balance and not the transfer of money to another bank."

162. In this regard, the Court has verified that, in the cases of at least 39 victims, the Board of the Central Bank rejected their claims based only on the client's absence of objection to the statements and, in some cases, also the person's "regularity" in carrying out the operation – which is also derived from these statements – even though that person had one of the accounts that are generally recognized as typical of depositors

(checking, savings or fixed-term accounts).[233] In other words, these persons had not given their consent or authorization for the transfer of the funds deposited in their accounts by means of an investment administration contract or specific instructions. The consent for successive transfers was derived merely from the fact that they had not contested their statements, which contained information that, in many cases, the petitioners argued was unclear and incomplete, because the identification of the operation carried out was limited to indications such as the abbreviation "CD TCB." With the exception of one case,[234] when granting probative value to uncontested statements of account, the said administrative body made no mention of the legal grounds for its decision. Similarly, the Court notes that, in the cases of at least five alleged victims,[235] the Contentious-Administrative Tribunal proceeded in the same way, inferring consent from the absence of objection to the statements, which also, in some cases, the petitioners argued, did not contain clear and complete information on the operation performed. For its part, the Contentious-Administrative Tribunal indicated that it was applying article 35 of Law No. 6,895 of March 24, 1919, which establishes that, if a client fails to comment on the statements sent to him, within 10 days of receiving them, "it shall be considered that he accepts the accounts as presented, and their negative or positive balances shall be final as of the date of the statement."

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[233] *Cf.* the following cases of victims whose evidence is in the files attached to the State's final written arguments, attachments 2 and 3: López García, Manuel (File No. 2003/0719) (folios 22490 to 22493); Rey Méndez, Wellington Manuel (File No. 2003/0715) (folios 22552 to 22554); Rodríguez López, Lilián (File No. 2003/0655) (folios 24531 to 24533); Poggio Odella, Elbio (File No. 2003/0597) (folios 24878 to 24880); García Nogueira, Bernabé (File No. 2003/567) (folios 25830 to 25835); Leite, Carlos (File No. 2003/0518) (folios 26280 to 26283); Álvarez Pirri, Esther (File No. 2003/0458) (folios 26406 to 26408); Reboa, Rosa (File No. 2003/0451) (folios 26584 to 26588); Jorge Valiño (File No. 2003/0432) (folios 27075 to 27077); Resala, Alberto (File No. 2003/0389) (folios 27737 to 27739); Symonds Herzog, Roberto (File No. 2003/0382) (folios 27945 to 27947); Lanata Sanguinetti, Horacio (File No. 2003/0380) (folios 28047 to 28049); Martins Romero, Joaquín (File No. 2003/0362) (folios 28529 to 28531); Pánfilo Pezzolano, Emilio (File No. 2003/0331) (folios 28950 to 28953); Meerhoff, Enrique and González, María Cristina (File No. 2003/0301) (folios 29430 and 29431); Fontana, Alejandro (File No. 2003/0247) (folios 29810 to 29813); Castellano, Gabriel and Saavedra María (File No. 2003/0243) (folios 29939 and 29943); Salamano, Carlos (File No. 2003/0649) (folios 24703 and 24706): Prevettoni, Gabriela (File No. 2003/0482) (folios 30079 to 30081); Piñeyro Castellanos, María Inés (File No. 2003/0480) (folios 30085 to 30087); Nario Alvarez, Alvaro (File No. 2003/0465) (folios 30108 to 30110); Ramos Echevarría, Magela (File No. 2003/0471) (folios 30097 and 30098); Castro Etchart, Gustavo (File No. 2003/0278) (folios 30135 to 30137); Caballero Lehite, Fernando (File No. 2003/0613) (folios 30180 to 30182); Nozar Cabrera, Fernando (File No. 2003/0765) (folios 30284 to 30286); Di Salvo, Crimilda (File No. 2003/0929) (folios 30404 to 30406); Copello Ametrano, Jorge (File No. 2003/0860) (folios 30444 to 30446); Panella Castro, Cristina (File No. 2003/0783) (folios 30545 to 30548); García Caban, Ricardo (File No. 2003/1049) (folios 30606 to 30608); Reino Berardi, Sebastián (File No. 2003/1033) (folios 30618 to 30620); Fernández Giordano, Graciela (File No. 2003/1016) (folios 30635 to 30637); Larrea, Alfredo (File No. 2003/0989) (folios 30672 to 30674); Pérez Bogao, Zulma (File No. 2003/0963) (folios 30710 to 30712); Abella De Marco, Rafael (File No. 2003/1407) (folios 31119 to 31121); Gavioli, José (File No. 2003/1457) (folios 31022 to 31025); Roure Casas, Pablo (File No. 2003/1582) (folios 31305 to 31308); Pugliese, Héctor Mario and Pereyra Elsa (File No. 2003/1530) (folios 31332 to 31334); Gigli Rodríguez, María Ivelice (File No. 2003/1494) (folios 31400 to 31402), and Wainstein Garfunkel, Alicia (File No. 2003/0759) (folios 31439 and 31440).

[234] *Cf.* Gavioli, José (File No. 2003/1457) (file of attachments to the State's final written arguments, volume II, attachment 3, folios 31022 to 31025).

[235] *Cf.* Judgment No. 828 of the Contentious-Administrative Tribunal of December 13, 2006, in proceedings entitled "Lijtenstein, Fabiana *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folio 15068); Judgment No. 314 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Roure, Pablo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15603 to 15609); Judgment No. 292 of the Contentious-Administrative Tribunal of June 6, 2007, in proceedings entitled "Rodríguez, Marta *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15627 and 15628); Judgment No. 477 of the Contentious-Administrative Tribunal of September 3, 2007, in proceedings entitled "Perles, Gisela *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 14871 to 14881), and Judgment No. 315 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Gigli, María *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15192 to 15199). In addition to the bank statements, in these cases the regularity and the "high rates of interest" are also mentioned, information that is also evident from the bank statements.

163. This Court also notes that, in cases of petitioners and plaintiffs who had not authorized the transfer by signing an investment administration contract and had not given specific instructions for the transfers to be made, the said administrative and judicial bodies laid the burden of proving the absence of consent on the petitioners and plaintiffs.

164. Despite the foregoing, the representatives did not submit any arguments or evidence that would allow the Court to analyze a possible violation of the American Convention arising from this situation.

B.2.b) Alleged new criteria applied arbitrarily by the Advisory Commission to the benefit of 22 cases

Arguments of the parties

165. The Inter-American Commission argued that the presumption of consent "was applied [by the Advisory Commission] arbitrarily and subjectively, and this resulted in the violation of the judicial guarantees of a group of depositors." In this regard, it indicated that the Advisory Commission gave preferential treatment to 22 persons who were able to recover their funds, and whose petitions were accepted, even though they also fulfilled some of the said disqualifying criteria (*supra* para. 150). In this regard, it referred to six types of situations that arose in this regard.[236] In particular, it indicated that, to accept the 22 claims, the Central Bank created "a new criterion" eliminating the disqualifying factors, which consisted in the depositor proving that he had tried not to renew his certificate. The Inter-American Commission added that, in so doing, "the Advisory Commission added eligibility requirements that were not made known to all the depositors, but only to those whom it accepted, as well as requirements that were outside the scope of the legislative analysis," because "the law did not establish any other requirement to the effect that the depositor had to prove that he had tried not to renew a placement that had already been made or that the placement was renewed despite the existence of specific instructions not to renew it." In general, the claims that were accepted were also initially rejected because they revealed a "disqualifying" characteristic, but the Advisory Commission suggested that some depositors return with a witness who could confirm that they had sought not to renew their placements. The Inter-American Commission argued that the Advisory Commission "did not ask [the alleged victims …] whether they had tried not to renew their placements in TCB certificates of deposit, and even when they made this argument and presented evidence of it, their claims were rejected because of the presence of one of the *per se* disqualifying elements." The Advisory Commission approved "claims from individual depositors that were exactly the same as those of the alleged victims that were rejected."

166. Contrary to the representatives, the Inter-American Commission did not argue that Article 24 of the American Convention had been violated (*supra* para. 3).[237]

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[236] The six situations described by the Inter-American Commission are as follows: (i) some depositors were not disqualified even though they had signed to "General Conditions" contract, which was to cause for disqualification; (ii) some depositors were disqualified because they had signed to "General Conditions" contract, considered to cause for disqualification; (iii) some depositors were disqualified because they had received bank statements; (iv) at least one depositor was disqualified because he had signed to specific authorization to buy Trade & Commerce Bank deposit certificates, even though this was not one of the criteria established by the Advisory Commission as to "disqualifier"; (v) at least one depositor was disqualified owing to the presumption of consent for the transfer of funds, given the existence of bank statements, even though the information used was insufficient to prove the existence of these accounts, and (vi) most of the 22 depositors accepted by the Advisory Commission had been disqualified at to previous stage owing to the presence of manifestations that were considered consent; however, following repeated attempts, they were accepted.

[237] In its Report on Merits, the Inter-American Commission considered that it did "not have sufficient information to conclude that there ha[d] been a discriminatory application of the domestic norm in each case."

167. For their part, the representatives indicated that they endorsed the arguments of the Inter-American Commission concerning the alleged violations of Article 8(1) of the Convention in relation to the alleged new criterion applied by the Advisory Commission. In addition, the representatives indicated that the State had violated the alleged victims' right to equal protection by the law "by applying certain rules of law […] arbitrarily and discriminately in the context of the procedure before the Advisory Commission." They indicated that the remedy established in article 31 of Law 17,613 "was appropriate for only 22 depositors who benefited from special considerations that [the alleged victims] could have enjoyed had it not been for the discriminatory and arbitrary action of the Advisory Commission." The representatives also argued that "[t]he violation of judicial guarantees and judicial protection inevitably results in a violation of the principle of equal protection by the law"; but that, in addition, this violation is also constituted autonomously, "from the moment that 22 [cases] out of 1,400 are successful based on legal grounds or evidence that could be applied or used by the remainder and was not." They insisted that, when interpreting the said article 31, "[r]easonable and objective criteria were not used to analyze the cases of the depositors," and that "by acting in a discriminatory manner in the use of its own criteria against a whole group of depositors, [the Advisory Commission] also violated the principle of equality before the law." According to the representatives, "[t]he mere verification of [the said] different treatment in relation to a whole group of people is sufficient proof that it acted in a discriminatory manner." They indicated that the State had not offered the same possibilities to those who filed claims before the Central Bank under article 31 of Law 17,613 in relation to the presentation of evidence and the rules applicable to the said procedure, which "is not only a violation of due process [… but also] a violation of the principle of equal protection by the law."

168. Regarding the requirements established in article 31 of Law 17,613, the State considered that the same criteria had been applied to all the cases, requiring them to fulfill the requirements indicated in said norm and, "in none of the cases had new requirements been established over and above those that existed in the legal framework." It considered that what the Inter-American Commission had identified as "new requirements" were merely the assessment of the evidence submitted by the depositors in relation to the requirements that arose clearly from the law. Thus, "[t]he difference between the [petitioners] accepted and those rejected was not that different requirements were applied to them, but [that] […] the petitioners whose claims were accepted were able to prove the absence of consent, eliminating what the Inter-American Commission refers to as 'presumptions' or 'disqualifying facts.'" The State explained how it had applied the criteria to determine consent, and referred to the situations alleged by the Inter-American Commission concerning the alleged arbitrary application of criteria (*supra* para. 165). In addition, even though the State contested the examination of the alleged violation of Article 24 of the Convention (*supra* para. 34), it also argued that "[i]n all the cases that were successful, the [Advisory] Commission understood – based on the evidence produced when the claim or the appeal was presented – that the petitioners' placements had been made or renewed without their consent; in other words, there was evidence that they did not wish to renew them and – nevertheless – they were renewed." To the contrary, "in the other claims […] the express or implied consent of the investor to the placement made and its successive renewals was proved." In response to the President of the Court's request for additional information, the State indicated that, from the analysis of the files before the Central Bank, there was only one case in which testimonial evidence had been offered specifically to prove orders not to renew that this evidence had not been received, and this had occurred because the proposed witness failed to appear.

Nevertheless, it indicated that the "analysis made reveal[ed] a situation of arbitrariness in the way in which the procedure was administered, but [that was] insufficient to determine that there was discrimination, as established in Article 24 of the Convention."

Considerations of the Court

169. The Court reiterates that it is not incumbent on it to rule on the merit of the alleged victims' claims under article 31 of Law 17,613 (*supra* para. 115). In order to analyze the alleged violations arising from the arbitrary application of an alleged "new" criterion by the Advisory Commission, the Court must first rule on the factual elements on which these allegations are based.

170. After analyzing the evidence provided in relation to the procedures before the Central Bank, the Court considers that, contrary to the allegations of the Inter-American Commission and the representatives, in the 22 cases of claims accepted, no new criterion was used and no requirement was established that differed from the provisions of article 31 of Law 17,613. In these 22 cases, the petitioners were able to prove the requirement of absence of consent. The Court finds that the fact that they had tried not to renew their certificate of deposit is part of the requirement of absence of consent, because there must be consent for both the acquisition of certificates of deposit or shares in them, and their renewal, since the latter, in reality, constitutes a new acquisition or, in the terms of article 31, they each constitute a different transfer. The Court has verified (*supra* para. 96) that, in these 22 cases, the Board of the Central Bank considered that the petitioners had proved the absence of consent in relation to three different situations: in one case, the petitioners proved that they had not given their consent to the acquisition of the Trade & Commerce Bank certificate of deposit because the *Banco de Montevideo* had acquired it "contrary to the specific instruction received by an account manager" to set up a fixed-term deposit; in 19 cases, the petitioners proved that, prior to the maturity date of the certificate, they had expressed their intention not to renew their share in the certificate of deposit, and the renewal was made against their will, and in two cases, the petitioners were able to prove that their placements were maintained, even though, before maturity, they had requested the withdrawal or early buyback of their funds, and they had also proved, in one specific case, that their initial consent had been given on condition that they could request its buyback before maturity.

171. The Court also finds that there is no evidence to prove the Inter-American Commission's assertion that "the Advisory Commission suggested that some depositors should return with a witness who could confirm the fact that they had tried *not to renew* their placements." Moreover, from the analysis of the body of evidence, the Court has verified that it contains no element to support the Inter-American Commission's statement that, "[i]n general, the claims that had been accepted had also initially been rejected due to a 'disqualifying' characteristic." Of the 22 cases admitted by the Board of the Central Bank, 17 of them were accepted by the said Board's decision resolving the initial claim (*supra* para. 85),[238] four of them were accepted in the decision of the Board

[238] *Cf.* the following cases: (1) Emilio Villamil Ramos and Elsa Marialli García (File No. 2003/0532) (file of attachments to the application, volume XV, attachment 12 (I), folios 11590 to 11593); (2) Carmen García Pardo (File No. 2003/0908) (file of attachments to the application, volume VII, attachment 12 (D), folios 6445 to 6451); (3) María del Carmen Bacigalupe and Julio Alberto Soler (File No. 2003/0221) (file of attachments to the application, volume III, attachment 12 (B), folios 3375 to 3436); (4) María Julia Boeri Bottero and María del Rosario Delmonte Boeri (File No. 2003/0708) (file of attachments to the application, Volumes V and XIII, Attachments 12 (C) and 12 (G), folios 4982 to 5070 and folios 9561 to 9640); (5) Gabriel Deus Rodríguez (File No. 2003/1045) (file of attachments to the application, volume VII, attachment 12 (D), folios 6215 and 6216); (6) Lucía Giambruno (File No. 2003/0327) (file of attachments to the State's final written arguments, volume I, attachment 3, folios 30126 and 30127); (7) José Luis Martín Hernández (File No. 2003/0602) (file of attachments to the application, volume I, attachment 12, folios 2606 to 2619); (8) Rafael Outeiro Silvera and Jorge Peláez Pla (File No. 2003/1339) (file of attachments to the application, volume VIII, attachment 12, folios 6726 to 6729); (9) Álvaro Gerardo Pérez Asteggiante (File No. 2003/0438) (file of attachments to the application, volume XV, attachment 12 (I), folios 10970 to 11035); (10) Erasmo Salvador Petingi Nocella (File No. 2003/0610) (file of attachments to the application, volume II, attachment 12, folios 2637 to 2695); (11) Lucía Piñeyrúa Zeni (File No. 2003/0595) (file of attachments to the application, volume IX, attachment 12 (E), folios 7402 to 7405); (12) Lylianne Edith Urdaneta Magri (File No. 2003/0956) (file of attachments to the application, volume X, attachment 12 (E), folios 8441 to 8444); (13) Néstor Alberto Rosales and Viviana

of the Central Bank resolving an appeal filed by the petitioners to annul the unfavorable decision issued previously by the said Board (*supra* para. 88),[239] and one case was accepted by a decision resolving an additional claim submitted after the decision that resolved an appeal for annulment admitted based on the constitutional right of petition.[240] In the last case, the Court recalls that the procedure before the Central Bank admitted and decided claims filed after the appeals for annulment had been decided or the time limit for their presentation had expired (*supra* para. 90). In addition, the Court has noted that the evidence used by the administrative body to consider that absence of consent had been proved was offered by the petitioners themselves in most cases, either in the initial claim, or when they were given access to the draft of the unfavorable decision prepared by the Advisory Commission (*supra* para. 85), or when they presented or substantiated the appeal for annulment (*supra* para. 88).

172. Having determined that the factual assumptions indicated by the Inter-American Commission and the representatives to argue the said violations were not constituted, the Court concludes that the violation of Article 8(1) of the American Convention has not been proven in this regard.

B.2.c) Procedural guarantee of adequate reasoning

173. Furthermore, regarding the alleged violation of Article 24 of the Convention, argued only by the representatives (*supra* para. 5), the Court reiterates that the alleged victims and their representatives may invoke the violation of rights other than those included in the application, provided they relate to the facts described in the application (*supra* para. 36) and are alleged at the appropriate procedural opportunity – in the pleadings and motions brief – which occurred in the instant case.

174. The Court recalls that, while the general obligation under Article 1(1) refers to the State's obligation to respect and guarantee "without discrimination" the rights contained in the American Convention, Article 24 protects the right to "equal protection of the law." [241] If it is alleged that a State discriminates in the respect or guarantee of a convention-based right, the fact must be analyzed under Article 1(1) and the material right in question. If, to the contrary, the alleged discrimination refers to unequal protection by domestic law, the fact must be examined under Article 24 of the Convention.[242]

Rivanera de Rosales (File No. 2003/0493) (file of attachments to the application, volume XV, attachment 12 (I), folios 11049 to 11071); (14) Marta Cázeres (File No. 2003/0598) (file of attachments to the application, volume IV, attachment 12 (B), folios 3774 to 3821); (15) Clara Jasinski (File No. 2003/0637) (file of attachments to the application, volume III, attachment 12 (B), folios 3450 to 3490); (16) Raúl Montero (File No. 2003/0469) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11783 to 11786), and (17) Elena Ibarra Acle and Victor Muccia García (File No. 2003/0521) (file of attachments to the application, volume III, attachment 12 (B), folios 3727 and 3728).

239 *Cf.* the following cases: (1) Rolando Massoni, Martha Moreira and Sandra Massoni (File No. 2003/0228) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11771 to 11774); (2) Kurt Bauer (File No. 2003/1329) (file of attachments to the application, volume XV, attachment 12 (I), folios 11150 to 11153); (3) Ernesto Llovet (File No. 2003/0952) (file of attachments to the application, volume XV, attachment 12 (I), folios 11350 to 11353), and (4) Graciela Cabrera D'Amico (File No. 2003/0880) (file of attachments to the application, volume X, attachment 12 (E), folios 8588 to 8663).

240 *Cf.* Ximena Camaño Rolando and Ana Laura Camaño Rolando (File No. 2003/0650) (file of attachments to the application, volume I, attachment 12 (A), folios 2315 to 2471).

241 *Cf. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 53 and 54; *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 183, and *Case of Vélez Loor v. Panama*, *supra* note 15, para. 253.

242 *Cf. Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010, Series C No. 215, para. 199; *Case of Rosendo Cantú et al. v. Mexico*, *supra* note 241, para. 183, and *Case of Vélez Loor v. Panama*, *supra* note 15, para. 253.

175. In the instant case, the Court observes that the representatives argued a supposed arbitrary and discriminatory treatment by the administrative body responsible for deciding their claims under article 31 of Law 17,613. This alleged discrimination regarding the rights contained in the Convention must be analyzed under the general obligation to respect and ensure those rights without discrimination, established by Article 1(1) of the American Convention.

176. First, the Court refers to its previous ruling concerning the alleged "presumption of consent and the disqualifying criteria" (*supra* paras. 159 and 160). The Court determined that no violation of due guarantees had been constituted due to the alleged preferential application of a new criterion to the benefit of the persons related to the 22 cases accepted (*supra* paras. 170 to 172). The Court recalls that it found that what the Inter-American Commission and the representatives identified as a "new criterion," applied to the benefit of 22 cases accepted by the Board of the Central Bank, was in fact the analysis of the absence of consent, which they were able to prove in relation to three distinct situations (*supra* para. 170). As explained, in most of the cases accepted, the petitioners proved that they had sought not to renew their share in the certificate of deposit (*supra* para. 170).

177. Therefore, the Court determined that the fact that these 22 cases were admitted did not constitute a violation of due process that prejudiced the alleged victims. Consequently, the Court found that this action did not constitute arbitrary and discriminatory treatment because it related to the analysis of the requirements established in article 31 of Law 17,613 and not to a new criterion applied only for the benefit of some petitioners.

178. Despite this general conclusion, the Court emphasizes that the special procedure before the Central Bank was intended to determine the individual rights of a considerable number of people who had to prove that they were in the situation stipulated in article 31 of Law 17,613. This procedure was created specifically to determine these rights, after which it would cease to exist. Hence, it was the State's obligation to ensure that everyone obtained an adequately reasoned ruling, allowing verification that the criteria to determine whether the requirements established by the said article 31 had been met were applied objectively to all the petitioners.

179. The Court will now examine whether the alleged victims whose claims were rejected were treated in an arbitrary or discriminatory manner even though they were in the same situation of absence of consent as the 22 cases admitted, because they had tried either not to renew their certificates of deposits or to withdraw their funds. It must be determined whether any of the four persons indicated by the representatives as alleged victims of arbitrary and discriminatory treatment are in the same situation that was determinant for accepting any of the said 22 cases. The Court notes that, to determine possible arbitrary and discriminatory treatment, it is not sufficient to merely verify the existence in both the accepted and the rejected cases of elements such as investment administration contracts, specific instructions, or uncontested statements, because other elements were present in the accepted cases that were considered decisive to conclude that there had been absence of consent.

180. Both the Inter-American Commission and the representatives have stated that, in the procedure before the Central Bank, the claims of alleged victims were denied, despite the fact that, as in the accepted cases, they had argued that they had tried not to renew their placements in certificates of deposit of the Trade & Commerce Bank and had submitted evidence of this. Nevertheless, although the Court requested additional information and useful evidence concerning the alleged victims regarding whom a violation could have been constituted in this regard, the representatives merely indicated four alleged victims and stated that they represented an "example" of a larger

group of alleged victims who were in the same situation.[243] In this regard, the Court emphasizes that it is not incumbent upon it to search through the available body of evidence to determine whether there has been a violation of the rights of other alleged victims, who were not expressly identified by the party alleging the violation.

181. When submitting its answering brief, the State indicated that, "for the specific analysis of each file decided favorably (and its comparison with some decided unfavorably), it referred to the complete and clear brief that […] the members of the Advisory Commission submitted to the 19th Criminal Judge of First Instance" in the criminal proceedings filed against the members of the said Commission (*supra* para. 99). Uruguay maintained that this document "reveals clearly that, in none of the cases decided unfavorably that are specifically described by the Inter-American Commission (numbers 52 (ii) to (v) of its application), was any suitable evidence provided to contest the consent derived from the express instructions, or the presumption of consent arising from the 'general conditions' or from the reception of the bank statements."

182. The Court finds that, according to the probative elements provided, the representatives' arguments concerning the cases of Oscar Pivovar[244] and Alba Fernández have not been proved. Regarding Oscar Pivovar, the representatives argued that the "[requested testimonial] evidence was never received" "from the *Banco de Montevideo* Branch Manager." Regarding this alleged victim the Court was only provided with the decision issued by the Board of the Central Bank that decided his initial claim, which does not reveal that he had offered any testimonial evidence that was rejected. The only comment made in relation to the opportunity granted the petitioner to see the draft decision was that "the arguments made […] when reviewing the draft decision do not add new elements that would change the decision." With regard to Alba Fernández, the representatives indicated that "her signature was forged to attest her renewal, [and that she] reported the fact to the [Advisory Commission], but it was never investigated." Similarly, regarding the procedure before the administrative body in the case of Mrs. Fernández, the Court was only provided with the decision deciding the initial claim, from which there is no evidence of the representatives' allegation. The decision only reveals that Alba Fernández did not make any observations when she was allowed to see the Advisory Commission's unfavorable draft decision.

183. Regarding the administrative procedure to determine the rights of the alleged victim Alicia Barbani Duarte, the representatives argued that what happened in her case is an "example" of the "alleged victims whose claim was rejected in the procedure before the Advisory Commission, even though they had offered evidence of not renewing or that their savings were subject to early buyback." A copy of Mrs. Barbani's Central Bank file was provided and, from this, the Court has verified that a statement by a *Banco de Montevideo* account manager reveals that Mrs. Barbani went to the bank "between the end of May and the intervention of the *Banco de Montevideo*" to request the withdrawal of her funds from the said bank, but the said official told her that she would have to wait until the date of maturity on June 27, 2002. According to the administrative decisions in relation to Mrs. Barbani's case, as well as from the brief submitted by the members of

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[243] As helpful evidence (*supra* para. 10), the President asked the parties to indicate whether there were alleged victims whose petition was rejected in the administrative procedures or in the proceedings under administrative law, despite having offered evidence of their alleged instruction that their shares in certificates of deposit should not be renewed. In their brief with final arguments, the representatives referred to the cases of "Mr. Pivovar," "Mr. Marenales" and "the depositor Alba Fernández" as cases in which there had been unequal treatment in relation to the cases accepted. Furthermore, in response to the President's said request, they indicated that they "kn[ew] that there were alleged victims whose petition was rejected in the procedures before the Advisory Commission, despite having provided evidence of not renewing or that their savings should be returned before maturity, as, for example, the cases of Alicia Barbani and Jorge Marenales."

[244] In their final written arguments, the representatives referred to the case of "Mr. Pivovar," without indicating the complete name of the alleged victim to whom they were referring. During the public hearing before the Court, the representatives identified him as Oscar Pivovar.

the Advisory Commission under the criminal proceedings filed against them (*supra* para. 181), the determinant factor in the rejection of her claim was the fact that she had expressed her wish to withdraw her money and not to renew her certificate before it matured and that the date of maturity occurred after the intervention of the *Banco de Montevideo*.[245] The Court has verified that, in two cases that were accepted, there was a similar situation as regards the request to withdraw funds and the date of maturity.[246] In addition, in those two cases the petitioners proved that the financial product (Trade & Commerce Bank certificates of deposit) had been offered to them on condition that they could withdraw their funds before the date of maturity.[247] In the case of Mrs. Barbani Duarte, this Court verified that, in her Central Bank file,[248] there is evidence that the financial product (Trade & Commerce Bank certificates of deposit) also came with the condition that "it could be withdrawn at any time," and that when Mrs. Barbani Duarte went to withdraw her money "the Bank unilaterally refused" "on the Manager's instructions." The Court does not find any rational and objective reason to justify the difference in treatment between the case of Alicia Barbani Duarte and the other two cases mentioned above that were accepted, in application of the same norm. Hence, it concludes that, in the case of Mrs. Barbani Duarte, adequate reasoning was not guaranteed that would allow verification that the criteria to determine the constitution of the requirement of absence of consent were applied objectively, and this constitutes a violation of Articles 1(1) and 8(1) of the American Convention.

184. Regarding the alleged victim Jorge Marenales, the representatives indicated that "he gave instructions to leave his deposit on-demand when it matured, in other words, not to renew it, but he was not accepted." A copy of this alleged victim's Central Bank file was provided, from which it has been verified that the testimony of an account

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[245] In particular, it is relevant to underscore that in the last decision of the Board of the Central Bank issued on December 28, 2005, which decided the petition filed by Mrs. Barbani, it was considered that "the request to withdraw the funds testified to by Mr. Fontana [account officer] occurred after having renewed the placement in TCB – with the consent of the joint holders of the account – on May 27, 2002, in an investment whose agreed maturity was after the date of which the *Banco de Montevideo S.A*. was intervened and on which TCB Cayman Island ceased to honor its obligations, which places the petitioner outside the possibility of being considered under the protection of the said legal provision." Decision of the Board of the Central Bank of Uruguay D/772/2005 of December 28, 2005, issued in file No. 2003/0624 concerning Alicia Barbani (file of attachments to the application, volume II, attachment 12 (A), folio 3009). Also, the brief presented by the members of the Advisory Commission in the criminal proceedings filed against them, established expressly that "Notary Barbani requested the withdrawal of the money, but on a later date than May 27, 2002; in other words, when the certificate of deposit had already been renewed. In order to withdraw the money, it was necessary to wait until the next date of maturity which was on June 27, 2002. As the intervention occurred on June 21, Notary Barbani could not withdraw the money. This is the crucial element that permits differentiating this situation from others that received a positive ruling." Brief with answers of the members of the Advisory Commission ante the 19th Criminal Judge of First Instance (file of attachments to the answer, volume II, attachment 21, folio 13308).

[246] *Cf.* Clara Jasinski (File No. 2003/0637) (file of attachments to the application, volume III, attachment 12 (B), folios 3450 to 3490), and Raúl Montero (File No. 2003/0469) (file of attachments to the application, volume XVI, attachment 12 (J), folios 11783 to 11786).

[247] In the said cases, the Central Bank considered that the refusal of the Banco de Montevideo to hand over their funds before maturity to these petitioners constituted a unilateral change on the part of the Bank, which signified that the placement had been maintained without the petitioners' consent (*supra* para. 96).

[248] *Cf.* Testimony given on May 25, 2004, before a member of the Advisory Commission by Jorge Olivar Fontana, account officer of the *Banco de Montevideo* (file of attachments to the application, volume II, attachment 12(A), folios 2905, 2920 and 2921). The second question that Mr. Fontana was asked was "When did you begin to manage Alicia Barbani's account and, when you began to manage it, what form did her deposit take," to which the witness responded: "I don't remember the exact date, but it was in the months just prior to the intervention. It was a deposit in TCB." In the cross-examination by Dr. Víctor Della Valle, the questions were: "1. Did you tell Mrs. Barbani that the fixed-term deposit she had made could be withdrawn at any time, even before maturity? Answer: Yes, that is correct, because that was one of the advantages of this product." "2. When she wanted to withdraw it, did the Bank unilaterally refuse this? Answer: Yes, on the Management's instructions." Then, the member of the Advisory Commission asked the following question: "Do you recall on what date it refused to allow Mrs. Barbani to withdraw the money referred to in the previous question?. Answer: It must have been some time between the end of May and the intervention of the *Banco de Montevideo*."

manager recorded that Jorge Marenales had given instructions not to renew his share in a deposit certificate that matured on June 20, 2002. In the above-mentioned brief presented by the members of the Advisory Commission in the criminal proceedings filed against them (*supra* para. 181), when referring to the case of Mr. Marenales, they indicated that, even though he had given instructions that, on the date maturity of his share, his funds be left "on demand"; in other words that they should be placed in the respective account, "[t]his could not be done because, precisely on June 20, 2002, the Central Bank instructed the *Banco de Montevideo* not to pay the TCB CD." Based on these elements, it is evident that the determinant factor in the rejection of this case was that the date of maturity of the share in the certificate was June 20, 2002, which this Court finds entails an arbitrary and discriminatory treatment with regard to at least one of the 22 cases admitted.[249] The representatives highlighted that one of the cases admitted contradicts the decision in the case of Mr. Marenales, because that case was accepted, because the claim was admitted under article 31 of Law 17,613, even though the placement also matured on June 20, 2002. The review of the file of the said petitioner who was accepted reveals that, in that case, the claim was admitted in relation to a share in certificates of deposit that matured on June 20, 2002, because consent had not been given for renewal. The Court finds no rational and objective reason that would justify the difference in treatment of the two cases in application of the same norm. It therefore concludes that, in the case of Mr. Marenales, adequate reasoning was not guaranteed that would allow verification that the criteria used to determine the requirement of absence of consent was applied objectively, which constitutes a violation of Articles 1(1) and 8(1) of the American Convention.

185. Therefore, regarding the alleged discriminatory treatment owing to the application of a new criterion in the 22 cases that were accepted, the Court concludes that the Central Bank's conduct did not constitute arbitrary and discriminatory treatment, because its acceptance was based on the analysis of the requirements established in article 31 of Law 17,613 and not on the application of a new criterion that only benefited some petitioners. Consequently, the State did not violate Article 8(1) of the American Convention, in relation to Article 1(1) thereof. Regarding the alleged arbitrary or discriminatory treatment received by four alleged victims identified by the representatives, the Court concludes that it does not have sufficient evidence to determine the existence of this arbitrary or discriminatory treatment with regard to Oscar Pivovar and Alba Fernández. However, the Court concludes that the victims Jorge Marenales and Alicia Barbani Duarte did suffer arbitrary and discriminatory treatment, because the State did not guarantee an adequate reasoning of the decisions of the Central Bank that decided their claims under article 31 of Law 17,613 that would allow verification of the objective application of the criteria used to determine the requirement of absence of consent, and this constitutes a violation the right to non-discriminatory treatment, in relation to the procedural guarantee of adequate reasoning, protected by Articles 1(1) and 8(1) of the American Convention to the detriment of Alicia Barbani Duarte and Jorge Marenales.

B.2.d) Alleged lack of information concerning evidence

Arguments of the parties

186. The Inter-American Commission argued that there had been a "selective inclusion of witnesses" when examining the cases that were admitted. The Advisory Commission

[249] The Central Bank's decision that decided the said petition, expressly affirmed that the testimony received and the documents in the file "reveal express instruction not to renew in TCB [… so that i]n the case of the document […] that matured on June 20, 2002, it should be understood that no consent was given to renew it." Consequently, in this case the petitioners were granted the rights recognized in article 31 of Law 17,613. *Cf.* Case of María Julia Boeri Bottero and María del Rosario Delmonte Boeri (File No. 2003/0708) (file of attachments to the application, volumes V and XIII, attachments 12 (C) and 12 (G), folios 4982 to 5070 and folios 9561 to 9640).

followed a pattern of rejecting a claim initially and then "admitting it owing to the testimony, generally unconfirmed, of a *Banco de Montevideo* employee." In this regard, the Inter-American Commission submitted a series of arguments related to the alleged absence of probative value of the statements received at the domestic level, the *quantum* of the evidence to prove a fact or a requirement, and the assessment of the evidence by the administrative body. In this regard, the Inter-American Commission argued that, the actions of the administrative body in relation to the admission and assessment of evidence constituted non-compliance with the Central Bank's Rules of Administrative Procedure or that the Advisory Commission "ignored" the provisions of article 161(2) of the General Code of Procedure. The Commission argued that, in the procedure before the Central Bank, the alleged victims "were not advised or notified that the Advisory Commission would interpret the testimony of witnesses in their favor" to prove that "they had sought to withdraw their money."

187. For their part, the representatives added that the evidence that the petitioners before the Central Bank had to submit to prove the absence of consent in the transfer of their funds to offshore accounts, "should have been reasonable and objective, and should not have constituted an obstacle for the transparent implementation of the procedure established for the recovery of their assets." According to the representatives, "the Advisory Commission did not even ensure that these probative elements, created as the procedure was underway and unknown to most of the interested parties, were publicized among them, so the new possibility of introducing witnesses was not accessible to most of them."

188. The State indicated that each petitioner had several opportunities, under both the administrative and the jurisdictional systems, to have his arguments heard and to offer any legal means of evidence to prove that the requirements established by article 31 of Law 17,613 had been met, in order to be granted the same rights as those established for the depositors of the *Banco de Montevideo*. It added that, if these opportunities were not used, this cannot be attributed to the State, but only to the interested party himself. It indicated that, in its actions, the Advisory Commission "conformed strictly to the law, in both the procedure used and the basic requirements for the claim to be decided […] using the general principles of the administrative procedure." It affirmed that the Advisory Commission acted with technical independence, "promptness and efficacy in attending [approximately] 1,400 claims, which were investigated and decided within a year […] without, in any case, rejecting any means of evidence offered by [the alleged victims]," and investigating and processing all the evidence received in each claim.

Considerations of the Court

189. The Court has verified that, in the special procedure created under article 31 of Law 17,613, the administrative body applied the norms in force to deal with claims before the Central Bank del Uruguay. The resolution of the Board of the Central Bank which, in compliance with the said article 31, created the Advisory Commission, expressly establishes that "[i]n the substantiation of the claims [before the Advisory Commission], the general principles of administrative proceedings included in the Rules of Administrative Procedure of the Central Bank of Uruguay shall be observed," and that "[t]he evidence will be assessed in accordance with the rules contained in the General Code of Procedure."

190. Indeed, as the State argues, according to the said norms that governed the procedure, the petitioners had at least three opportunities to offer evidence: when filing their claim, when they were permitted to examine the unfavorable draft decision prepared by the Advisory Commission, and if they filed an appeal for annulment of the initial decision (*supra* paras. 84 to 89). They could offer any type of evidence, and this was admitted unless it was found to be inadmissible because it was irrelevant,

inappropriate or illegal. If a petitioner offered testimonial evidence, he was responsible for the appearance of the witness with the questions to be asked (*supra* para. 88).

191. Consequently, the Court finds that the arguments of the representatives are unfounded, because there was no justification for requiring the Advisory Commission or the Board of the Central Bank to provide specific information to the petitioners about the possibility of presenting witnesses to support their claims, since the regulations concerning the evidence they could submit were contained in general public norms. Moreover, the Court underscores that the norms applicable to the said procedure were expressly indicated in the resolution creating the Advisory Commission.

192. Regarding the alleged violations for failing to comply with domestic norms concerning the assessment of evidence, the Court notes that it is not incumbent on it to determine whether the significance accorded by the administrative body to the testimonial evidence in the 22 cases admitted was appropriate under domestic law. In addition, the Court refers to its preceding determination that, in the cases that were admitted, the requirement that was found proven by the said evidence, was not a new one, but rather the absence of consent (*supra* para. 170).

193. The persons accepted in those 22 cases are not alleged victims before this Court; thus the Court is unable to analyze their procedures, unless this is necessary for determining an unequal treatment in relation to the alleged victims that violates the American Convention. In the instant case, the Inter-American Commission and the representatives have not argued that the administrative body treated the testimony proposed by the alleged victims differently, but rather they are suggesting that this Court make an isolated analysis of the evidence rendered in 22 cases of persons who are not alleged victims.

194. Based on the above findings, the Court concludes that no violation of the American Convention has been constituted based on the alleged lack of information concerning evidence.

C) JUDICIAL PROTECTION

C.1) The appeal for annulment before the Contentious-Administrative Tribunal

Arguments of the parties

195. Both the Inter-American Commission and the representatives of the alleged victims argued that the State had violated the right to judicial protection by not providing "a simple and prompt remedy for examining all factual and legal issues related to the dispute."

196. The Inter-American Commission argued that Uruguay had not provided the alleged victims with an effective remedy "to contest the interpretation made by the Advisory Commission of article 31 of Law 17,613 in the Uruguayan courts." The alleged victims "were unable to submit to judicial resolution the central issue of the nature of the consent required to prove that their funds had been transferred offshore 'without their consent.'" However, the Inter-American Commission indicated that it considered that "the information presented is not sufficient to demonstrate State responsibility related to a failure to comply with Article 2 of the Convention." When referring to the appeal for annulment before the Contentious-Administrative Tribunal, the Inter-American Commission indicated that the said tribunal "could only intervene in the contested proceedings from the perspective of whether a disqualifying factor existed,

[but] it could not examine all the relevant facts, particularly as regards the petitioners' alleged absence of consent."

197. The representatives of the alleged victims argued that the domestic judicial remedies to which the State alluded "are totally ineffective." The representatives added that most of the alleged victims did not try to obtain the annulment of the administrative decisions before the Contentious-Administrative Tribunal "because they did not consider it an effective remedy," since the latter's ruling could only annul the contested act, but "would not have resulted in the depositor automatically being included among those protected," and another act of the Central Bank would have been required to achieve that.

198. For its part, the State indicated that the alleged violation of Article 25 of the Convention "is unfounded." According to the State, all those whose claim was denied by the Central Bank were able to seek the annulment of the decision before the Contentious-Administrative Tribunal, a body with jurisdictional powers, independent of the three branches of Government, whose five members are appointed by the Legislature. It indicated that only 38 alleged victims filed this appeal for annulment.

199. The State indicated that "the [Inter-American] Commission had assessed erroneously all aspects of the jurisdictional mechanism of the Contentious-Administrative Tribunal." According to the State, the appeal for annulment before this tribunal functioned with full guarantees. In this regard, the State described "the characteristics of the appeal for annulment or for administrative protection." According to the State, this tribunal examines all the factual and legal circumstances related to the case, and is not influenced in any way by the previous administrative procedure." Uruguay underscored that the said Tribunal had "analyzed all the factual and legal circumstances relating to the cases, without the prior administrative procedure influencing it in any way." The State referred to the fact that the Contentious-Administrative Tribunal had admitted the claim of a person who is not an alleged victim in the instant case, which confirmed that the judicial remedy was accessible and effective. In addition, Uruguay indicated "that the fact that the Contentious-Administrative Tribunal […] has upheld the Central Bank's criteria – in the immense majority of the cases – does not constitute a violation of the right to judicial protection, but rather is evidence that the Central bank's decisions were legitimate and that, consequently, the petitioners did not have grounds for their claim."

Considerations of the Court

200. The Court has indicated that Article 25(1) of the Convention establishes the obligation of the States Parties to guarantee to all persons subject to their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights.[250] This effectiveness presumes that, in addition to the formal existence of the remedies, they achieve results or represent responses to the violations of rights established in the Convention, the Constitution or by law.[251] In this regard, those remedies that are not viable, owing to the general situation of the country or even the specific circumstances of a case, cannot be considered effective. This may occur, for example, when their ineffectiveness has been revealed in the practice, because there are no mechanisms for executing their decisions or owing to any other situation that constitutes the denial of

[250] *Cf. Case of Velásquez Rodríguez v. Honduras*, *supra* note 29, para. 91; *Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, para. 127, and *Case of Torres Millacura et al. v. Argentina*, *supra* note 18, para. 113.

[251] *Cf.* Advisory Opinion OC-9/87, *supra* note 207, paras. 23 and 24; *Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, para. 127, and *Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 95.

justice.[252] Hence, the proceedings must be conducive to achieving the protection of the right recognized in the judicial decision by the appropriate implementation of the said ruling.[253]

201. Furthermore, as the Court indicated previously, when evaluating the effectiveness of the remedies filed under the domestic administrative jurisdiction, the Court must observe whether the decisions taken in that jurisdiction have made a real contribution to ending a situation that violates rights, to guaranteeing the non-repetition of the harmful acts and to ensuring the free and full exercise of the rights protected by the Convention.[254] The Court does not assess the effectiveness of the remedies filed based on a possible decision in favor of the victim's interests.[255]

202. The Court finds that, in order to decide the dispute between the parties concerning the effectiveness of judicial protection in the instant case, it must include some relevant consideration on the scope of the review that a judicial remedy must provide in order to be effective in accordance with Article 25 of the Convention.

203. The Court will refer to some relevant factors in cases such as this one, where a prior administrative decision that is alleged to violate the rights of an alleged victim has been submitted to the judicial bodies. To this end, the Court will take into account the jurisprudence developed by the European Court of Human Rights in this matter.[256] In this regard, The Court considers that it is important to analyze factors such as: (a) the competence of the judicial body in question; (b) the subject matter on which the administrative body ruled, taking into account whether it concerned specialized information requiring professional knowledge or experience; (c) the purpose of the dispute filed before the judicial body, including the factual and legal arguments of the parties, and (d) the guarantees of due process before the judicial body. Regarding the latter, the Court has established, in its consistent case law, that to preserve the right to an effective remedy under Article 25 of the Convention, it is essential that the said remedy be processed in keeping with the rules of due process of law embodied in Article 8 of the Convention.[257]

204. This Court is in general agreement with the European Court in understanding that a judicial review is sufficient when the judicial body examines all the allegations and arguments submitted to its consideration concerning the decision of the administrative

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[252] *Cf.* Advisory Opinion OC-9/87, *supra* note 207, para. 24; *Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 7, para. 137; *Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, para. 127, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 251, para. 94.

[253] *Cf. Case of Baena Ricardo et al. v. Panama. Competence.* Judgment of November 28, 2003. Series C No. 104, para. 73; *Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, para. 127, and *Case of Mejía Idrovo v. Ecuador*, *supra* note 251, para. 95.

[254] *Cf. Case of the Mapiripán Massacre v. Colombia*, *supra* note 21, para. 210; *Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, paras. 127 and 128, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 184.

[255] *Cf. Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, para. 128, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 184.

[256] "In assessing the sufficiency of a judicial review available to an applicant, the Court will have regard to the powers of the judicial body in question […], and to such factors as (a) the subject-matter of the decision appealed against, in particular, whether or not it concerned a specialized issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and if, so, to what extent; (b) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the adjudicatory body; and (c) the content of the dispute, including the desired and actual grounds of appeal." *ECHR, Case of Sigma Radio Television Ltd. v. Cyprus.* Judgment of 21 July 2011. App. Nos. 32181/04 and 35122/05, para. 154.

[257] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 148; *Case of Claude Reyes et al. v. Chile*, *supra* note 208, para. 127, and *Case of Ximenes Lopes v. Brazil*, *supra* note 215, para. 193.

body, without waiving its competence to decide on them or to determine the facts.[258] To the contrary, this Court finds that no judicial review has occurred if the judicial body is prevented from determining the main object of the dispute, as in cases where the judicial body considers that it is restricted by factual or legal determinations made by the administrative body that would have been decisive to decide the case.[259]

205. In the instant case, it has been proved that it was possible to file an appeal for annulment before the Contentious-Administrative Tribunal against the final decision of the Board of the Central Bank concerning a petition under article 31 of Law 17,613; that 39 alleged victims filed this appeal, and that all of them obtained an adverse ruling from this tribunal[260] (*supra* paras. 101 and 103).

206. The Inter-American Commission argued, in general, that Uruguay had not provided the alleged victims with an effective remedy "to contest the Advisory Commission's interpretation of article 31 of Law 17,613 before the Uruguayan courts," and that the alleged victims "were unable to submit the central issue of the nature of the consent required to prove that their funds had been transferred offshore 'without their consent' to the courts for a ruling" (*supra* para 196). For their part, the representatives, referring specifically to the appeals for annulment filed by some alleged victims before the Contentious-Administrative Tribunal, argued that this tribunal "did not conduct an independent and impartial analysis of the requirements for evidence established in article 31 of Law 17,613, in particular those relating to the alleged absence of consent in relation to the transfer of [their] funds to the TCB," and that, on this basis, all the appeals for annulment filed by the alleged victims were rejected.

207. In this regard, as has occurred in other case,[261] the Court is unable to analyze the cases corresponding to these 39 alleged victims in the proceedings under administrative law due to the limited evidence provided in this regard. Only 22 judicial rulings deciding the appeals of 28 alleged victims were provided to the Court, but neither the appeals nor the judicial case files were provided.[262] Therefore, the Court will

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[258] ECHR, *Case of Sigma Radio Television Ltd. v. Cyprus*, *supra* note 256, para. 156. See also, ECHR, *Case of Zumtobel v. Austria*. Judgment of 21 September 1993, Series No. 268-A, para. 32; *case of Fischer v. Austria*. Judgment of 26 April 1995, Series A No. 312, para. 34, and *case of Bryan v. the United Kingdom*. Judgment of 22 November 1995, Series No. 335-A, para. 47.

[259] ECHR, *Case of Sigma Radio Television Ltd. v. Cyprus*, *supra* note 256, para. 157. See also, ECHR, *Case of Obermeier v. Austria.* Judgment of 28 June 1990, Series A No. 179, paras. 69-70 and *case of Terra Woningen B.V. v. the Netherlands*. Judgment of 17 December 1996, Rep. 1996-VI, fasc. 25, paras. 46, 50 to 55.

[260] Since some of these judicial decisions do not indicate the names of all the plaintiffs and the corresponding complaints were not provided, this Court will also take into account the lists and tables of judicial proceedings provided by the State, which were not contested by the representatives or the Commission.

[261] *Cf. inter alia, Case of Torres Millacura et al. v. Argentina*, *supra* note 18, para. 134; *Case of Mejía Idrovo v. Ecuador*, *supra* note 251, paras. 120 to 122; Case of *Vélez Loor v. Panama*, *supra* note 15, paras. 250 and 251, and *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. 112.

[262] The 22 judgments of the Contentious-Administrative Tribunal provided to the body of evidence are in the file of attachments to the answer, volumes III to VII, attachment 27 and are as follows: (1) Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (folios 13865 to 13886), corresponding to the alleged victims: Barcarcel, Liliana; Cavajani, Nícida; Cavanna, José Luis; Da Silva Gaibisso, Hugo; Pizza, Martha; Tabárez Corni, Tabaré. (2) Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 13907 to 13918), corresponding to the alleged victim Azparren, Ana Beatriz. (3) Judgment No. 659 of the Contentious-Administrative Tribunal of October 4, 2006, in proceedings entitled "Alzaradel, Rita *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 13965 to 13972), corresponding to the alleged victim Alzaradel, Rita. (4) Judgment No. 138 of the Contentious-Administrative Tribunal of May 8, 2008, in proceedings entitled "Dendrinos, Daniel *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 14368 to 14367), corresponding to the alleged victim Dendrinos Saquieres, Daniel. (5) Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the

now analyze the effectiveness of the appeal for annulment before the Contentious-Administrative Tribunal based on the judgments provided, domestic law, and the expert opinion on the matter.

208. Regarding the jurisdiction of the judicial body in question, it is relevant that article 23 of the Law of the Contentious-Administrative Tribunal establishes that an appeal for annulment may be made against "the administrative decisions of a unilateral, treaty-based or any other nature that are issued involving misuse, abuse or excess of

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Central Bank of Uruguay. Appeal for annulment" (folios 14470 to 14481), corresponding to the alleged victim Contin, Gianna. (6) Judgment No. 487 of the Contentious-Administrative Tribunal of October 23, 2008, in proceedings entitled "Castro, Gustavo *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 14597 to 14602), corresponding to the alleged victim Castro Etchart, Gustavo. (7) Judgment No. 477 of the Contentious-Administrative Tribunal of September 3, 2007, in proceedings entitled "Perles, Gisela *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 14871 to 14881), corresponding to the alleged victim Perles, Gisela. (8) Judgment No. 16 of the Contentious-Administrative Tribunal of February 5, 2007, in proceedings entitled "Neuschul, Franklin *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 14932 to 14941), corresponding to the alleged victim Neuschul, Franklin. (9) Judgment No. 179 of the Contentious-Administrative Tribunal of April 30, 2007, in proceedings entitled "Neuschul, Thomas *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 14954 to 14963), corresponding to the alleged victim Neuschul, Thomas Máximo. (10) Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15048 to 15061), corresponding to the alleged victim Lingeri Olsson, Manuel. (11) Judgment No. 828 of the Contentious-Administrative Tribunal of December 13, 2006, in proceedings entitled "Lijtenstein, Fabiana *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15062 to 15069), corresponding to the alleged victim Lijtenstein, Fabiana. (12) Judgment No. 204 of the Contentious-Administrative Tribunal of June 12, 2008, in proceedings entitled "Leroy, Jean *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15083 to 15090), corresponding to the alleged victim Leroy, Jean. (13) Judgment No. 719 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Horvath, Raúl *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15121 to 15128), corresponding to the alleged victim Horvath, Raúl. (14) Judgment No. 726 of the Contentious-Administrative Tribunal of December 17, 2007, in proceedings entitled "Gutiérrez, Eduardo *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15144 to 15157), corresponding to the alleged victim Gutiérrez Galiana, Eduardo; (15) Judgment No. 578 of the Contentious-Administrative Tribunal of October 17, 2007, in proceedings entitled "Guerra, Martín *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15182 to 15191); corresponding to the alleged victim Guerra, Martín. (16) Judgment No. 315 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Gigli, María *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15192 to 15199), corresponding to the alleged victim Gigli Rodríguez, María Ivelice. (17) Judgment No. 435 of the Contentious-Administrative Tribunal of August 22, 2007, in proceedings entitled "Rama, Leandro *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15200 to 15206), corresponding to the alleged victim Rama Sienra, Leandro. (18) Judgment No. 408 of the Contentious-Administrative Tribunal of July 25, 2007, in proceedings entitled "Atijas, Vito *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15407 to 15414), corresponding to the alleged victim Volyvovic, Clara. (19) Judgment No. 314 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Roure, Pablo *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15603 to 15609), corresponding to the alleged victim Roure Casas, Pablo Raúl. (20) Judgment No. 317 of the Contentious-Administrative Tribunal of May 13, 2010, in proceedings entitled "Roelsgaard, Niels *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15611 to 15617), corresponding to the alleged victim Roelsgaard Papke, Niels Peter. (21) Judgment No. 292 of the Contentious-Administrative Tribunal of June 6, 2007, in proceedings entitled "Rodríguez, Marta *v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15619 to 15629), corresponding to the alleged victim Rodríguez Lois, Marta. (22) Judgment No. 272 of the Contentious-Administrative Tribunal of June 4, 2007, in proceedings entitled "Notero, Ángel *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (folios 15619 to 15629), corresponding to the alleged victims Notero, Ángel and Bonifacino, Alba. According to the information provided by the State, and not contested by the Inter-American Commission or the representatives, the appeals for annulment filed by another 11 alleged victims ended and, consequently, were archived because "more than six months had passed without any procedural action, which, pursuant to art. 96 of DL 15,524, results in prescription." The said Decrees of Prescription are in the file of attachments to the answer, volume VII, attachment 27 (B) and are as follows: (1) Canabal Lema, Andrés, Decree of Prescription No. 2073/2010, of March 24, 2010, (folio 15670); (2) Canabal, Andrea, Decree of Prescription No. 3946/2010, de May 19, 2010, (folio 15671); (3) García Milia, María Delia, Decree of Prescription No. 2200/2007, of April 12, 2007, (folio 15672); (4) Lisbona Vásquez, Gabriel, Decree of Prescription No. 641/2009 of February 13, 2009 (folio 156724); (5) López Varela, José Jorge, Decree of Prescription No. 6062/2005 of September 5, 2005 (folio 15675); (6) López Alejandro, Rogelio, Decree of Prescription No. 1801/2009 of March 17, 2009 (folio 15676); (7) Rubio Saquieres, Manuel, Decree of Prescription No. 633/2009 of February 13, 2009 (folio 15677); (8) Rubio Saquieres, Miguel Ángel, Decree of Prescription No. 633/2009 of February 13, 2009 (folio 15677); (9) Saiquieres Garrido, Nelly, Decree of Prescription No. 633/2009 of February 13, 2009 (folio 15677); (10) Schipani, Élida, Decree of Prescription No. 2073/2010, of March 24, 2010, (folio 15670). The Court has no information regarding the status of the appeal for annulment filed by the alleged victim Marion Glaser.

power, or that violate a rule of law, understood as any principle of law or constitutional, legislative, regulatory or contractual norm."[263] Based on the foregoing and other probative elements in the body of evidence, the Court observes that, using the appeal for annulment, the alleged victims could request a review of the way in which the administrative body had applied the requirements established in article 31 of Law 17,613, arguing that it was contrary to the provisions of the said article, or of any other legal norm or principle. The judgments submitted to this Court reveal that the Contentious-Administrative Tribunal did not waive its jurisdiction to decide any of the allegations and arguments presented in these cases.

209. The representatives argued that most of the alleged victims did not seek to have the administrative decisions annulled by the Contentious-Administrative Tribunal, "because they did not consider it to be an effective remedy," since its ruling could only annul the contested decision, but "would not have resulted automatically in the inclusion of the depositor among those protected," which would have required another procedure before the Central Bank (*supra* para. 197). For its part, the State explained that "[b]ased on the characteristics of this matter, an annulment by the Contentious-Administrative Tribunal would entail full satisfaction of the petitioners' interests, because it would not only extinguish the ruling that denied the claim (extinctive effect), but it would oblige the Central Bank of Uruguay (positive effect of the annulled *res judicata*) to recognize the person whose case was successful as a depositor of the *Banco de Montevideo S.A*. with the same rights as the other depositors."

210. In this regard, it is relevant to emphasize that the European Court has considered that the remedy is effective if there has been adequate judicial review, even when the judicial body was not empowered to analyze all aspects of an administrative decision, but was competent to annul the said decision under different hypotheses, including an erroneous interpretation of the facts or the law.[264] The Inter-American Court has also ruled on a case in which the available judicial remedy was an appeal for annulment, finding that it was appropriate to protect the rights that had allegedly been violated in the said case.[265]

211. Consequently, the Court finds that, in the instant case, the appeal for annulment could have been an effective remedy, to the extent that the annulment of the administrative decision would have protected the alleged victims from the decision that violated their rights. In the instant case, for the appeal for annulment to be effective, it would have had to result in both the annulment of the decision, and also the consequent determination or, if appropriate, recognition, of the rights established under article 31 of Law 17,613. The only case that was decided favorably by the Contentious-Administrative Tribunal was that of two people who are not alleged victims in the instant case and, although the judgment was provided, no information was forwarded on the consequences of the annulment of the administrative decision in relation to the recognition of the rights granted by article 31 of Law 17,613.

212. The Court does not have the necessary elements to analyze whether, the execution of a judgment deciding an appeal for annulment, specifically related to the application of article 31 of Law 17,613, would have been ineffective. This could have occurred if it merely annulled the administrative decision and failed to determine or recognize the rights established in the said article.

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[263] Decree Law 15,524, entitled "Regulatory framework. Administrative Tribunal" (file of attachments to the answer, volume I, attachment 15, folio 13011).

[264] *Cf. ECHR, Case of Sigma Radio Television Ltd. v. Cyprus*, *supra* note 256, paras. 156-159.

[265] *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 15, para. 81.

213. Based on the above considerations, the Court concludes that the fact that the judicial remedy available was an appeal for annulment has not constituted a violation of the right to judicial protection in the present case.

214. In addition, the representatives indicated that, since it is a remedy of annulment, the appeal for annulment "does not allow all the aspects of the evidence to be considered, so that the petitioners could not argue defects of consent." In this regard, the State emphasized that "[t]here is no limitation of any kind to the powers of the Contentious-Administrative Tribunal as regards evidence under the annulment proceedings," except that "it may reject any [evidence] that it finds significantly dilatory or prohibited by law." According to the State, the parties "were able to offer any type of evidence additional to the evidence included in the previous administrative decisions that the appeal for annulment contested […]." The State also asserted that, in the appeals for annulment filed by the alleged victims, "probative elements submitted within the time frame and in the form established by law were not rejected."

215. According to the norms that govern this remedy, the expert opinion of Daniel Hugo Martins, and the decisions of the said tribunal, it is clear that the alleged limitation did not exist with regard to the evidence or the arguments that the parties could submit to the decision of the said tribunal.

216. Given the reasons for which the Court declared a violation of the material sphere of the alleged victims' right to be heard (*supra* paras. 133 to 142), the Court finds that, for the appeal for annulment before the Contentious-Administrative Tribunal to be effective, according to Article 25(1) of the American Convention, the said tribunal would have had to examine fully whether the Central Bank's analysis of the requirement of consent conformed to the provisions of article 31 of Law 17,613 for the determination of the rights that it granted.

217. From the judgments that were provided, the Court observes that the Contentious-Administrative Tribunal analyzed the requirements stipulated in article 31 and their application by the Central Bank in 11 of them, and decided that the allegations concerning defects of consent or non-compliance with the obligation to inform had not been proved, indicating, *inter alia*, that "factual evidence was lacking" or that "there was insufficient evidence." The Court does not have sufficient elements to determine whether the Contentious-Administrative Tribunal's assessment of the evidence impaired the effectiveness of the said remedy with regard to the respective claimants.[266]

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[266] *Cf.* (1) Judgment No. 691 of the Contentious-Administrative Tribunal of September 16, 2010, in proceedings entitled "Clemata José *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folios 13865 to 13886); (2) Judgment No. 713 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Azparren, Ana *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folio 13907 to 13918); (3) Judgment No. 659 of the Contentious-Administrative Tribunal of October 4, 2006, in proceedings entitled "Alzaradel, Rita *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume III, attachment 27, folios 13965 to 13972); (4) Judgment No. 316 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Contín, Gianni *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folios 14470 to 14481); (5) Judgment No. 487 of the Contentious-Administrative Tribunal of October 23, 2008, in proceedings entitled "Castro, Gustavo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folios 14597 to 14602); (6) Judgment No. 477 of the Contentious-Administrative Tribunal of September 3, 2007, in proceedings entitled "Perles, Gisela *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 14871 to 14881); (7) Judgment No. 16 of the Contentious-Administrative Tribunal of February 5, 2007, in proceedings entitled "Neuschul, Franklin *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 14932 to 14941); (8) Judgment No. 306 of the Contentious-Administrative Tribunal of June 13, 2007, in proceedings entitled "Lingeri, Manuel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15048 to 15061); (9) Judgment No. 719 of the Contentious-Administrative Tribunal of October 25, 2006, in proceedings entitled "Horvath, Raúl *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15121 to 15128); (10) Judgment No. 726 of the Contentious-Administrative Tribunal of December 17, 2007, in proceedings entitled "Gutiérrez, Eduardo *v.* the Central Bank

218. Furthermore, the Court observes that, in another 11 judgments that were provided, which decided appeals for annulment, the Contentious-Administrative Tribunal analyzed the requirements stipulated in article 31 and their application by the Central Bank, but the arguments submitted regarding defects of consent or non-compliance with the obligation to provide information were not verified to confirm whether or not these had been constituted.[267] Hence, in the same way as the administrative body, the tribunal responsible for deciding the judicial remedy (*supra* paras. 140 to 142) made an incomplete examination of the claims submitted to its consideration.

219. In one of these 11 cases the Contentious-Administrative Tribunal considered that, "despite the alleged fraud by the [*Banco de Montevideo]* of which the claimant says he was a victim with regard to his investment, at least a presumption of the claimant's implied consent can be verified in relation to the operation carried out by the banking entity to which he entrusted his capital."[268] In addition, in another of these cases, the said tribunal considered that "[e]ven acknowledging that the information that the *Banco de Montevideo* provided [to the alleged victims who are claimants] was incomplete; that the name TCB on the statements could not be fully understood by the depositors, and that the operation was carried out from a checking account and not with certificates of deposit in an 'On-demand deposits for stock trading' account, the claimants had been unable to prove that they were depositors in the *Banco de Montevideo* and that their deposits were transferred to the TCB without their consent."[269]

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of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15144 to 15157) (11) Judgment No. 317 of the Contentious-Administrative Tribunal of May 13, 2010, in proceedings entitled "Roelsgaard, Niels *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15611 to 15617).

[267] *Cf.* (1) Judgment No. 138 of the Contentious-Administrative Tribunal of May 8, 2008, in proceedings entitled "Dendrinos, Daniel *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume IV, attachment 27, folios 14368 to 14367); (2) Judgment No. 828 of the Contentious-Administrative Tribunal of December 13, 2006, in proceedings entitled "Lijtenstein, Fabiana *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15062 to 15069); (3) Judgment No. 204 of the Contentious-Administrative Tribunal of June 12, 2008, in proceedings entitled "Leroy, Jean *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15083 to 15090); (4) Judgment No. 578 of the Contentious-Administrative Tribunal of October 17, 2007, in proceedings entitled "Guerra, Martín *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15182 to 15191); (5) Judgment No. 315 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Gigli, María *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15192 to 15199); (6) Judgment No. 435 of the Contentious-Administrative Tribunal of August 22, 2007, in proceedings entitled "Rama, Leandro *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 15200 to 15206); (7) Judgment No. 408 of the Contentious-Administrative Tribunal of July 25, 2007, in proceedings entitled "Atijas, Vito *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15407 to 15414); (8) Judgment No. 314 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Roure, Pablo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15603 to 15609); (9) Judgment No. 292 of the Contentious-Administrative Tribunal of June 6, 2007, in proceedings entitled "Rodríguez, Marta *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VI, attachment 27, folios 15619 to 15629); (10) Judgment No. 272 of the Contentious-Administrative Tribunal of June 4, 2007, in proceedings entitled "Notero, Ángel *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume VII, attachment 27, folios 15619 to 15629), and (11) Judgment No. 179 of the Contentious-Administrative Tribunal of April 30, 2007, in proceedings entitled "Neuschul, Thomas *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer, volume V, attachment 27, folios 14954 to 14963). Regarding this last case, the Court notes that the incomplete examination by the Contentious-Administrative Tribunal is related to the allegation of the victim that the renewal of negotiable securities of Velox Investment Company had been carried out without his consent and not with defects of consent.

[268] Judgment No. 314 of the Contentious-Administrative Tribunal of June 18, 2007, in proceedings entitled "Roure, Pablo *v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer to the application, volume VII, attachment 27, folios 15607 and 15608).

[269] Judgment No. 828 of the Contentious-Administrative Tribunal of December 13, 2006, in proceedings entitled "Lijtenstein, Fabiana *et al. v.* the Central Bank of Uruguay. Appeal for annulment" (file of attachments to the answer to the application, volume V, attachment 27, folio 15068).

220. Therefore, the Court finds that, in these 11 cases (*supra* para. 218), the State did not guarantee the petitioners a judicial remedy that protected them effectively against the violation of the material sphere of their right to be heard before the administrative body for the determination of the rights granted by article 31 of Law 17,613. Consequently, the Court declares that Uruguay violated the right to judicial protection embodied in Article 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Daniel Dendrinos Saquieres, Fabiana Lijtenstein, Jean Leroy, Martín Guerra, María Ivelice Gigli Rodríguez, Leandro Rama Sienra, Clara Volyvovic, Pablo Raúl Roure Casas, Marta Rodríguez Lois, Ángel Notaro, Alba Bonifacino and Thomas Máximo Neuschul.

C.2) Other alleged judicial remedies available

Arguments of the parties

221. When contesting the alleged violation of judicial protection, the State indicated that, in addition to the appeal for annulment before the Contentious-Administrative Tribunal, other effective judicial remedies were available to the alleged victims. Uruguay indicated that "article 31 does not exhaust the possibility of the TCB Cayman Islands investors being included as shareholders of the *Banco de Montevideo* – Bank Assets Recovery Fund." It added that "many of them did not use them or, having used them, their cases were rejected, after proceedings endowed with all the judicial guarantees for defense and the production of evidence." Uruguay indicated that several of the said actions before the courts were successful, enabling some alleged victims to be considered as shareholders of the respective Recovery Fund. Also, in this regard, it emphasized that "a significant percentage of the claimants presented their claims as of 2004 and, fundamentally, during 2005 and 2006, so that some proceedings are still underway." The State presented figures and documentation with regard to the said proceedings and the judgments handed down. Lastly, it indicated that an application for *amparo* was also available, and was the most simple and prompt remedy under Uruguayan law for an act "of manifest illegality," and that this remedy was not used.

222. The representatives indicated that "some depositors" filed actions under "other domestic judicial remedies in the civil, bankruptcy and criminal sphere," but "most of these proceedings are still ongoing and subject to possible cassation." In this regard, they indicated that "[a] remedy that takes from 7 to 10 years to decide is not effective." Moreover, they stated that most of the alleged victims did not have "the capacity, the strength of character, the health and the money to continue and obtain proper counseling on the steps to take in order to evaluate properly to which jurisdiction they should resort." They added that "if they really had all the remedies mentioned by the State within their reach, and if these remedies had really been effective, the legislator would not have taken the trouble to adopt article 31 and order the creation of an Advisory Commission to decide their situation in 60 days."

223. For its part, the Inter-American Commission indicated that, as regards the remedies identified by the State in its answering brief, one of the minimum guarantees necessary under the administrative procedure should be the clarity of the path to follow by the petitioner to reclaim his rights and that, in the instant case, "the State revealed a lack of clarity in its defense before the inter-American system." In its final written arguments, the Commission indicated that "even today it is not clear which remedy would be effective, or whether such a remedy exists […]."

Considerations of the Court

224. The Court found it proved that at least 136 alleged victims filed actions in the ordinary jurisdiction against the *Banco de Montevideo* based on, *inter alia*, breach of

contract and claims for compensation for damage. In 10 cases the *Banco de Montevideo* was found guilty and the decision is final in nine of them (*supra* para. 107).

225. Uruguay argued the existence of other "means of judicial remedy" that would have allowed the alleged victims "to obtain a guilty verdict against [the] *Banco de Montevideo S.A.* (in liquidation), which would have enabled them to be included as shareholders in the *Banco de Montevideo* – Bank Assets Recovery Fund." In this regard, the State did not provide details of what these remedies consisted of, their procedures and the norms that regulate them, as it did when referring to the appeal for annulment before the Contentious-Administrative Tribunal. However, the State did provide copies of the judgments in some cases filed by certain alleged victims, as well as lists and tables with information on the appeals filed in different instances and how they were decided.

226. Bearing in mind the State's arguments and the corresponding evidence as regards the alleged remedies in the instant case, the Court can analyze whether those remedies allowed the courts that decided them to consider the matter that is the purpose of the dispute in this case. In order to rule on this, the Court recalls that, under article 31 of Law 17,613, it was stipulated that those who met the requirements established in the said norm should be granted two rights: (i) recognition as a creditor of the *Banco de Montevideo* or the *Banco La Caja Obrera*, based on which they became shareholders in the Recovery Fund of the respective bank, and (ii) the right to receive from the State a complement to their share (*supra* paras. 97 and 126). In contrast, the civil actions against the *Banco de Montevideo* to which the State refers could only result in the determination of the right to be recognized as a creditor of the said banks, based on which they would also become shareholders in the Recovery Fund, although not always for the amount that they alleged had been transferred without their consent, but often for the amount that the respective court established as compensation for non-compliance with a banking obligation. Although these actions allowed an analysis of the petitioners' consent as well as the *Banco de Montevideo's* non-compliance with its obligation to provide truthful and complete information, the Court underlines that the body of evidence does not show that the use of these remedies, which decided the actions against the *Banco de Montevideo,* allowed the application of article 31 of Law 17,613 and making the determinations that the article established, or a review of the actions of the administrative body that were alleged to have violated the guarantees of due process.

227. In this regard, the Court considers that the preceding conclusion has been confirmed by the State's assertion that "no ruling (even those that have been favorable to the claim presented, granting the plaintiff the status of creditor of the *Banco de Montevideo S.A*.) stated that the plaintiffs were depositors of the *Banco de Montevideo S.A*., […] but rather […] they are orders to pay all or part of sums invested as damages, but do not entail any recognition of the status as depositors of the *Banco de Montevideo S.A*. and, therefore, do not contest or contradict the decision of the Central Bank of Uruguay in application of the said art. 31 of Law No. 17,613." Furthermore, referring to the final judgments that had admitted claims for compensation from the *Banco de Montevideo,* the State affirmed that, those who had obtained these favorable rulings, "did not receive […] the benefit – from State resources – of art. 31 of Law No. 17,613."

228. The fact that some alleged victims used these judicial remedies and obtained favorable judgments does not mean that these remedies were effective in this matter. It merely reveals the search by these alleged victims for alternate means to allow them to obtain judicial protection for at least some of the rights established in article 31 of Law 17,613.

229. Based on the above, the Court finds that these actions before the civil jurisdiction did not grant all the rights established under the said article 31, and neither did they

revise or modify the decision adopted by the administrative body; therefore they cannot be considered effective remedies for the matter that is the purpose of this case.

230. Lastly, the Inter-American Commission stated that a violation of judicial protection had also taken place due to "the absence of a judicial forum where the petitioners could file their claims that the TCB was not, in fact, an offshore entity, which they alleged was proved by the fact that the *Banco de Montevideo* was allowed to assist the TCB to such a point that it resulted in its own insolvency." On this issue, Uruguay indicated that "all the alleged victims were always empowered to have recourse to the organs of the Judiciary to make claims other than the 'absence of consent' (the specific sphere of action of the Advisory Commission under art. 31 Law 17,613)".

231. In this regard, the Court notes that the said argument of the Inter-American Commission refers to a matter that does not form part of the factual framework of this case, given that the submission of arguments based on "the fact that the TCB was not […] an offshore entity" are excluded from the analysis of the situation that article 31 of Law 17,613 was intended to deal with.

D. Conclusions of the Court concerning Chapter VI

232. Taking into account its decisions in this chapter, the Court finds that the State violated: (a) the right to be heard protected by Article 8(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 539 persons who filed a claim under article 31 of Law 17,613, indicated in the Annex to this judgment (*supra* paras. 133 to 142); (b) the right to equal treatment in relation to the procedural guarantee of adequate reasoning protected by Articles 1(1) and 8(1) of the American Convention, to the detriment of Alicia Barbani Duarte and Jorge Marenales (*supra* paras. 183 to 185); (c) the right to judicial protection recognized in Article 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Daniel Dendrinos Saquieres, Fabiana Lijtenstein, Jean Leroy, Martín Guerra, María Ivelice Gigli Rodríguez, Leandro Rama Sienra, Clara Volyvovic, Pablo Raúl Roure Casas, Marta Rodríguez Lois, Ángel Notaro, Alba Bonifacino and Thomas Máximo Neuschul, who filed appeals for annulment that were not examined fully by the Contentious-Administrative Tribunal (*supra* paras. 218 to 220).

VII
RIGHT TO PROPERTY[270]
IN RELATION TO THE OBLIGATION TO GUARANTEE RIGHTS

Arguments of the parties

233. The Inter-American Commission did not argue that Article 21 of the American Convention had been violated.

234. The representatives argued that Uruguay had violated the right to property. To found their allegation, they referred to extracts from the dissenting opinion of a commissioner of the Inter-American Commission with regard to the Report on Merits in

[270] Article 21(1) and 21(2) (Right to Property) of the Convention establishes that:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

[…]

this case. Regarding the factual framework of the case submitted to this Court (*supra* paras. 37 to 41), the representatives cited the relevant parts of that dissenting opinion which stated that the Inter-American Commission's declaration in its Report on Merits that the State violated the rights to due process and to judicial protection "implied a violation of the obligation to protect the right to property." In this regard, the representatives underlined that, as a direct result of the violation of judicial guarantees owing to the actions of the Advisory Commission, "the right to property [was violated] also." They indicated that "the result of the [Advisory Commission's] incorrect application of criteria was the failure to return [their] savings," and that "since the issue involves a claim for money that belongs to [them], the failure to return it constitutes a violation of the use and enjoyment of [their] private property[, …] a deprivation [that] lacks any justification."

235. The State argued that "no act of the Uruguayan State or the Central Bank of Uruguay was intended to deprive the petitioners of the funds they invested, or to limit their availability," because "the matter relates to the failure of a private investment, made […] through a private Uruguayan institution." Uruguay added that "the reasons and evidence why each case that was decided favorably warranted the protection of the Board of the Central Bank [of] Uruguay, with the prior recommendation of the commission of jurists designated for that purpose, has already been provided." It also indicated that it "wished to insist that the petitioners did not avail themselves of the remedies offered to them by the domestic legal system to obtain the annulment of the unfavorable decisions."

Considerations of the Court

236. The Court reiterates that the alleged victims and their representatives can invoke the violation of other rights in addition to the ones already included in the application provided they relate to facts already included in the application and are invoked at the proper procedural opportunity (*supra* para. 36).

237. In its case law, this Court has developed a broad concept of property that covers, among other matters, the use and enjoyment of property, defined as material goods that can be possessed, as well as any right that can form part of an individual's personal wealth.[271] In addition, under Article 21 of the Convention, the Court has protected acquired rights, understood as rights that have been incorporated into an individual's personal wealth.[272]

238. In this case, the Court has not ruled on whether or not the alleged victims complied with the requirements established in article 31 of Law 17,613 to accede to the rights established under that article, because it is not incumbent on it to decide this. In addition, all the domestic administrative and judicial decisions in relation to such rights have rejected the claims of the alleged victims. Contrary to other cases in which the Court has decided that there has been a violation of Article 21 in relation to or derived from the declared violations of Articles 8 and 25,[273] in the instant case there has been no

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[271] *Cf. Case of Ivcher Bronstein v. Peru*, *supra* note 252, paras. 120-122; *Case of Salvador Chiriboga v. Ecuador*, *supra* note 30, para. 55, and *Case of Acevedo Buendía et al. ("Dismissed and Retired Employees of the Comptroller's Office") v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2009 Series C No. 198, para. 84.

[272] *Cf. Case of Five Pensioners v. Peru*, *supra* note 18, para. 102; *Case of Salvador Chiriboga v. Ecuador*, *supra* note 30, para. 55; *Case of Acevedo Buendía et al. ("Dismissed and Retired Employees of the Comptroller's Office") v. Peru, supra* note 271, para. 84, and *Case of Abrill Alosilla et al. v. Peru*, *supra* note 15, para. 84.

[273] *Cf. Case of Five Pensioners v. Peru*, *supra* note 18, paras. 121, 138 and 141; *Case of Salvador Chiriboga v. Ecuador*, *supra* note 30, paras. 99 to 118; *Case of Acevedo Buendía et al. ("Dismissed and Retired Employees of the Comptroller's Office") v. Peru*, *supra* note 271, paras. 74 to 91, and *Case of Abrill Alosilla et al. v. Peru*, *supra* note 15, para. 85.

domestic decision or a determination by this Court as to whether the alleged victims effectively had grounds for their claims for the rights referred to in the said article 31. Consequently, the Court has not found any evidence to declare a violation of Article 21 of the American Convention on Human Rights.

VIII
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

239. Based on the provisions of Article 63(1) of the American Convention,[274] the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation,[275] and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[276]

240. The reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the re-establishment of the previous situation. If this is not possible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights violated, to repair the consequences of the violations that occurred, and to establish compensation for the damage caused.[277] Consequently, the Court has considered the need to grant different measures of reparation, in order to redress the damage fully, so that, in addition to pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition are especially relevant to the damage caused.[278]

241. This Tribunal has established that reparations must have a causal link to the facts of the case, the violations declared, and the damage attributed to those violations, as well as to the measures requested to repair the corresponding damage. Therefore, the Court must verify that concurrence in order to rule duly and in keeping with the law.[279]

A. Injured Party

242. The Court reiterates that, under the terms of Article 63(1) of the American Convention, anyone who has been declared a victim of the violation of any right

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274 This article stipulates that "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.."

275 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 178, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 207.

276 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 62; *Case of Torres Millacura et al. v. Argentina*, *supra* note 18, para. 157, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 207.

277 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra* note 275, para. 26; *Case of Mejía Idrovo v. Ecuador*, *supra* note 251, para. 128, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 209.

278 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81; *Case of Chocrón Chocrón v. Venezuela*, *supra* note 18, para. 145, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 209.

279 *Cf. Case of Cantoral Benavides v. Peru, supra* note 278, para. 42; *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 179, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 210.

enshrined in the Convention is considered an injured party.[280] The victims in this case are: (a) the 539 individuals victims of the violation of the right to be heard with regard to their petitions before the Central Bank (*supra* paras. 133 to 142); (b) Alicia Barbani Duarte and Jorge Marenales, victims of the violation of the right to non-discriminatory treatment in relation to the right to the procedural guarantee of adequate reasoning in the decision of the Central Bank (*supra* paras. 183 to 185), and (c) Daniel Dendrinos Saquieres, Fabiana Lijtenstein, Jean Leroy, Martín Guerra, María Ivelice Gigli Rodríguez, Leandro Rama Sienra, Clara Volyvovic, Pablo Raúl Roure Casas, Marta Rodríguez Lois, Ángel Notaro, Alba Bonifacino and Thomas Máximo Neuschul, victims of the violation of the right to judicial protection (*supra* paras. 218 to 220).

C. Measures of reparation

243. International case law and, in particular, that of the Court have established repeatedly that the judgment constitutes *per se* a form of reparation.[281] However, considering the circumstances of the case *sub judice* and the effects on the victims resulting from the violations of Articles 8(1) and 25(1) of the American Convention declared to their detriment, the Court finds it pertinent to order the following measures.

B.1) Measure of satisfaction and guarantee of non-repetition

B.1.a) Guarantee of due process and judicial protection in the determination of the rights of the victims

244. The Commission asked the Court to order the State to "take the necessary measures to establish a suitable and effective mechanism so that the victims named in the present case and the other members of the group of more than 1,400 depositors[, whose petitions relating to article 31 of Law 17,613 were rejected by the Central Bank] can have recourse to it and the opportunity to prove whether they meet the criteria that the applicable law establishes to receive the compensation provided for in Law 17,613."

245. The only reparations requested by the representatives refer to the payment of "compensation" (*infra* para. 255) and the reimbursement of costs and expenses (*infra* para. 268).

246. For its part, the State indicated that "there have been suitable and effective mechanisms that were more than sufficient for the individuals identified as victims in the instant case and the other members of the group of more than 1,400 persons[, whose petitions with regard to article 31 of Law 17,613 were rejected by the Central Bank,] to be able to prove whether they met '…the criteria of the applicable law to receive the compensation provided for by Law 17,613….'" Thus, according to the State, "it would not be appropriate to adopt any new additional measure." It added that "even if the Court were to grant measures of satisfaction […], it would still be inadmissible in the instant case to grant any 'compensation,' as sought by the Commission."

247. In this case, the Court has declared the international responsibility of Uruguay for having committed specific violations of due guarantees in the procedure before the Central Bank with regard to the determination of the rights of the victims, as stipulated in article 31 of Law 17,613 (*supra* paras. 172 and 198), as well as for having violated the right to judicial protection to the detriment of 12 persons. Hence, the Court has not

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[280] *Cf. Case of the La Rochela Massacre v. Colombia*, *supra* note 215, para. 233; *Contreras et al. v. El Salvador*, *supra* note 12, para. 181, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 211.

[281] *Cf. Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35; *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 227, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 213.

made any ruling with regard to whether or not the alleged victims complied with the requirements stipulated in article 31 of Law 17,613 to access the said rights, because it is not incumbent on this Court to make that determination.

248. The Court finds that, as a result of the violations declared in this judgment, Uruguay must guarantee that the victims in this case or their heirs can present new petitions for the determination of the rights established in the said article 31, which must be heard and decided with all due guarantees by a body with the necessary competence to make a complete analysis of the requirements established in the said article, in accordance with paragraphs 133 to 142 of this judgment. In any case, the Court reminds the State that, in keeping with Article 25(1) of the American Convention and the determinations made in this judgment, it has the obligation to guarantee an effective judicial remedy to the victims or their heirs that protects them against acts that violate their fundamental rights.

249. In order to comply with this measure of reparation, the State must determine the body that will decide the new petitions within six months. Once the State has determined this, it must adopt the pertinent measures to inform the victims in this case of that determination, as well as of the procedure under which that body will examine the new petitions, together with the time frame for their presentation. When complying with this measure, the State must take into account that the victims in this case are of different nationalities and have different places of residence. Among the pertinent measures for disseminating the said information, the State must communicate its decision to the representatives, the Inter-American Commission,[282] and this Court. Also, in addition to the official publication, it must publish the information in a national daily newspaper with widespread circulation and on the official website of the State organs that it considers pertinent.

250. To comply with this measure, the State must decide the new petitions within three years at the most, from when it had determined the body responsible for decided these petitions. Uruguay must adopt the necessary measures to ensure that the victims who are accepted under article 31 of Law 17,613, following the adequate examination of their new petitions, can be recognized as shareholders in the respective Bank Asset Recovery Fund and receive the complement established in article 27 of the said law.

251. The Court notes that the Inter-American Commission has requested that this measure include individuals who were not presented as alleged victims in this case, but who had allegedly filed a remedy under article 31 of Law 17,613. In this regard, the Court finds that, in this case, it is not incumbent on the Court to rule on reparations for individuals who were not identified as victims. This conclusion does not exclude the possibility that domestic law may permit these individuals to present new petitions.

B.1.b) Publication and dissemination of the judgment

252. The Court finds, as it has in other cases,[283] that the State must publish within six months of notification of this judgment:

(a) The official summary of this judgment prepared by the Court, once, in the Official Gazette;

(b) The official summary of this judgment prepared by the Court, once, in a

[282] The foregoing, taking into account that the Inter-American Commission is the procedural representative of the victims who are not represented by Mrs. Barbani Duarte and Mrs. Breccia (*supra* para. 4).

[283] *Cf. Case of Cantoral Benavides v. Peru*, *supra* note 278, para. 79; *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 203, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 222.

national newspaper with widespread circulation, and

(c) This judgment in its entirety on an official web site, available for one year.

253. In this case, the Court finds that, among other effects, this measure will contribute to satisfactory compliance with the guarantee of non-repetition established above.

B.2. Compensation for non-pecuniary damage

254. With regard to non-pecuniary damage, the Inter-American Commission asked the Court to "order the State to pay appropriate compensation for the damage suffered due to the violations of Articles 8 and 25 of the American Convention that were declared to the detriment of the victims identified in the Report on Merits and the […] application." The Commission made that request "notwithstanding any claims that the representatives of the victims may file at the appropriate time during the proceedings." It added that "the loss of savings of approximately 1,500 families who were counting on those resources for their living expenses has caused [them] untold suffering and has had a devastating effect on these persons." In addition, the Commission indicated that many of them are "of an advanced age" and that "approximately 100 individuals have died without obtaining justice."

255. In their brief with final arguments, the representatives asked the Court to order the State to pay "appropriate compensation" for "the non-pecuniary damage suffered, which should be 33% of the capital deposited." In addition, regarding the impact of the violations, they emphasized that the victims they represent "include 80 individuals of from 70 to 97 years of age, one of them blind, who have been deprived of a dignified old age owing to this matter." They added that the victims "were deprived of their life savings, and this has caused a situation of extreme desperation which, in many cases resulted in illness as well as one premature death and, in others, led directly to suicide."

256. The State indicated that reparation for non-pecuniary damage is "totally inadmissible" because "the matter relates […] exclusively to private capital; in other words, the recovery of alleged rights to credit or the recuperation of savings or investments placed in private entities."

257. In its case law, the Court has developed the concept of non-pecuniary damage[284] and the situations in which it must be compensated.

258. Regarding the compensation for non-pecuniary damages requested by the representatives, the Court recalls that it has not ruled on the merits of the victims' petitions under article 31 of Law 17,613, because it is not incumbent on this Court to make that determination.

259. Therefore, the Court does not find non-pecuniary compensation based on the amount of the victims' alleged deposits admissible. Nevertheless, the Court must recognize that the violations of the rights to judicial guarantees and judicial protection declared in this judgment (*supra* paras. 140 to 142, 183 to 185 and 218 to 220) caused non-pecuniary damage, owing to the uncertainty in the determination of their rights. It

[284] The Court has established that non-pecuniary damage "may include both the suffering and hardship caused to the direct victim and to his next of kin, the harm of values that are of great personal significance, and also the changes of a non-pecuniary nature in the living conditions of the victim or his family." *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*, *supra* note 276, para. 84; *Case of Mejía Idrovo v. Ecuador*, *supra* note 251, para. 150, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 231.

is human nature that every individual who suffers a violation of his human rights experiences distress.[285]

260. Consequently, the Court establishes, in equity, the sum of US$3,000.00 (three thousand United States dollars) as compensation for non-pecuniary damage. This amount must be paid to each victim indicated in the Annex to this judgment, or to the heir within one year of notification of this judgment.

B.3. Other claims for reparation

261. The Commission "ask[ed] the Court to establish, in equity, the amount of compensation corresponding to indirect damage and loss of earnings, in exercise of its broad powers in this regard."

262. For their part, the representatives asked that the State "pay an appropriate compensation for the damage suffered owing to the violations declared […] to the detriment of the victims." According to the representatives, in this case "appropriate compensation" would be:

i) "Restitution of all the capital deposited by each [victim] with the *Banco de Montevideo* that was in TCB certificates of deposit";

ii) "The damage caused by the years during which the legitimate owners of the savings could not use them, that being the lawful purpose of money," and

iii) "The devaluation of the dollar with regard to the Uruguayan peso between 2002 and 2011, which is approximately 50% of its value."

263. According to the representatives, "[t]he foregoing is without prejudice to the provisions of article 31 of Law 17,613 relating to the recovery of the assets, which governed the Advisory Commission's actions, and that the Court should understand are applicable to the case."

264. Regarding indirect damage, the State asserted that "it is evident […] that the State's lack of compliance alleged by the Commission does not, in itself, generate any direct and immediate effect on the victims' capital, because the Commission does not indicate in any way that […] the victims are in the right on the merits of the matter." With regard to loss of earnings, "it is very clear that the loss of any income or benefit is only constituted if the […] victims were in the right on the merits of the matter, and the Commission does not […] recognize this."

265. The Court reiterates that it has not ruled with regard to the victims' claims that they be granted the rights established in article 31 of Law 17,613, so that the requests for reparation by the Inter-American Commission and the representatives are not compatible with the violations found in this judgment. The Court has already determined that the measure that provides adequate reparation for the violations declared in this case is the one that allows them to present new petitions regarding the determination of the rights established in the said article 31 (*supra* paras. 248 to 251).

B.4. Costs and expenses

266. As the Court has indicated on other occasions, costs and expenses are included in the concept of reparations established in Article 63(1) of the American Convention.[286]

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[285] *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 15, para. 176; *Case of Abrill Alosilla et al. v. Peru*, *supra* note 15, para. 131, and *Case of Chocrón Chocrón v. Venezuela*, *supra* note 218, para. 190.

267. The Commission asked the Court to "order the State to pay the costs and expenses duly proven" by the injured party.

268. The representatives asked that "the victims be granted additional compensation for the costs and expenses of the litigation at the domestic and international levels" estimated at US$50,000.00 (fifty thousand United States dollars).

269. The State indicated that "the expenses in these proceedings must be determined by the express decision of the Court, which, […] if it rejects the application, […] must also reject any claim for the reimbursement of expenses and honoraria."

270. The Court has indicated that, "the claims of the victims or their representatives regarding costs and expenses, together with the supporting evidence, must be submitted to the Court at the first procedural opportunity granted to them, that is in the pleadings and motions brief; notwithstanding the fact that this claim may be updated later, in keeping with the new costs and expenses incurred during the processing of the case before this Court."[287] Regarding the reimbursement of costs and expenses, the Court must estimate their scope prudently; they includes the expenses incurred before the authorities of the domestic jurisdiction, as well as those incurred during these proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses reported by the parties, provided the amount is reasonable.[288]

271. In this case, the Court observes that the representatives did not submit any evidence with regard to the amount of the costs and expenses that they and the victims may have incurred during the processing of the instant case.

272. However, as it has in other cases, the Court can infer that the representatives incurred expenses while processing the case before the inter-American human rights system. Taking this into account, and given the lack of vouchers for these expenses, the Court establishes, in equity, that the State must pay a total of US$15,000.00 (fifteen thousand United States dollars) or its equivalent in Uruguayan currency for costs and expenses incurred in the litigation of this case. The Court notes that the representatives did not indicate who should be reimbursed for the costs and expenses. In this regard, the Court finds that the State must deliver that amount in equal parts, to Alicia Barbani Duarte and María del Huerto Breccia, representatives of the majority of the victims before this Court. Also, it indicates that, during the proceeding to monitor compliance with this judgment, it may order that the State reimburse the victims or their representatives for the reasonable expenses incurred during that procedural stage.

C. Means of compliance with the payments ordered

273. The State must pay the compensation for non-pecuniary damage and reimbursement of costs and expenses established in this judgment directly to the

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286 *Cf. Case of Garrido and Baigorria vs. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C. No. 39, para. 79; *Case of Contreras et al. v. El Salvador, supra* note 12, para. 229, and *Case of López Mendoza v. Venezuela*, *supra* note 12, para. 236.

287 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*, *supra* note 23, para. 275; *Case of Torres Millacura et al. v. Argentina*, *supra* note 18, para. 197, and *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 233.

288 *Cf. Case of Garrido and Baigorria v. Argentina, supra* note 286, para. 82; *Case of Contreras et al. v. El Salvador*, *supra* note 12, para. 232, *and Case of López Mendoza v. Venezuela*, *supra* note 12, para. 241.

persons indicated in the judgment within one year of notification of the judgment and in accordance with the following paragraphs.

274. If the victims are deceased or die before they receive the respective compensation, the amount must be paid directly to the heirs, pursuant to the applicable domestic law.

275. The State must comply with its pecuniary obligations by payment in United States dollars or the equivalent in the Uruguayan currency, using the exchange rate in force on the stock market of New York, United States of America, on the day prior to the payment.

276. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts decided within the time frame indicated, the State must deposit the said amounts in an account or certificate of deposit in the beneficiary's name in a solvent Uruguayan financial institution in United States dollars and under the most favorable financial terms allowed by law and banking practice.

277. If, after 10 years, the compensation remains unclaimed, the funds will be returned to the State together with the accrued interest.

278. The amounts allocated in this judgment for compensation and reimbursement of costs and expenses must be paid to the persons indicated in full, as established in this judgment, without reductions for future taxes or charges.

279. If the State fall into arrears with its payments, it must pay interest on the amount owed corresponding to Uruguayan bank interest on arrears.

IX
OPERATIVE PARAGRAPHS

280. Therefore,

THE COURT

DECLARES,

By four votes in favor to one vote against, that,

1. The State is responsible for the violation of the right to be heard, embodied in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereto, to the detriment of the 539 persons who filed a petition under article 31 of Law 17,613, indicated in the Annex to this judgment, as established in paragraphs 133 to 143 of this judgment.

2. The State is responsible for the violation of the right to non-discriminatory treatment, in relation to the right to the procedural guarantee of an adequate reasoning, protected by Articles 1(1) and 8(1) of the American Convention on Human Rights, to the detriment of Alicia Barbani Duarte and Jorge Marenales, pursuant to paragraphs 173 to 175 and 178 to 185 of this judgment.

3. There are no elements to corroborate the alleged violation of the right to non-discriminatory treatment, in relation to the procedural guarantee of an adequate reasoning, protected by Articles 1(1) and 8(1) of the American Convention on Human Rights, to the detriment of Oscar Eduardo Pivovar Vannek and Alba Fernández, pursuant to paragraphs 182 and 185 of this judgment.

4. The State did not violate the right to due process, established in Article 8(1) of the American Convention on Human Rights, in relation to the alleged "presumption of consent" by applying "disqualifying criteria," the alleged arbitrary application of a new criterion, or the alleged lack of information concerning probative elements, in the terms of paragraphs 153 to 160, 169 to 172, 176, 177, 185 and 189 to 194 of this judgment.

5. The State is responsible for the violation of the right to judicial protection embodied in Article 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Daniel Dendrinos Saquieres, Fabiana Lijtenstein, Jean Leroy, Martín Guerra, María Ivelice Gigli Rodríguez, Leandro Rama Sienra, Clara Volyvovic, Pablo Raúl Roure Casas, Marta Rodríguez Lois, Ángel Notaro, Alba Bonifacino and Thomas Máximo Neuschul, pursuant to paragraphs 216 and 218 to 220 of this judgment.

6. It has not found elements to declare a violation of the right to property, protected by Article 21 of the American Convention on Human Rights, pursuant to paragraph 238 of this judgment.

7. It is not incumbent to rule on the alleged violation of the right to equal protection established in Article 24 of the American Convention on Human Rights, pursuant to paragraph 173 to 175 of this judgment.

AND ORDERS

By four votes in favor to one vote against, that,

1. This judgment constitutes *per se* a form of reparation.

2. The State must guarantee that the victims in this case or their heirs can present new petitions concerning the determination of the rights established by article 31 of Law 17,613 on the strengthening of the financial system, which must be heard and decided, within three years, with all due guarantees by a body with the necessary competence to make a complete analysis of the requirements established in the said norm, pursuant to paragraphs 247 to 251 of this judgment.

3. The State must make the publications indicated in paragraph 252 of this judgment, within six months of its notification.

4. The State must pay the amounts established in paragraphs 260 and 272 of this judgment, as compensation for non-pecuniary damage and for reimbursement of costs and expenses, as appropriate, pursuant to paragraphs 273 to 279 of this judgment.

5. The State must, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

6. The Court shall monitor full compliance with this judgment, in exercise of its powers and in compliance with its obligations under the American Convention on Human Rights, and will consider the instant case concluded when the State has complied fully with all aspects of it.

Judge Eduardo Vio Grossi informed the Court of his Dissenting Opinion, which accompanies this judgment. Judges Diego García-Sayán, Margarette May Macaulay and Rhadys Abreu Blondet informed the Court of their Concurring Opinions, which accompany this judgment.

Done, at Bridgetown, Barbados, on October 13, 2011, in the Spanish and English languages, the Spanish version being authentic.

Diego García-Sayán
President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

ANNEX TO THE JUDGMENT IN THE CASE OF BARBANI DUARTE *ET AL*.
VICTIMS OF THE VIOLATION OF ARTICLE 8(1) OF THE AMERICAN CONVENTION ON HUMAN RIGHTS IN RELATION TO ARTICLE 1(1) THEREOF

No.	Name of the victim[1]	No. of the de Central Bank of Uruguay case file	Location of the evidence in the file before the Inter-American Court
1	María Abal Gemelli	2003/0645	(file of attachments to the application, tome XIV, attachment 12 (H), folios 10571 to 10574)
2	Mario Héctor Abal Bordachar	2003/0646	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30355 to 30362)
3	Martín Abascal	2003/0878	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 21931 to 21951)
4	Patricia Abella De Luca	2003/0692	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23392 to 23406)
5	María Cristina Abellá Demarco	2003/1408	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31113 to 31118
6	Rafael Abella Demarco	2003/1407	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 3119 to 31121)
7	Chemel Abisabb Ache	2003/0928	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30407 to 30409)
8	Yamil Abisab Baranzano	2003/0969	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30704 to 30706)
9	Alejandro Abut	2003/0446	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26785 to 26831)
10	Eduardo Acevedo Sotelo	2003/0268	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30148 to 30154)

[1] The identification of the victims was made taking into account the contents of paragraphs 51 and 143 of the judgment.

11	Amalia Antuña	2003/1013	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30643 to 30646)
12	Saúl Isaac Acher	2003/0506	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30273 to 30277)
13	Borys o Boris Achtsam	2003/0401	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27427 to 27470)
14	Leonor Adami Lansac	2003/0603	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30208 to 30210)
15	Julio Alberto Adinolfi Castellano	2003/0988	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30675 to 30676)
16	Paulina Adrien	2003/0528	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26000 to 26029)
17	Graciela Alemán	2003/1358	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31207 to 31210)
18	Clara Alfassa	2003/0713	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22607 to 22616)
19	Roberto Alonso	2003/1508	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31377 to 31381)
20	Carolina Alzugaray	2003/0684	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30341 to 30344)
21	Esther Álvarez Pirri	2003/0458	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26406 to 26408)
22	Néstor Álvarez López	2003/1414	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31103 to 31107)
23	Ana María Álvarez Vasallo	2003/0350	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28735 to 28748)
24	Gloria Alvez	2003/1192	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30818 to 30822)

25	Rita Alzaradel	2003/1227	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30771 to 30779)
26	José Luis Amo D'Alessandro	2003/0593	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24988 to 25038)
27	Pedro Amonte	2003/0800	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30527 to 30529)
28	Alfonso Amoroso	2003/0324	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29017 to 29043)
29	Rudolf Anspacher	2003/0253	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29728 to 29740)
30	María Carolina Antuña	2003/1013	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30643 to 30646)
31	Gerardo Ariano	2003/0883	(merits file, tome V, folio 1913)
32	María Soledad Arieta Apesteguy	2003/1014	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30638 to 30642)
33	Nora Arroyo	2003/0409	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27193 to 27228)
34	Ana Beatriz Azparren	2003/0586	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25283 to 25353)
35	Magali Báez Carballido	2003/0245	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29863 to 29911)
36	Néstor Báez Porcile	2003/0246	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29816 to 29862)
37	Sergio Bagatini	2003/0337, 2003/0780 and 2003/4082	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1912)
38	Gonzalo Bailón	2003/1337	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31219 to 31221)

39	Samir Bakkar	2003/0337 and 2003/4074	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1912)
40	Liliana Barcarcel	2003/4025	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31279 to 31283)
41	Walter Bara	2003/0525	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26163 to 26200)
42	Juan José Baraza	2003/0277	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30140 to 30142)
43	Alicia Barbani	2003/624	(file of attachments to the application, tome II, attachment 12 (A), folios 2820 to 2985)
44	Verónica Baril Kogan	2003/1321	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31230 to 31232)
45	Ignacio Barquín	2003/0856	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30449 to 30453)
46	Cecilia Barra Saturno	2003/0502	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30278 to 30280)
47	Elvis Barreiro	2003/1394	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 31162 to 31166)
48	José Barreiro	2003/1193	(file of attachments to the State's final written arguments, tome I and II, attachment 3, folios 30813 to 30817)
49	Vivian Barretto	2003/0813	(file of attachments to the State's final written arguments, tome I, attachment 3, folios30494 to 30496)
50	Jorge Barreto	2003/1533	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31329 to 31330)
51	Adolfo Batista	2003/1320	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31233 to 31235)
52	Susana Bazik Lasan	2003/0249	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30159 to 30161)

53	Amparo Bazterrica	2003/1404	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31129-31132)
54	Leonardo Beimeras	2003/1581	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31311 to 31319)
55	María Beisso	2003/0366	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28335 to 28385)
56	Daniel Bellesi	2003/0584	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25399 to 25424)
57	Washington Benedetti	2003/0585	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25354 to 25398)
58	María Luisa Bengochea	2003/1464	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31019 to 31021)
59	Rovert Bentancort Corbo	2003/0697	(file of attachments to the application, tome V, attachment 12 (C) and 12 (H), folios 4819 to 4820 and 4894 to 4929)
60	Esteban Bentancour	2003/1320	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31233 to 31235)
61	María Beres	2003/0799	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30530 to 30532)
62	Raúl Bergamino	2003/0575	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25557 to 25602)
63	Amilcar Bergara Avila	2003/0686	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23656 to 23681)
64	Gabriela Beriolo	2003/0821	(merits file, tome V, folio 1913)
65	Esmeralda Verlini	2003/0431	(merits file, tome VI, folios 2278 to 2311)
66	María Teresa Verlini	2003/0433	(merits file, tome VI, folios 2312 to 2341)

67	Alejandro Bernasconi	2003/1565	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31323 to 31325)
68	Gustavo Bertolini	2003/1468	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31434 to 31438)
69	Rodolfo Besio	2003/0688	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23607 to 23614)
70	Romero Bianchi	2003/1091	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30749 to 30752)
71	Lita Bigoni Baccani	2003/0779	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30554 to 30556)
72	Lili Birger Nejerman	2003/0485	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30070 to 30072)
73	Luisa Bo de Suzacq	2003/447	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26745 to 26784)
74	Juan José Bocchi Paladino	2003/0806	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30508 to 30512)
75	Nelson Bocchi	2003/0759	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30295 to 30299)
76	María Raquel Quintans	2003/1547	(merits file, tome V, folio 1937)
77	Mauro Bolla	2003/0517	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26306 to 26347)
78	Lilián Bongoll	2003/0365	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28386 to 28448)
79	Alba Bonifacino Olmedo	2003/0696	(file of attachments to the State's final written arguments, tome I, attachment 2, folio 23221 to 23269)
80	Fernando Bonilla,	2003/1532	(merits file, tome V, folio 1910)

81	Ignacio Javier Bordad	2003/0360	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28562 to 28602)
82	Luis Bordino	2003/0835	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30474 to 30476)
83	Gerardo Bossano Sánchez	2003/0661	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24206 to 24298)
84	Nelson Botto	2003/0305	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29257 to 29339)
85	Mario González	2003/1143 and 2003/0872	(file of attachments to the State's final written arguments, tome I and II, attachment 3, folios 30434 to 30438 and 30908 to 30910)
86	Rafael Braceras	2003/0707	(file of attachments to the application, tome VI, 12 (C), folios 5088 to 5198)
87	Elina Braceras	2003/0707	(file of attachments to the application, tome VI, 12 (C), folios 5088 to 5198)
88	María del Huerto Breccia	2003/1044	(file of attachments to the application, tome XII, attachment 12(F), folios 9220 to 9274) and (file of attachments to the State's final written arguments, tome I, attachment 3, folios 30612 to 30614)
89	María Marta Brit Torres	2003/1008	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30650 to 30655)
90	Krzysztof Brudz	2003/1388	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31183 to 31189)
91	Uruguay Bulla Core	2003/0483	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30076 to 30078)
92	Helga Buseck Ehrlich	2003/1154	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30902 to 30904)
93	Fernando Caballero Lehite	2003/0613	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30180 to 30182)

94	Ana María Cabrera Arotcharen	2003/0671	(file of attachments to the application, tome I, attachment 12 (A), folios 2553 to 2583)
95	Stella Mazzoni	2003/0671	(file of attachments to the application, tome I, attachment 12 (A), folios 2553 to 2583)
96	Cabrera Thieulent, Graciela	2003/0729	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22225 to 22266)
97	Teresa Caligaris	2003/0975	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30698 to 30700)
98	Luis Camors	2003/0801	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30524 to 30526)
99	Andrés Canabal Lema	2003/1453	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31041 to 31042)
100	Andrea Canabal	2003/1454	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31036 to 31038)
101	Ruben Cancela	2003/0452	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26500 to 26539)
102	Miguel Cancro	2003/0599 and 2003/0654	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24535 to 24851 and 24883 to 24887)
103	Guillermo Canen	2003/0809	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30503 to 30507)
104	Fortunata Carreño	2003/1182	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30853 to 30857)
105	Wilmer Casavieja Colombo	2003/0588	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25219 to 25247)
106	Luis Pablo Casavieja	2003/0587	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25248 to 25282)
107	Blanca Casella	2003/1082	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30571 to 30580)

108	Hildo Caspary	2003/0337 and 2003/4076	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1914)
109	Gonzalo Castagna	2003/1508	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31377 to 31381)
110	Gabriel Castellano	2003/0243	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29912 to 29974)
111	Vicente Carlos Castello	2003/0466	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30105 to 30107)
112	Gustavo Castro Etchart	2003/0278	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30135 to 30139)
113	Francisco Castro Millán	2003/0589	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25181 to 25218)
114	Ramón Castro Millán	2003/0590	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30229 to 30232)
115	Ruben Caussade	2003/0367	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28296 to 28334)
116	Nicida Cavajani	2004/0216 and 2004/0221	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31268 to 31273 and 31263 to 31267)
117	José Luis Cavanna	2003/4014	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31289 to 31293)
118	Ruben Cerdá	2003/1417	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31098 to 31102)
119	Enrique Colombo Pampín	2003/1289	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31257 to 31259)
120	Gianna Contín	2003/0398	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27471 to 27613)
121	Copello Ametrano, Jorge	2003/0860	(file of attachments to the State's final written arguments,

			tome I, attachment 3, folios 30444 to 30448)
122	Roque Coronato Machín	2003/0926	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30410 to 30411)
123	Roque Coronato Buono	2003/0961	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30716 to 30718)
124	José Corredoira	2003/1356	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31211 to 31214)
125	Raquel Cortabarria Zavala	2003/1183	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30848 to 30852)
126	Ramón W. Cotelo	2003/0953	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30724 to 30728)
127	Nelly Crestino Aycaguer	2003/0848	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30463 to 30467)
128	Juan Cristina	2003/0286	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30128 to 30130)
129	Mariana Crocco Piñeyro	2003/1272	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30756 to 30758)
130	Gabriel Croce	2003/1477	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31428 to 31433)
131	Martín Crosa Boix	2003/1034	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30615 to 30617)
132	María Cristina Cutri	2003/1915	(merits file, tome V, folio 1915)
133	Elizabeth Cholaquidis	2003/1405	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31124 to 31128)
134	Raúl D' Andrada Berhouet	2003/0474	(merits file, tome V, folio 1916)
135	Aldo D´Amico	2003/0642	(file of attachments to the State's final written arguments, tome I, attachment 3, folios

136	Ana Da Conceiçao	2003/0337 and 2003/4075	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1915)
137	Pedro Paulo Da Luz	2003/0337 and 2003/4071	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1915)
138	Marcela Da Pena Pepoli	2003/1522	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31349 to 31352)
139	Juan Carlos Da Silva Da Costa	2003/1328	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31224 to 31226)
140	Luis Da Silva Da Costa	2003/1327	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31227 to 31229)
141	Hugo Da Silva Gaibisso	2003/0758	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30300 to 30004)
142	Francisco D'Allorso	2003/1177	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30875 to 30879)
143	Antonio De Amorín	2003/0488	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30066 to 30069)
144	Fernando De Crescenzo Ruiz	2003/1022	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30629 to 30634)
145	María del Carmen De la Fuente,	2003/0609	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30192 to 30197)
146	Nilda De la Sovera	2003/0489	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30063 to 30065)
147	Celestino De la Torre	2003/0622	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30385 to 30387)
148	Juan De la Vega Aguerre	2003/0652	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24626 to 24650)

149	Aída De León	2003/1423	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31077 to 31081)
150	Vilma De Luca Sarmoria	2003/0710	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22724 to 22742)
151	Juan De Marco Ferrari	2003/0536	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30269 to 30272)
152	José Delfante (Eduardo Delfante)	2003/1274	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30753 to 30755) and (merits file, tome V, folio 1910)
153	Álvaro Demicheri	2003/0563	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30236 to 30238)
154	Luis Julio Demicheri	2003/0564	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30233 to 30235)
155	Daniel Dendrinos Saquieres	2003/0689	(file of attachments to the application, tome IV, attachment 12 (B), folios 4089 to 4151)
156	Ana María Denissow	2003/1011	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30647 to 30649)
157	Beatriz Di Carlo	2003/1275	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31006 to 31008)
158	Crimilda Di Salvo	2003/0929	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30404 to 30406)
159	Eduardo Díaz Cabana	2003/1519	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31355 to 31361)
160	Nilda Díaz Santana	2003/1403	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31133 to 31137)
161	Eduardo Díaz Vidal	2003/1520	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31353 to 31354)
162	Rafael Díaz	2003/0946	(file of attachments to the State's final written arguments, tome I, attachment 3, folios

			30744 to 30748)
163	Elida Dogliotti Guimaraens	2003/0542	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30264 to 30268)
164	Ruben Donner	2003/1518	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31362 to 31367)
165	Martín García	2003/1563	(merits file, tome V, folios 1728 to 1787)
166	Daniel Dura	2003/1188	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30828 to 30832)
167	Eduardo Durán	2003/1513	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31368 to 31370)
168	Fabio Eminente Cohen	2003/0867	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22177 to 22226)
169	Bernardo Erramun	2003/0850	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30457 to 30459)
170	Pablo Espasandín	2003/725	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22328 to 22377)
171	Ana Laura Espasandín	2003/0722	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22444 to 22465)
172	Nelson Espasandín	2003/0723	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22396 to 22426)
173	José Antonio Etchart	2003//1197	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30802 to 30805)
174	Miguel Etchevarne	2003/0703	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23068 to 23083)
175	Jorge Etchevers Mion	2003/0328	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28957 to 28998)

176	Oscar Everett Villamil	2003/0601	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30211 to 30213)
177	María Raquel Fabro	2003/0552	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30250 to 30254)
178	Héctor Faccio Arioni	2003/1390	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31173 to 31177)
179	Diego Faccio Ortíz	2003/1389	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31178 to 31182)
180	Rosa Farré	2003/1246	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30766 to 30770)
181	Raúl Favrin	2003/1081	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30576 to 30580)
182	Sergio Fazio	2003/0659	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24299 to 24323)
183	Alba Fernández Baliero	2003/0742	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30315 to 30317)
184	Jorge Adelino Fernández Fernández	2003/1180	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30863 to 30864)
185	Oscar Fernández Giordano	2003/1029	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30863 to 30864)
186	Guillermo Fernández Giordano	2003/1029	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30626 to 30628)
187	Graciela Fernández Giordano	2003/1016	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30635 to 30637)
188	Daniel Fernández González	2003/0353	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28673 to 28734)
189	José Fernández Rodríguez	2003/1396	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31158 to 31161)

190	Aurelio Fernández	2003/1318	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31236 to 31239)
191	José Fernández Longres	2003/0596	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24888 to 24923)
192	Carlos Ferrando	2003/0985	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30680 to 30682)
193	María Soledad Ferraro Core	2003/1090	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30568 to 30570)
194	Luis Figueroa Colosso	2003/0913	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30425 to 30429)
195	Julia Fiori	2003/0643	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30366 to 30368)
196	Severino Fleig	2003/0968	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30710 to 30715)
197	Alejandro Fontana	2003/0247	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29741 to 29815)
198	Marta Flocken	2003/0601	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30211 to 30213)
199	María Formoso	2003/0348	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28749 to 28781)
200	Carlos Frabasile	2003/1426	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31067 to 31071)
201	Marcelo Franzoni	2003/0664	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24095 to 24143)
202	Talma Friedler	2003/1055	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30593 to 30595)
203	Erna Frins Pereira	2003/0984	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30683 to 30685)

204	Martín Frontini Medina	2003/0647 and 2003/0653	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24566 to 24625 and 24736 to 24779)
205	Diego Fuentes Quintans	2003/1106	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30931 to 30933)
206	María Teresa Fulgueral	2003/702	(file of attachments to the application, tome III, attachment 12 (B), folios 3337 to 3374)
207	Alejandro Furtado Mazzino	2003/1122	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30923 to 30925)
208	Federica Gaglardini Giuffra	2003/0920	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30417 to 30421)
209	Carlos Gallotti Milani	2003/0694	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23320 to 23325)
210	Verónica Gambini	2003/1427	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31064 to 31066)
211	Ricardo García Caban	2003/1049	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30606 to 30608)
212	Nelson García Comesaña	2003/0529	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25972 to 25999)
213	Luis Andrés García Fernández	2003/1421	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31087 to 31089)
214	María Delia García Milia	2003/1228 and 2003/1226	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30780 to 30784)
215	Bernabé García Nogueira	2003/0567	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25792 to 25850)
216	Alba Rosa García Pérez	2003/0520	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26234 to 26258)
217	Virginia García Piñeyrua	2003/0530	(file of attachments to the State's final written arguments, tome I, attachment 2, folios

			25944 to 25971)
218	Alejandro García Santoro	2003/0787	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30539 to 30541)
219	Laura Gardiol	2003/0681	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23768 to 23782)
220	Gerardo Garland Bazzano	2003/1359	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31203 to 31206)
221	José Gavioli	2003/1457	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31022 to 31025)
222	Alcides Gavioli	2003/1449	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31043 to 31045)
223	Elbio Nelson Gesto	2003/0441	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26911 to 26954)
224	Clara Giambruno De Amicis	2003/0284	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30131 to 30134)
225	María Ivelice Gigli Rodríguez	2003/1494	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 31400 to 31404)
226	Marta Gil	2003/0993	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30667 to 30671)
227	Marion Glaser	2003/294	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29615 to 29707)
228	Hugo Rodolfo Godin	2003/0317	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29190 to 29256)
229	Héctor Goicochea	2003/0476	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30090 to 30092)
230	Judith Goldglanz	2003/0387	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27789 to 27791)

231	Mateo Roberto Gómez	2003/0436	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26955 to 26997)
232	David Goncalves Gonzalves	2003/0355	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28640 to 28672)
233	Alfredo González Rodríguez	2003/0614	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30175 to 30179)
234	José Enrique González Amaro	2003/0375	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28163 to 28221)
235	Mario González	2003/0872 and 2003/1143	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30434 to 30438 and 30908 to 30910)
236	Palmira González Beade	2003/0522	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26201 to 26233)
237	Ruben Goyas Martínez	2003/1428	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31059 to 31063)
238	Carla Gramática	2003/0643	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30366 to 30368)
239	José Luis Granell	2003/0819 and 2003/0820	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30480 to 30485)
240	José Pedro Greco	2003/1175	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30885 to 30887)
241	Juana Griffin	2003/0449	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26645 to 26699)
242	Héctor Gross Espiell	2003/0443	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26832 to 26870)
243	Martín Guerra	2003/1512	(file of attachments to the application, tome VI, attachment 12 (C), folios 5506 to 5583)
244	Miriam Guillón	2003/0268	(file of attachments to the State's final written arguments, tome I, attachment 3, folios

			30148 to 30153)
245	Antonio Guimaraens	2003/0682	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23748 to 23756)
246	Griselda Guimaraens (Griselda Marisa Urtiaga Guorisea)	2003/0682	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23748 to 23756) and (merits file, tome V, folio 1919)
247	María Gutiérrez Bussi	2003/1431 and 2003/0701	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 30040 to 30049) and (merits file, tome V, folio 1919)
248	Eduardo Gutiérrez Galiana	2003/0876	(file of attachments to the application, tome I, attachment 12 (A), folios 2192 to 2314)
249	Noé Gutiérrez	2003/0701	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30333 to 30335)
250	José María Guzzini García	2003/1108	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30926 to 30930)
251	Yoko Hachiuma Yoshida	2003/0240	(merits file, tome V, folio 1919)
252	Úrsula Haiber	2003/1105	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30934 to 30640)
253	Alfredo Halegua Albagli	2003/1313	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31240 to 31242)
254	Susana Halegua Albagli	2003/1312	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31243 to 31245)
255	Toros Hamalián Sarkisián	2003/0269	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30143 to 30147)
256	Jorge Harcenicow	2003-0403	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27392 to 27426)
257	Erika Dagmar Haschke	2003/1385	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31190 to 31195)

258	Celia Heijo	2003/0472	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30093 to 30096)
259	Gastón Hernández Larriera	2003/1393	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31167 to 31172)
260	Adriana Holtz Bergier	2003/0456	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26445 to 26449)
261	Raúl Horvath	2003/1310	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31246 to 31250)
262	Carlos Iglesias	2003/0644	(file of attachments to the State's final written arguments, tome I, attachment 3, folios
263	Sergio Iglesias	2003/0753	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30363 to 30365)
264	Graciela Irigoin	30838/2004, 2003/1185	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30838 to 30842)
265	Pierina Ivaldi	2003/0821	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30477 to 30479)
266	Mariangela Juchem Goncalves	2003/0337 and 2003/4068	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1920)
267	Minas Alberto Kahiaian Kevorkian	2003/0896	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 21767 to 21812)
268	José Karamanukian	2003/1194	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30806 to 30812)
269	Juan Karamanukian	2003/1179	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30865 to 30869)
270	Perla Kogan	2003/1303	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31251 to 31253)
271	José Kouyoumdjian	2003/1429	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31054 to 31058)

272	Susana Krell	2003/0773	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30394 to 30396)
273	María Laura Kvasina	2003/0347	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28782 to 28794)
274	Carlos La Cava	2003/1466	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31009 to 31014)
275	Horacio Lanata Sanguinetti	2003/0380	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28012 to 28051)
276	Vicente Langone Colucci	2003/0299	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29446 to 29507)
277	Alfredo Larrea	2003/0989	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30672 to 30674)
278	Nelson Lasalvia Baldomir	2003/0680	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23785 to 23901)
279	Alejandro Lasalvia Berriel	2003/1434	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31046 to 31048)
280	Carlos Leite	2003/0518	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26259 to 26305)
281	Rafael Lena	2003/0691	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23436 to 23441)
282	Fernando Leoncini	2003/1052	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30600 to 30605)
283	Juan Leoncini	2003/1053	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30596 to 30599)
284	Jean Leroy	2003/1224	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30785 to 30791)
285	Carmen Libonati Semino	2003/0846	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30468 to 30473)

286	Gladys Lichtman Leiner	20003/0405	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27334 to 27391)
287	Werner Liepmann	2003/0381	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27950 to 28011)
288	Fabiana Lijtenstein	2003/0639	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30377 to 30380)
289	Manuel Lingeri Olsson	2003/1221	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30792 to 30795)
290	Gabriel Lisbona Vázquez	2003/0318	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29126 to 29188)
291	Hélio Ángelo Lodi	2003/0337 and 2003/4080	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1920)
292	Vanderlei Luis Lodi	2003/0337 and 2003/4081	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1920)
293	Luisa Lomiento	2003/0915	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30422 to 30424)
294	Virgina Longinotto	2003/0450	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26591 to 26644)
295	Manuel López García	2003/0719	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22484 to 22492)
296	Diana López Vanini	2003/0574	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25603 to 25619)
297	José Jorge López Varela	2003/0925	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30413 to 30416)
298	Alejandro Rogelio López	2003/0376	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28141 to 28157)

299	Beatriz López	2003/1434	(merits file, tome V, folio 1910)
300	Eugenio Lorenzo Fernández	2003/0718	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30329 to 30332)
301	Fernando Lorenzo Rodríguez	2003/1066	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30581 to 30586)
302	Gonzalo Lorenzo Rodríguez	2003/1066	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30581 to 30586)
303	José Raúl Lorenzo	2003/0996	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30661 to 30666)
304	Nelson Lorenzo	2003/1065	(file of attachments to the State's final written arguments, tome I, attachment 3, folios
305	Virginia Lorieto de Souza	2003/1489	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30587 to 30592)
306	Juan Losada	2003/0490	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30059 to 30062)
307	Marta Loureiro Morena	2003/0359	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 28603 to 28639)
308	Carlos Nicolás Luengo	2003/0410	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 27151 to 27192)
309	María Rosa Luzardo	2003/1402	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31138 to 31142)
310	Francisco Llana	2003/0607	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30202 to 30204)
311	Rosa Macedo	2003/1465	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31015 to 31018)
312	Walmir Maciel	2003/0337 and 2003/4077	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1921)

313	José Magni	2003/0851	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30454 to 30456)
314	María Victoria Mainardi	2003/1479	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31418 to 31421)
315	Milka Maisonnave	2003/0583	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25425 to 25463)
316	Gloria Malinow	2003/0455	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26452 to 26499)
317	Dolores Malugani Mastalli	2003/0481	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30082 to 30084)
318	Beatriz Manaro	2003/1534	(merits file, tome V, folio 1921)
319	Washington Mandorla	2003/1163	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30895 to 30897)
320	Eduardo Marcos Marra	2003/0744	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30310 to 30314)
321	Jorge Marenales Escrich	2003/950	(attachments to la demanda, tome III, attachment 12(b) folios 3242-3336) and (file of attachments to the State's final written arguments, tome I, attachment 3, folios 30734 30738)
322	Valeria Martínez Delfino	2003/0620	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30391 to 30393)
323	José Martínez Liotti	2003/0621	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30388 to 30390)
324	Lorenzo Martínez Rodríguez	2003/0677	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23929 to 23932)
325	Mariano Martínez Rodríguez	2003/0678	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23902 to 23918)

326	Ana María Martínez	2003/0670 and 2003/0669	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24033 to 24047 and 24049 to 24066)
327	Enrique Martínez	2003/1422	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31082 to 31086)
328	Norma Martínez	2003/0562	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30238 to 30241)
329	Joaquín Martins Romero	2003/0362	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28504 to 28533)
330	Luisa Marziotte	2003/1186	(merits file, tome V, folio 1921)
331	Carlos Mazzuchi	2003/1300	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31254 to 31256)
332	Margarita Mechur Winzer	2003/0386	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27846 to 27848)
333	Enrique Meerhoff	2003/0301	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29427 to 29444)
334	José Luis Menafra Nuñez	2003/472	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30093 to 30096)
335	Hilda Méndez Fernández	2003/1146	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30905 to 30907)
336	Leonardo Merletti	2003/0877 and 2003/1378	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 21925 to 21974) and (merits file, tome V, folio 1910)
337	Carlos Mezquita	2003/0470	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30101 to 30104)
338	Mónica Revello	2003/0470	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30101 to 30104)
339	Zdzislaw Michalski	2003/0373	(file of attachments to the State's final written arguments, tome I, attachment 3, folios

			28222 to 28256)
340	Luis Michelini	2003/0265	(merits file, tome V, folio 1921)
341	Roberto Miglietti	2003/0408	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27267 to 27269)
342	Gregorio Mitnik	2003/1596	(merits file, tome V, folio 1921)
343	Cristina Montefiori	2003/1401	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31143 to 31147)
344	Gustavo Andrés Morales Cabrera	2003/1214	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30796 to 30798)
345	Martha Moreira	2003/0714	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22583 to 22590)
346	Jorge Moretti	2003/0442	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26897 to 26909)
347	Gonzalo Muccia Ibarra	2003/0942	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30401 to 30403)
348	Víctor Muccia	2003/0943	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30397 to 30400)
349	Álvaro Nario Álvarez	2003/0465	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30108 to 30112)
350	Silvia Neubauer Margolis	2003/0909	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30430 to 30432)
351	Franklin R. Neuschul	2003/0527	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26082 to 26095)
352	Thomas Máximo Neuschul	2003/1524	(file of attachments to the application, tome V, attachment 12 (C), folios 4402 to 4447)

353	Vicente Nípoli	2003/1425	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31072 to 31076)
354	Mirtha Noriega	2003/1170	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30892 to 30894)
355	Ángel Notaro	2003/0696	(file of attachments to the application, tome IV, attachment 12 (B), folios 3834 to 3881)
356	María Noveri Mari	2003/0346	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28817 to 28820)
357	Fernando Nozar Cabrera	2003/0765	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30284 to 30286)
358	Micaela Modesta Nuñez	2003/0761	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30292 to 30294)
359	Gerardo Olivet	2003/0501	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30162 to 30164)
360	Enrique Osievich Brener	2003/0435	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27035 to 27037)
361	Claudio Outerelo	2003/1578	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31320 to 31322)
362	Gloria Oxandabarat	2003/0554	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30247 to 30248)
363	Jorge Pagani	2003/0326	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29012 to 29015)
364	Federico Palazzi López	2003/1419	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31090 to 31092)
365	Héctor Pallas Geirinhas	2003/0379	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28084 to 28085)
366	Cristina Panella Castro	2003/0783	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30545 to 30550)

367	Emilio Pánfilo Pezzolano	2003/0331	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28950 to 28953)
368	Raquel Pareja	2003/727	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22293 to 22307)
369	Horacio Parodi	2003/0779	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30554 to 30555)
370	Vito Pascaretta	2003/0986	(merits file, tome V, folio 1911)
371	Carlos Pascual Knaibl	2003/0657	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24459 to 24476)
372	Alfredo Paseyro Mouesca	2003/0735	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30321 to 30323)
373	Héctor Passada	2003/0741	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30318 to 30320)
374	José Ángel Pastorino	2003/0545	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30255 to 30258)
375	Susana Pastorino	2003/1175	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30885 to 30887)
376	Graciela Patteta	2003/1456	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31026 to 31031)
377	Mercedes Paullier	2003/1477	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31428 to 31433)
378	Emilio Peluffo Biselli	2003/1418	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31093 to 31097)
379	Carmen Pelufo	2003/1030	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30621 to 30625)
380	José Walter Pena	2003/0578	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25553 to 25555)

381	Rossana Penone Corbo	2003/0606	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30205 to 30207)
382	Pablo Peralta Ansorena	2003/0484 and 2003/0483	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30073 to 30078)
383	Probo Pereira Da Silva	2003/0776	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30557 to 30563)
384	Ana Pereira	2003/0390	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27684 to 27686)
385	Cecilia Pereiro	2003/0590	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30229 to 30232)
386	Zulma Pérez Bogao	2003/0963	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30710 to 30714)
387	Mario Martín Pérez Garín	2003/1381	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31196 to 31198)
388	Atahualpa Pérez Rodríguez	2003/0960	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30720 to 30723)
389	Walter Pérez Soto	2003/0611	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 30186 to 30191)
390	Juan Pérez Zeballos	2003/0704	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23010 to 23021)
391	Javier Pérez	2003/0594	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30222 to 30224)
392	Rumildo Pérez	2003/0594	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30222 to 30224)
393	Gisela Perles	2003/0526	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26145 to 26148)
394	Margarita Helena Peter	2003/0728	(file of attachments to the application, tome III, attachment 12 (B), folios 3087 to 3110)

395	María Inés Piñeyro Castellanos	2003/0480	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30085 to 30089)
396	Adela Piñeyro Gutiérrez	2003/1264	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30759 to 30761)
397	Gladys Píriz Bustamante	2003/0683	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23722 to 23724)
398	Gustavo Pita	2003/0676	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23948 to 23951)
399	Luis Pitetta	2003/0711	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22676 to 22700)
400	Oscar Pivovar	2003/0803	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30521 to 30523)
401	Martha Pizza	2003/4028	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31274 to 31278)
402	Irina Pogge Boldt	2003/0982	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30691 to 30692)
403	Elbio Poggio Odella	2003/0597	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24853 to 24882)
404	Teresa Pohoski Grachoswska	2003/0604	(merits file, tome V, folios 1819 to 1824)
405	Omar Polizzi	2003/0849	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30460 to 30462)
406	Gabriela Poplavski	2003/0909	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30430 to 30433)
407	Gabriela Prevettoni	2003/0482	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30079 to 30081)
408	Jesús Puente Caamaño	2003/0568	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25774 to 25789)

409	Alberto Puente Vázquez	2003/0571	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25661 to 25678)
410	Gonzalo Puente	2003/0705	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22970 to 22982)
411	Doris Silva	2003/0705	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22970 to 22982)
412	Héctor Mario Pugliese	2003/1530	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31322 to 31334)
413	Laura Quintana Andreoli	2003/0618	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30281 to 30283)
414	María Elvira Quintans	2003/0805, 2003/1106, 2003/1610 and 2003/1527	(file of attachments to the State's final written arguments, tome I and II, attachment 3, folios 30513 to 30516, 30931 to 30933, 31294 to 31297 and 31335 to 31338)
415	Manuel Quintans	2003/1610	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31294 to 31297)
416	Encarnación Quintans	2003/1527	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31335 to 31338)
417	Anabela Quintero	2003/0974	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30701 to 30703)
418	Nilda Raineri Pardo	2003/1564	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31326 to 31328)
419	Leandro Rama Sienra	2003/0981	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30693 to 30697)
420	Florencia Rama Barbé	2003/0981	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30693 to 30697)
421	Carlos Ramírez	2003/0726	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22308 to 22328)

422	Magela Ramos Echevarría	2003/0471	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30097 to 30100)
423	María Jesús Real de Azúa	2003/0556	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30242 to 30246)
424	Rosa Reboa	2003/0451	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26584 to 26588)
425	María Ángela Recalde Maillot	2003/1395 and 2003/0762	(file of attachments to the application, tome III and V, attachment 12 (B) and 12 (H), folios 3076 to 3086 and 4930 to 4981)
426	Alicia Recalde	2003/1177	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30875 to 30879)
427	Sebastián Reino Berardi	2003/1033	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30618 to 30620)
428	Bernardo Reitman Fuchs	2003/0384	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27890 to 27891)
429	Alberto Resala	2003/0389	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27689 to 27741)
430	Wellington Rey Méndez	2003/0715	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22532 to 22555)
431	Gladys Rial Roverano	2003/1478	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31422 to 31427)
432	Jorgelina Rial	2003/0690	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23460 to 23524)
433	Elvira Richino	2003/0643	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30369 to 30373)
434	Pablo Rivas	2003/1157	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30898 to 30901)
435	Cristina María Rocha	2003/1388	(file of attachments to the State's final written arguments, tome II, attachment 3, folios

			31183 to 31189)
436	Marta Rodríguez Lois	2003/1495	(file of attachments to the application, tome X, 12 (E), folios 7953 to 8037) and (file of attachments to the State's final written arguments, tome II, attachment 3, folios 31395 to 31399)
437	Lilián Rodríguez López	2003/0655	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24531 to 24533)
438	Claudia Rodríguez Noya	2003-0668 and 2003/0663	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30348 to 30350)
439	Dorval Rodríguez Pírez	2003/1191	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30823 to 30827)
440	Heber Rodríguez	2003/0337 and 2003/4069	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1924)
441	Eduardo Rodríguez	2003/1598	(merits file, tome V, folio 1924)
442	María Fernanda Rodríguez	2003/0364	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28498 to 28500)
443	Julio Rodríguez	2003/0658	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24379 to 24404)
444	Luis Atilio Rodríguez	2003/1480	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31410 to 31417)
445	Susana Rodríguez,	2003/0299	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29447 to 29507)
446	Daniel Rodríguez	2003/0427	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27104 to 27107)
447	Niels Peter Roelsgaard Papke	2003/0608	(file of attachments to the application, tome VIII, attachment 12 (E), folios 7265 to 7365)

448	Platero, Gustavo	2003/0685	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30336 to 30339)
449	Elisa Rothschild	2003/0904	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 217001 to 21764)
450	Pablo Roure Casas	2003/1582	(file of attachments to the application, tome VIII, attachment 12 (D), folios 6940 to 6985) and (file of attachments to the State's final written arguments, tome II, attachment 3, folios 31305 to 31310)
451	Manuel Rubio Saquieres	2003/0298	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29508 to 29614)
452	Miguel Ángel Rubio Saquieres	2003/0298	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29508 to 29614)
453	Rumassa Causi, Sheila	2003/0793	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30533 to 30535)
454	Nesim Selmo Saban	2003/0781	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30551 to 30553)
455	Liliana Saibene	2003/0817	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30486 to 30489)
456	Carlos Salamano	2003/0649	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24679 to 24707)
457	Alejandro San Pedro	2003/0712	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22627 to 22633)
458	Osmundo Sánchez Castro	2003/0591	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25145 to 25147)
459	Baltasar Sánchez Labrador	2003/0592	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30225 to 30228)
460	Celeste Aída Sánchez	2003/1589	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31298 to 31301)

461	Isabelino Roque Sánchez	2003/0761	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30292 to 30294)
462	María Virginia Sansón	2003/0499	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30055 to 30058)
463	Luis Fernando Santiesteban o Santisteban	2003/0802	(merits file, tome V, folio 1925)
464	Tristán José Santiesteban	2003/0662	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30352 to 30354)
465	Adriana Saquieres de Souza	2003/0323	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29044 to 29076)
466	Nelly Saquieres Garrido	2003/0298	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29508 to 29614)
467	Martín Sarro	2003/1187	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30833 to 30837)
468	Rey Dura (Daniel Dura)[2]	2003/1187	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30833 to 30837) and (merits file, tome V, folio 1916)
469	Nelson Sassano	2003/0378	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28109 to 28112)
470	Adrián Scalone	2003/0368	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28257 to 28295)
471	Ángel Scapin Longo	2003/1588	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31302 to 31304)
472	Felipe Scivoli Tuttobene	2003/0209	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 21459 to 21468)
473	Andrés Scotti	2003/0812	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30497 to 30499)

[2] La Corte no cuenta con elementos para determinar si se trata de la misma víctima llamada Daniel Dura (Exp. No. 2003/1188) colocada bajo el No. 166 *supra*. De ser el caso, la indemnización dispuesta en el punto resolutivo cuarto, conforme al párrafo 260 de la Sentencia, deberá otorgarse una sola vez.

474	Rodolfo Schaich	2003/0266	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30154 to 30158)
475	Dora Schermann	2003/0827	(merits file, tome V, folio 1938)
476	Carlos Scherschener	2003/1256	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30762 to 30765)
477	Lilián Elena Schettini	2003/0623	(merits file, tome V, folio 1925)
478	Élida Schipani	2003/1453	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31041 to 31042)
479	Daniel Sebastiani	2003/4083	(merits file, tome V, folio 1925)
480	Jorge Humberto Sena	2003/0868	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22148 to 22176)
481	Elena Seré de Nadal	2003/0615	(file of attachments to the State's final written arguments, tome I, folios 30169 to 30174)
482	Antonio Seré Márquez	2003/1131	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30915 to 30919)
483	José Enrique Sienra	2003/0804	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30517 to 30520)
484	José Luis Sienra	2003/0672	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30345 to 30347)
485	Luis Fernando Sienra	2003/0706	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 22948 to 22956)
486	Florentina Nidia Sisa	2003/1411	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31108 to 31112)
487	Gabriel Sorensen	2003/1377	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31199 to 31202)

488	Luis Soria	2003/1399	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31148 to 31151)
489	Arnaldo Sormani	2003/0461	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30113 to 30117)
490	Nicolás Sosa	2003/0983	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30686 to 30690)
491	Ellen Steierman	2003/1184	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30843 to 30847)
492	Álvaro Suárez	2003/0695	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23277 to 23295)
493	María Mercedes Supervielle Casaravilla	2003/0616	(file of attachments to the application, tome II, attachment 12 (A), folios 2708 to 2819)
494	Enriqueta Suzacq Aradas	2003/1525	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31342 to 31344)
495	Ricardo Suzacq Aradas	2003/1526	(merits file, tome V, folio 1925)
496	Roberto Symonds Herzog	2003/0382	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27945 to 27947)
497	Alejandro Szasz	2003/0699	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23168 to 23175)
498	Susana Szasz	2003/0651	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 24651 to 24678)
499	Alberto Talamini	2003/0562	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30239 to 30241)
500	José Daniel Teixeira	2003/0337 and 2003/4084	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1925)
501	Julio Tejera Monteagudo	2003/1126	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30920 to 30922)

502	Alejandra Tejería Amonarriz	2003/0581	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25520 to 25522)
503	Gabriel Torrado	2003/1172	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30888 to 30891)
504	Rogelio Torres Ramos	2003/0709	(file of attachments to the application, tome XVI, attachment 12 (J), folios 11673 to 11735)
505	Ángel Marcelo Trigo Gómez	2003/1432	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31049 to 31053)
506	Guzmán Triver Varela	2003/1332	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31222 to 31223)
507	Washington Triver Varela	2003/1507	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31382 to 31384)
508	Alejandra Unanua	2003/0566	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25895 to 25910)
509	Gustavo Uranga	2003/1103	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30941 to 30943)
510	René Valdez	2003/1181	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30858 to 30862)
511	Jorge Valiño	2003/0432	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 27075 to 27077)
512	Ana Van Lommel	2003/0695	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23277 to 23295)
513	Lola Varela	2003/1520	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31353 to 31354)
514	Mara Vasen Feibelmann	2003/0885	(file of attachments to the application, tome III, attachment 12 (B), folios 3111 to 3143)
515	Rocío Vaz	2003/1251	(merits file, tome V, folio 1926)

516	Gustavo Vázquez	2003/0693	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 23352 to 23368)
517	Raúl Veiras Alabau	2003/0531	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25938 to 25941)
518	Jorge Veiras	2003/0531	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25938 to 25941)
519	Pedro Federico Ventós Coll	2003/0332	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28909 to 28922)
520	Alfredo Verdes	2003/0425	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27146 to 27148)
521	Ricardo Vergara	2003/0810	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30500 to 30502)
522	Nora Vidal Puyo	2003/1176	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30880 to 30884
523	Danilo Vigo Sosa	2003/0612	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30183 to 30185)
524	Verónica Villa	2003/1157	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30898 to 30901)
525	Fernando Villarreal Mascheroni	2003/0569	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25721 to 25736)
526	Julio Vinnotti	2003/0884 and 2003/0881	(merits file, tome V, folio 1926)
527	Juan José Viña Acuña	2003/0582	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 25464 to 25488)
528	Clara Volyvovic	2003/0999 and 2003/0361	(file of attachments to the application, tome IX, attachment12 (E), folios 7625 to 7876) and (file of attachments to the State's final written arguments, tome I, attachment 2, folios 28534 to 28561)

529	Alicia Vulcano	2003/0784	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30542 to 30544)
530	Alicia Wainstein Garfunkel	2003/0759	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 31439 to 31440)
531	Mauricio Weiss Bayardi	2003/1005	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30656 to 30660)
532	Jorge West	2003/0448	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 26740 to 26742)
533	Dilmar Westphalen	2003/0337 and 2003/4072	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 28822 to 28881) and (merits file, tome V, folio 1927)
534	Douglas White Rattin	2003/0319	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 29107 to 29122)
535	Fabián Yelen	2003/1178	(file of attachments to the State's final written arguments, tome II, attachment 3, folios 30870 to 30874)
536	Mirta Elena Zanandrea	2003/0543	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30259 to 30263)
537	André Zanón	2003/0407	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27325 to 27327)
538	María Cristina Zanoni Bello	2003/0397	(file of attachments to the State's final written arguments, tome I, attachment 2, folios 27646 to 29649)
539	Rodolfo Zunza Ramírez	2003/0947	(file of attachments to the State's final written arguments, tome I, attachment 3, folios 30739 to 30743)

DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI
JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,
MERITS, REPARATIONS AND COSTS, CASE OF BARBANI *ET AL. V.* URUGUAY,
OF OCTOBER 13, 2011.

Introduction

This dissenting opinion is issued concerning the aspects of the judgment in reference (hereinafter, the judgment) that are indicated below, for the reasons stated.

The first matter on which I disagree with what is said and decided in the judgment is with regard to the violation of Article 8(1) of the American Convention on Human Rights (hereinafter, the Convention), based on decisions adopted by the Central Bank of Uruguay (hereinafter, the Bank), under the provisions of article 31 of Law No. 17,613 of the Oriental Republic of Uruguay (hereinafter, the State).

And my second disagreement with the content of the judgment, on the same grounds, relates to the violation of Article 25 of the Convention.

I. Violation of Article 8(1) of the Convention.

Regarding the first aspect, it is necessary to describe the pertinent facts of the case and then analyze the international convention-based norm that is applied in the judgment, all with the respective consequences.

A. Facts

The relevant facts that, in my opinion, are of interest in relation to this aspect are the decisions of the Central Bank based on the provisions of article 31 of the said Law No. 17,613, a norm that, for the effects of this case and of international law, constitutes a fact.[1]

The latter provision (hereinafter, article 31) establishes:

> "*The Central Bank of Uruguay is hereby authorized to grant depositors of the Banco de Montevideo and the Banco La Caja Obrera, whose deposits have been transferred to other institutions without their consent, the same rights enjoyed by other depositors of the said Banks.*

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[1] Art. 62 of the Convention: "*1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it 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. […]*

2….

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

Art. 27 of the Vienna Convention on the Law of Treaties: "*Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.*"

To this end, and by a well-founded resolution, the Central Bank of Uruguay shall establish a commission that shall function for an extendible period of 60 (sixty) days.[2]

It is appropriate to emphasize that the said article gave the Bank the authority to grant a right to those who accredited or complied with the requirements that it established, and it did so under Law No. 17,613, which did not alter the Bank's inherent nature or task.[3]

Effectively and in this regard it should be recalled that Law No. 17,613 establishes "*norms for the protection and strengthening of the financial system,"* conferring "*powers on the Central Bank as liquidator of the financial intermediation entities, in order to protect the rights of the depositors of those entities, safeguarding their savings for reasons of general interest."*[4]

In the same way, it is worth mentioning, on the one hand, that the Bank itself decided, in the resolution establishing the commission, that *"[i]n the substantiation of the claims [before the Advisory Committee] the general principles of administrative procedure set out in the Administrative Regulations of the Central Bank of Uruguay [would] be observed ...."*[5]

In this regard, it should be underlined, also as a fact, that the commission required by article 31 "*must 'advise the Board of the Central Bank of Uruguay, insofar as the legislator granted the latter the authority to determine the status as depositor of the Banco de Montevideo S.A (in liquidation) and La Caja Obrera S.A. (in liquidation), in the situation established in the first paragraph of [article 31 of Law 17,613].' The purpose of the Advisory Commission was to 'make recommendations,' but its decisions were not binding for the Board [of the Central Bank], which could diverge from them for well-founded reasons."*[6]

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[2] Para. 77.

[3] Art. 190 of the Constitution of the Republic: "*The autonomous bodies and the decentralized services shall not conduct business outside the functions they are assigned by law, or dispose of their resources for purposes over and above their normal activities."*

Article 196 of the Constitution: "*There shall be a Central Bank of the Republic, which shall be organized as an autonomous body and shall have the mandates and powers determined by the law approved with the vote of the absolute majority of all the members of each Chamber."*

Article 3 of Law No. 16,696, Central Bank of Uruguay. The Bank's Charter: "*(Purposes). The purposes of the Central Bank of Uruguay shall be:*

A) To safeguard the stability of the national currency.

B) To ensure the normal operation of internal and external payments.

C) To maintain an appropriate level of international reserves.

D) To promote and maintain the adequate health, solvency and functioning of the national financial system.

..."

Article 7*: "(Powers). The powers of the Banks shall be conducive to achieving the purposes indicated in Article 3.*

In this regard, the Bank:

...

G) Shall regulate normatively and shall supervise the execution of those rules by public and private entities that are part of the financial system. To this end, it may authorize or prohibit, totally or in part, operations in general or in particular, as well as establish norms of prudence, good administration or working methods, and shall inform, in the case of the public entities, the Executive Branch, to this effect."

[4] Para. 75.

[5] Para. 83.

[6] Para. 79.

It is also a fact of the case that an appeal before the Contentious-Administrative Tribunal was admissible against the decisions adopted by the Bank under article 31, and this was filed by some of the interested parties.[7]

Lastly, it should also be recalled that the judgment "*notes that, in this case, no violation has been alleged regarding the creation of the special administrative procedure under article 31 […], or with regard to the requirements established in this norm in order to benefit from it*" and that, in the instant case, what must be "*determined is whether, in the procedures in which the said norm was applied, the guarantees of due process and judicial protection […] were violated*,"[8] and it concluded "*that the special administrative procedure was ineffective, in light of what it had to determine […], because the Central Bank made an incomplete analysis of the merits of the petitions, which meant that the State violated the substantive sphere of the right to be heard protected by Article 8(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 539 persons who filed a petition under article 31 of Law 17,613, indicated in the Annex on victims to this judgment.*"[9]

It is precisely with regard to the meaning and scope that the judgment accords to the provisions of this norm, thus making it applicable to the corresponding decisions taken by the Bank, that I present this dissenting opinion.

B. Interpretation of Article 8(1) of the Convention

Based on the foregoing, it is now appropriate to analyze the text of the said Article 8(1) of the Convention (hereinafter, Article 8(1)), which reads:

> "*Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or 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."*

There are several ways of interpreting this article.

One of them, which this opinion shares, is the one stated in a dissenting opinion issued in another case,[10] to the effect that this *"provision seeks to protect the right of the individual to have disputes arising between two parties, whether private individuals or State bodies and whether or not they refer to human rights issues, decided with the most complete judicial guarantees. This provision is the guarantee, par excellence, of all human rights and a requirement sine qua non for the existence of a State in which the rule of law prevails. We consider that its importance should not be trivialized by applying it to situations that, in our opinion, cannot be the focus of this regulation."*

Always according to the said dissenting opinion, "*[a] basic presumption for the application of this right is that the State has failed to respect a right or that the State has not provided a remedy should an individual fail to respect a right*," so that "*[w]hen a right has been denied, the Convention establishes (under Article 8) the right that a body with the characteristics indicated in this article shall decide the dispute; in other words,*

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[7] Para. 103.

[8] Para. 115.

[9] Para. 142.

[10] Dissenting opinion of Judges Alirio Abreu Burelli and Cecilia Medina Quiroga, *Case of Claude Reyes et al. v. Chile*. *Judgment on merits, reparations and costs* of September 19, 2006.

the right to proceedings being initiated, where the parties who disagree may, inter alia, submit their respective arguments, present evidence, and contest each other."

In this regard, the provisions of Article 8(1) constitute in themselves a remedy against acts of the State that have affected rights, so that, in consequence, the corresponding sanctionary powers may be exercised. The above-mentioned dissenting opinion recalls that this *"has been clearly established by the Court in the precedents cited in the judgment"* in reference.

A second possible interpretation, which does not exclude the preceding one, is considered in the same dissenting opinion, which recalls that the Court has repeatedly indicated, with regard to Article 8(1) that "*its application is not strictly limited to judicial remedies,*" that "*although the jurisdictional function belongs, in particular, to the Judiciary, other public body or authorities may exercise functions of the same type,"* and that, therefore, "*any State body that exercises functions of a substantially jurisdictional nature has the obligation to adopt decisions that are in consonance with the guarantees of due process of law in the terms of Article 8 of the American Convention."*

The judgment reiterates these affirmations and thus indicates that *"Article 8 of the American Convention establishes the standards for due process of law, which consist of a series of requirements that must be observed by the procedural instances, so that every person may defend his rights adequately in the face of any type of act of the State that may affect them*"; that it "*is not applicable only to judges and courts*"; and that *"[t]he guarantees established by this norm must be observed in the different procedures in which State bodies adopt decisions determining a person's rights, because the State also entrusts the function of adopting decisions that determine rights to administrative, collegiate or single-person authorities."*[11]

A third alternative interpretation, that complements the preceding one, is the one assumed in this opinion, consisting in nuancing or clarifying the aspects affirmed by the Court and in the above-mentioned dissenting opinion.

To this end, it is necessary to call attention to the fact that the rules of interpretation of treaties, which entail the simultaneous application of good faith, the ordinary meaning of the terms used in the treaty in question, their context, and the object and purpose of the treaty,[12] make it obligatory not to overlook the relevance of the explicit use of the words "*competent, independent and impartial judge or tribunal, previously established by law*" in Article 8(1). According to the customary and convention-based rules of interpretation of treaties, it is therefore necessary to consider the use of these terms. The rules of interpretation do not authorize these words to be omitted or, above all, changed, but merely that their meaning and scope be established among the various application alternatives that could arise.

In this regard, it is worth recalling that this course was followed in one of the Court's most recent judgments. The case in which the judgment was delivered consisted in *"determining whether the sanction of loss of civil rights imposed on Mr. López Mendoza by a decision of an administrative body* – the Comptroller General of the Bolivarian Republic of Venezuela, adopted under the authority granted by law[13] - *and the consequent impossibility for him to register his candidacy for elected office, was*

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[11] Paras. 116 and 118.

[12] Art. 31(1) of the Vienna Convention on the Law of Treaties: *"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."*

[13] *Case of López Mendoza v. Venezuela. Judgment on merits, reparations and costs,* September 1, 2011, Para. 33.

compatible with the American Convention."[14] In this regard, the Court recalled Article 23(2) of the Convention, which indicates that "*the law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph [*concerning political rights*] only on the basis of age, nationality, residence, language, education, civil and mental capacity, or a criminal conviction by a competent court*." And, in this regard, concluded that "*in this case, which refers to a restriction imposed by means of sanctions, it should have been a "criminal conviction imposed by a competent judge,"* adding that *"[n]one of these requirements has been fulfilled, because the body that imposed the said sanctions was not a "competent judge," there was no "criminal conviction" and the sanctions were not applied as the result of "criminal proceedings," in which the judicial guarantees embodied in Article 8 of the American Convention would have to have been respected*."[15]

In short, it could be inferred from the above that the Court, in its interpretation of Article 23(2) of the Convention, understood the ordinary meaning of the expression "*competent judge*" in keeping with the principle of good faith, the context of the terms of the Convention, and its object and purpose[16] and, consequently, considered that the Comptroller General of the Bolivarian Republic of Venezuela, even though he was exercising the disciplinary and sanctionary powers granted by law, and having heard the victim in accordance with the previously-regulated procedure, in reality was not a "*competent judge,*" terms that could well be equated to those used by Article 8(1); in other words, to those of "*competent, independent and impartial judge or tribunal, previously established by law.*"

Notwithstanding the above, it could be understood that the terms "*judge or tribunal*" employed in Article 8(1) also include "*the State bodies* (that) *adopt decisions on the determination of the rights of the individual"*[17] or "*any State body that exercises functions of a substantially jurisdictional nature";*[18] in other words, bodies that are not formal judges or tribunals, but which act as such.

In this regard, it should be recalled that the essential and distinctive function of judges is, without doubt, the settlement of disputes; in other words, the exercise of the contentious jurisdiction. Accordingly, should there be a dispute with regard to *"the determination of* (the) *rights and obligation of a civil, labor, fiscal or any other nature,"*[19] they would evidently be decided by a judge or tribunal.

To the contrary, the essence of this judicial function is not the exercise of the non-contentious or voluntary jurisdiction, since this relates to matters that are outside the judicial sphere and belong to the administrative sphere, but whose hearing and settlement is conferred by law on a judge or tribunal, even though there is no dispute about them and, for different reasons, including the possibility that disputes could arise in relation to them. Without this express assignment by law, a judge or tribunal could not hear and decide such matters and, therefore, the pertinent matters would continue being the competence of administrative authorities and the non-contentious or voluntary jurisdiction would not exist with regard to them.

Consequently, it is based on the foregoing jurisdiction that, on the one hand, if there is no dispute as regards *"the determination of* (the) *rights and obligations of a civil, labor,*

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[14] *Idem*, para. 104.

[15] *Idem*, paras. 104 and 107.

[16] See my concurring opinion, *Case of López Mendoza v. Venezuela. Judgment on merits, reparations and costs,* September 1, 2011.

[17] Para. 118.

[18] Dissenting opinion of Judges Abreu and Medina, *cit.*

[19] Art. 8(1).

fiscal or any other nature," that determination would not be included in the said jurisdiction unless the law had provided that it should be made by a judge or tribunal.

Furthermore, precisely because the non-contentious or voluntary jurisdiction is closely connected to the institution of judge or tribunal (outside of which it is not justified and does not exist), assigning to another body, particularly an administrative entity, the hearing and settlement of matters that are generally included in that jurisdiction, such as *"the determination of* (the) *rights and obligation of a civil, labor, fiscal or any other nature,"* would not be conferring on the said administrative body or entity a different jurisdiction to that which it already possesses as such, but rather incorporating a new element into its jurisdiction.

From the above it can be inferred that, only when an administrative body or entity has clearly been granted the authority to decide disputes concerning specific administrative matters, which would normally fall within its own sphere, such as those relating to *"the determination of* (the) *rights and obligation of a civil, labor, fiscal or any other nature,"* would this be admissible under the contentious jurisdiction which has thus been granted to it even though it is neither judge nor tribunal. In such cases, it will act and be considered as such, and will be a "*State body* (that, without being a judge or tribunal as such) *adopts decisions that determine the rights of the individual,*"[20] or that exercises *"functions of a substantially jurisdictional nature."*[21]

Consequently, the fundamental object and purpose sought by the provisions of Article 8(1) is that, with regard to "*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,"* the interested party has the right to *"a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal, previously established by law*" or by "*State bodies* (that, although they are not judges or tribunals as such) *adopt decisions on the determination of the rights of the individual"* or by "*any State body that* (although not a judge or tribunal) *exercises functions of a substantially jurisdictional nature,"* but, in these last hypotheses, provided that the said bodies have been granted contentious jurisdiction; in other words, they should be bodies that act as judges or tribunals, even though they are not.

Thus, the most relevant part of this provision is not the reference to "*the substantiation of any accusation of a criminal nature"* or "*the determination of […] rights and obligations of a civil, labor, fiscal, or any other nature,"* but the right of every individual to "*a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal, previously established by law*" or by another State body that, despite not being a judge or tribunal as such, has been endowed with the contentious jurisdiction and has the same conditions with regard to the said matters.

On the same basis, it is not the specific matters that ensure the jurisdictional function, but rather the condition that, in the presence of a dispute about them, they are heard and decided "*by a competent, independent, and impartial judge or tribunal, previously established by law*" or by another State body that, despite not being a judge or tribunal as such, has been endowed with the contentious jurisdiction and has the same conditions with regard to the said matters.

C. General conclusions

[20] Para. 118.

[21] Dissenting opinion of Judges Abreu and Medina, *cit.*

Based on the above, it is clear, first, that, in exercise of the powers embodied in article 31, the Bank continued to be an administrative body or entity and that, in the matter in question, it acted as such. The judgment repeatedly considered this to be so.[22]

Second, it is unquestionable that the Bank's decisions under the provisions of this article did not consist in decisions adopted under the contentious jurisdiction by a "*judge or tribunal"* or by a *"State body* (that without being a judge or tribunal as such) *adopts decisions on the determination of the rights of the individual"* or that exercises *"functions of a substantially jurisdictional nature."*

And this is because there is no evidence in the case file that, under article 31, there had been the express or implicit intention to transform the Bank into a jurisdictional instance or to grant it jurisdictional or contentious judicial powers, or that it had acted, in relation to the said provision, based on the presumption that it had powers of this nature. To the contrary, the judgment, although it is based on the assumption that there is a dispute, indicates that it was "*decided to create a special procedure and delegate decisions to an administrative body that allegedly had limitations in this regard*" and, therefore, it considered that the State *"should have ensured that the body entrusted with determining them had the necessary competence to make a complete analysis of the requirements established in article 31."*[23] In other words, it is evident that the said administrative body, the Bank, was not granted the necessary powers to exercise a jurisdictional function.
The foregoing is also revealed in the judgment when it affirms that article 31 created "*a special procedure to deal with the petitions of those who considered that they fulfilled the corresponding requirements; and called for the establishment of a technical committee (the Advisory Commission) responsible for examining the petitions and advising the Board of the Central Bank of Uruguay, the administrative body that had to adopt the corresponding decisions*."[24] In this way the judgment is indicating that, all things considered, it does not find that the petitions formulated under this provision are real remedies against a decision adopted by a State body, but only a mechanism to benefit from the provisions of the said article. And it also declares that "*[a]n appeal for annulment of the decisions of the Board of the Central Bank could be made before the Contentious-Administrative Tribunal*" and that this remedy "*can be filed once the administrative remedies have been exhausted."*[25] Thus, in the final analysis, the judgment considers that the decisions adopted by the Bank under the provisions of article 31 form part of the administrative and not the jurisdictional procedure.

Third, it can also be concluded that, since the Bank adopted the pertinent decisions under administrative proceedings, rejecting or accepting to grant the individuals the rights established by article 31, prior to the issue of these decisions, there was no dispute in this regard. Hence, it was only after the Bank's refusal to grant these rights to the "*depositors of the Banco de Montevideo and the Banco La Caja Obrera, whose deposits have been transferred to other institutions without their consent*," that "*the right* [emerged] *of those affected to be able to resort to a body that would decide it; that would settle the dispute owing to its jurisdiction and competence*"[26]; that is to say, and in keeping with the meaning of the word "to determine,"[27] to ascertain or establish the terms of those rights that had been denied, as indeed, happened with regard to the interested parties who exercised this right. It is only logical that, before they proved that

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[22] Paras. 139 and 140.

[23] Para. 140.

[24] Para. 127.

[25] Paras. 101 and 102.

[26] Dissenting opinion of Judges, *cit*.

[27] *Concise Oxford English Dictionary*, Eleventh Edition, Oxford University Press, 2008

they fulfilled the requirements to benefit from the provisions of article 31, the Bank was not denying them any right; this happened exclusively when the Bank considered that, in the corresponding cases, this proof had not been provided.

In summary, we can say, on the one hand, that the Bank's decisions based on that article did not constitute a contentious proceeding and, on the other, that only in those cases where the interested parties considered that the Bank's decision, adopted based on or bearing in mind the facts gathered by the above-mentioned Commission, was not sufficiently founded, particularly owing to the inadequacy of those facts, was it possible to appeal against it. Thus, it was only in the cases in which the Bank refused to grant the rights established in the said article, because it considered that the petitioner in question did not fulfill the article's requirements, that a dispute could be constituted.

On the same basis – that is to say, because the Bank's procedure did not consist in settling a dispute – its procedure could not constitute a violation of Article 8(1), because what is at issue is not the exercise of the right of every individual to "*a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal, previously established by law, for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature,"* or the exercise of that right before a "*State body* (which without being a judge or tribunal as such) *adopts decisions on the determination of the rights of the individual*" or before "*any State body that* (without being a judge or tribunal as such) *exercises functions of a substantially jurisdictional nature*," bodies that have been granted the contentious jurisdiction and that, consequently, act as judges or tribunals.

This thesis is supported by the fact, which was not examined in the judgment, that the provisions of article 31 did not exclude the right to resort to the competent courts against the Bank's decisions. The terms of the article were not exclusive or prohibitive, which indicates that the mechanism established in the article did not substitute or complement the judicial or jurisdictional remedies, or prohibit them. Consequently, this mechanism had no effect whatsoever on the right of the interested parties to make use of the judicial remedies established by law to that end and, indeed, some of those affected by the said situation did so.[28]

Thus, I cannot share the presumption on which the judgment is based, that the provisions of article 31 were included to avoid interested parties having to resort to the courts[29] and that, for this reason, the State "*decided to create,"* "*instead*" of the judicial organs, "*a special procedure and delegate decisions to an administrative body,*" to which it granted limited powers to decide a dispute;[30] because, first, the objective of the article was really only to ensure compliance with the requirements it established to accede to the rights it indicated, so that, if this was done, it was unnecessary to resort to the courts of law; second, because there is no evidence, but rather the contrary, that it curtailed the powers of the ordinary courts regarding the right of those affected to appeal to them to safeguard their rights impaired by the situation that article 31 was intended to resolve, or against the Bank's decisions under that article; third, because the powers established in the said article are of the same nature as those that naturally correspond to and are exercised by the Bank and, lastly, because, strictly speaking, there was still no dispute to decide, in other words, none of the interested parties had yet been denied the right established in article 31; but rather, to the contrary, what was involved was an administrative procedure precisely to recognize those rights and, furthermore, more easily and promptly.[31]

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[28] Para. 103

[29] Para. 139.

[30] Para. 140.

[31] Para. 139.

Regarding the above, it should be considered that the actual provisions of Article 8(1) constitute a remedy – in the instant case, against the administrative procedure of the Central Bank that it was deemed did not grant "*the same rights enjoyed by other depositors of these banks*"; consequently, the procedure for the adoption of those decisions could not also be considered, in turn, a remedy subject to the provisions of Article 8(1), because it was not against the State, but only a procedure to prove before the Bank a requirement from which the exercise of a right could be inferred.

Nevertheless, if it is considered that Article 8(1) would apply to both the procedure followed to adopt the administrative decision that could be appealed, and to the complaint or review proceedings filed against it, the result, in the case of the latter, would in fact be a second instance to which recourse could be had in relation to the decision by another judge or tribunal, which Article 8(1) does not envisage, but which is provided for in Article 8(2)(h) of the Convention, although only in cases of criminal charges.[32]

In this regard, I repeat that it was after the Bank had issued the corresponding decisions that did not grant "*the same rights enjoyed by other depositors of these banks*," that the interested party could resort, as some of them did, to *"a competent, independent, and impartial judge or tribunal, previously established by law,"* for the right *"to be heard […] for the determination of"* those rights.

It should also be underlined that, by deciding the instant case as it did, the judgment establishes a precedent that the provisions of Article 8(1) would apply to procedures concerning claims submitted to administrative authorities to accede, after fulfilling the legal requirements, to benefits or rights that they establish and, in this way and by interpretation, it significantly expands what those who drafted the article wished to establish. In this regard, we only have to envisage the scope of the decision in the sense that it could be applied, for example, to claims that are submitted to administrative authorities concerning family allowances, pensions and to welfare rights in general, or to different types of subsidies, and even to tax reductions or benefits.

In addition, it is relevant to call attention to the fact that, in the instant case, what the judgment is indicating is that, faced with a decision of an administrative authority, such as the Bank, it is possible to resort immediately to the inter-American jurisdiction claiming the right to be heard embodied in Article 8(1); although, without prejudice – if it is deemed appropriate - to resorting also to a court. In other words, the judgment opens up the possibility that it is possible to resort to the Court without complying with the prior obligation of exhausting domestic remedies. Evidently, that interpretation is also outside the letter and spirit of the said article.

It is, therefore, for all these reasons – that is, because the assumptions did not exist for Article 8(1) to be considered applicable to the actions of the Bank in exercise of the power granted under article 31 – that it could not and cannot be considered that the decisions taken under article 31 violated the provisions of Article 8(1).

II. Violation of Article 25(1) of the Convention

Following the same process as in Part I of this dissenting opinion, I will first describe the facts and then apply the norm that they indicate was violated.

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[32] "*Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: …, and h) the right to appeal the judgment to a higher court.*"

A. Facts

In the instant case, remedies were filed before two judicial organs: one, the Contentious-Administrative Tribunal, and the other the ordinary courts.

Regarding the former, the judgment records that *"[i]n the instant case, it has been proved that it was possible to file an appeal for annulment before the Contentious-Administrative Tribunal against the final decision of the Board of the Central Bank concerning a petition under article 31 of Law 17,613, that 39 alleged victims filed this appeal, and that all of them obtained an adverse ruling from this tribunal."*[33]

Regarding the second, *"[t]he Court found it proved that at least 136 alleged victims filed actions in the ordinary jurisdiction against the Banco de Montevideo based on, inter alia, breach of contract and requests for compensation for damage. In 10 cases the Banco de Montevideo was found guilty and the decision is final in nine of them."*[34]

However, it should be noted that what the Court ruled on in this regard was whether or not the remedies that were filed permitted the annulment of the Bank's decision under the provisions of article 31. Thus, the judgment indicates that *"[i]n this case, the Court is called upon to determine whether, in the procedures in which the said norm was applied, the guarantees of due process and judicial protection of the alleged victims were violated."*[35]

For this purpose, the norm considered applicable is Article 25(1) of the Convention (hereinafter, Article 25(1)), which reads as follows:

> *"Judicial Protection*
> *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."*

1. Remedies before the Contentious-Administrative Tribunal

a. Facts or background information

Regarding this matter, the judgment indicates that "*[a]n appeal for annulment of the decisions of the Board of the Central Bank could be made before the Contentious-Administrative Tribunal,"* and that *"[a]ccording to article 309 of the Uruguayan Constitution*[36] *and article 23 of Law No. 15,524, in the appeal for annulment, the plaintiffs have to prove that 'the contested administrative acts were contrary to a rule of law or had been issued with misuse, abuse or excess of power.'"*[37]

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[33] Para. 205.

[34] Para. 224.

[35] Para. 115.

[36] *The Court of Administrative Law shall hear the applications for the annulment of final administrative decisions complied with by the Administration in the exercise of its functions that are contrary to a rule of law or issued with misuse of authority.*
The jurisdiction of the Court shall also include final administrative decisions issued by other organs of the State, the departmental governments, the autonomous entities, and the decentralized services.
The appeal for declaration of nullity may only be exercised by the possessor of a right or of a direct, personal and legitimate interest violated or harmed by the administrative decision."

[37] Para. 101.

It also states that "*[t]his appeal can be filed once the administrative remedies have been exhausted….*"[38]

On this basis, the Court merely determined whether the said appeal for annulment before the said Tribunal was "*effective, in the terms of Article 25(1) of the Convention,"* by verifying whether the Bank's analysis of the requirement of consent was complete and *"conformed to the provisions of article 31 of Law 17,613 for the determination of the rights that it granted.*"[39]

b. Considerations

In this regard, it should be noted that the judgment expressly indicates that the Court "*does not have the necessary elements to analyze whether, the execution of a judgment deciding an appeal for annulment, specifically related to the application of article 31 of Law 17,613, could have been ineffective. This could have occurred if it merely annulled the administrative decision and failed to determine or recognize the rights established in the said article.*"[40] And, previously, it indicates that "*[t]he only case that was decided favorably by the Contentious-Administrative Tribunal was that of two people who are not alleged victims in the instant case and, although the judgment was provided, no information was forwarded on the consequences of the annulment of the administrative decision in relation to the recognition of the rights granted by article 31 of Law 17,613*."[41]

Furthermore it is relevant to underline that the judgment also indicates that "*[o]nly 22 judicial rulings deciding the appeals of 28 alleged victims were provided to the Court, but neither the appeals nor the judicial case files were provided*" so that it examined "*the effectiveness of the appeal for annulment before the Contentious-Administrative Tribunal based on the judgments provided, domestic law, and the expert appraisal on the matter*,"[42] adding that it "*does not have sufficient elements to determine whether the Contentious-Administrative Tribunal's assessment of the evidence impaired the effectiveness of the said remedy with regard to the respective claimants.*"[43]

Hence, it can be observed that its assertions in this regard are not sufficiently founded. This is what occurs, for example, when, on analyzing the other 11 judgments of the Contentious-Administrative Tribunal, it states that "*the arguments submitted regarding defects of consent or non-compliance with the obligation to provide information were not verified in order to confirm whether or not these had been constituted*" and that "*[h]ence, similarly, […this] tribunal […] made an incomplete examination of the claims submitted to its consideration,*"[44] to conclude that the State violated the said Article 25(1) to the detriment of 12 of the individuals who filed the said appeal for annulment.[45]

The judgment's ruling on this aspect is insufficiently founded because, in addition, it departs from what it had indicated as regards, "*the Contentious-Administrative Tribunal considered that the consent required by article 31 of Law 17,613 could be express or implied";* that, based on this, it "*understood that the petitioners had given consent*

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38 Para. 102.

39 Para. 216.

40 Para. 212.

41 Para. 211.

42 Para. 207.

43 Para. 217.

44 Para. 218.

45 Para. 220.

based on elements such as: (i) signed contracts of "General Conditions for Administration of Investments"; (ii) specific instructions given by clients to the Banco de Montevideo; (iii) the reception by the petitioner of bank statements showing the respective operation, without the petitioner raising objections or making observations, as established in article 35 of Law 6,895; (iv) the interest rates enjoyed by the petitioner, for his share in the certificates of deposit or other product, in the understanding that they enjoyed interest rates that were considerably higher than those offered on fixed-term deposits in the Banco de Montevideo and were also significantly higher than market rates, and (v) the petitioner's investment profile or regularity in regard to such operations"; that *"[t]he first two elements were considered elements of express consent and, regarding the others, it indicated that they could constitute forms of implied consent under banking practice";* that it *"indicated repeatedly that, under banking law, both banking norms and banking practice were applicable, so that "implied consent, and verbal orders by the clients, even by telephone, constitute a reiterated practice under banking law that has give rise to general awareness ('opinio juris') of their existence and compulsory nature."*[46]

In other words, the judgment indicates expressly that the Contentious-Administrative Tribunal analyzed and ruled on the requirement established in article 31 in terms of "*without their consent."* Nevertheless, it is true that it did not do so with regard to the defects that, in some cases, could have impaired this consent, because it considered that its function was to rule on the appeal for annulment filed "*against the final decision of the Board of the Central Bank,*"[47] which, in turn, had expressly considered that "*the declaration of the annulment of the acceptance of the investment, and any contractual responsibility for the unsuccessful operations carried out that involved error, fraud or negligence, necessarily constitute[d] jurisdictional decisions that exceed[ed] the sphere of the powers granted to the Central Bank of Uruguay under article 31 of Law 17,613*."[48]

In other words, since the Bank had ruled that it was not its responsibility to decide on the possible defects that could have impaired the consent that had been granted, what the Contentious-Administrative Tribunal did is consider that this ruling, in the terms of the Constitution – and recorded in the judgment – is not *"contrary to a rule of law,* [and had not] *been issued with misuse, abuse or excess of power*";[49] in other words, it also ruled on the issue, but not in the sense that the appellants hoped.

In this regard, it is also appropriate to note that the judgment mentions that, in the cases submitted to it, the ordinary justice system examined the issue of defects of consent,[50] which would indicate that this remedy also was available to the appellants.

Furthermore, based on the two preceding paragraphs, it might have been necessary to consider whether article 31 included the Bank's competence to rule on its own competence; namely, whether or not the Bank had what is known in the judicial sphere as the "competence of the competence," or whether that corresponded to administrative or judicial instances. Also, it might have been useful to consider whether the decision on competence is a matter of domestic law or international law. Certainly, it seems more logical to consider that, following a decision by the Bank on its competence in the matter, it was possible to have recourse to the Contentious-Administrative Tribunal and that this discussion belongs to the sphere of domestic law; whereas it corresponds to the sphere of international law, in this case the Court, to assess the act that, ultimately,

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46 Para. 156.

47 Para. 205.

48 Paras. 95 and 134.

49 Para. 101.

50 Para. 108.

could entail the State's international responsibility under international law, in this case, the Convention. Otherwise, the way the Court proceeded could be mistaken for a "*fourth instance.*"

However, even if it is considered, as in the judgment, that if corresponded to the Contentious-Administrative Tribunal to rule on that matter, it should be recalled that the Court, in order to interpret the right to be heard embodied in Article 8(1) of the Convention resorted, not to a juridical norm created by an autonomous source of international law, but to the case law of the European Court of Human Rights, when it stated that "*fair proceedings presume that the organ responsible for administering justice conducts 'a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision*.'"[51] But, this is precisely what the Contentious-Administrative Tribunal did when it ratified the Bank's decisions; in other words, it recognized, considered or appreciated the value or merits[52] *"of the allegations, arguments and evidence adduced by the parties"* relating to the decisions of the Bank as *"relevant to its decision."*

Moreover, and notwithstanding the above, it could be considered that the grounds used by the judgment that, owing to the ruling of the Contentious-Administrative Tribunal in the cases mentioned, Article 25(1) of the Convention has been violated, constitute an indirect, insufficient and inadequate way of making this provision applicable to the matter in question.

Indeed, the judgment indicates that, since the Contentious-Administrative Tribunal did not analyze the defects that, in some cases, impaired the granting of the consent envisaged in the said article 31, the appeal filed before it was not an "*effective remedy,*" because, ultimately, it could not protect those prejudiced by the decisions of the Bank that (since the latter had not made the said analysis) violated the substantial sphere of the right *"to be heard by an administrative body, for the determination of the rights granted in article 31 of Law 17,613."* Consequently, the judgment finds that, regarding the said cases, Article 25(1) had been violated.[53]

Since, as stated above, this dissenting opinion considers that Article 8(1) is not applicable to the Bank's decisions, logically it is unable to agree with the ruling as regards Article 25(1). To the contrary, this opinion considers that, according to the above, that norm was fully applicable to the ruling of the Contentious-Administrative Tribunal and, consequently, it was before that instance that the right to be heard stipulated in Article 8(1) should have been exercised in relation to the Bank's decisions and, if its exercise had been prevented, it would have been possible to file an appeal to safeguard that right before the corresponding instance, under the provisions of Article 25(1).

Hence, it can be said that what the Court should have done in relation to the rulings of the Contentious-Administrative Tribunal was determine whether or not they conformed to the provisions of Article 8(1) rather than Article 25(1). But, it did not do this and, for the reasons stated, I cannot agree with the decision it took in this regard either.

2. Remedies before ordinary justice

a. Facts and/or background information

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[51] Para. 121.

[52] *Diccionario de la Lengua Española*, *op.cit*.

[53] Para. 220.

In this regard, it should be recalled that the Court stated that, once the administrative decision had been annulled by the Contentious-Administrative Tribunal, "*the interested party can have recourse to the courts to claim reparation for the damage that the said act, which has been declared illegal, may have caused him*"; but that, "*under article 312 of the Constitution, the interested party may also resort directly to the competent courts to claim reparation for the damage caused by "acts or omission of the administration," without the need to apply previously to the Contentious-Administrative Tribunal.*"[54]

With regard to the remedies filed before the ordinary system of justice by some of the victims of the situation that befell the *Banco de Montevideo* and the *Banco La Caja Obrera*, the judgment takes into account that "*the body of evidence does not show that the remedies available under the ordinary justice system, which decided the actions against the Banco de Montevideo, could apply article 31 of Law 17,613 and determine the rights established therein*."[55] In the same way it "*underlines that the body of evidence does not show that the use of these remedies, which decided the actions against the Banco de Montevideo, allowed application of article 31 of Law 17,613 and making the determinations that the article established, or review of the actions of the administrative body that were alleged to have violated the guarantees of due process*."[56]

The above allows the judgment to affirm that "*[t]he fact that some alleged victims used these judicial remedies and that they obtained favorable judgments does not mean that these remedies were effective in this matter*"[57] and, consequently, it concludes that "*actions before the ordinary jurisdiction […] cannot be considered effective remedies for the matter that is the purpose of this case.*"[58]

Furthermore, the judgment records that filing these remedies "*merely reveals the search by these alleged victims for alternate means to allow them to obtain judicial protection for at least some of the rights established in article 31 of Law 17,613*."[59] And, it should be recalled that article 312 of the Constitution allows the individual to choose which judicial action to use to safeguard his rights.

Meanwhile, the judgment does not make any ruling on the conformity or not with the provisions of Article 25(1) of the remedies established under *"the ordinary justice system to claim reparation for the damage"* in situations such as those that occurred to the *Banco de Montevideo* and the *Banco La Caja Obrera*, which is, after all, the purpose of article 31. This ruling would have been as or more significant and necessary because such remedies existed before the promulgation of Law 17,613 and there is no record that the latter invalidated them.
In other words, by limiting its purpose in this matter as it did, the judgment did not make any ruling on the conformity of the said remedies before the ordinary system of justice with the provisions of Article 25.

III. General considerations

As previously stated, the judgment in this case, applied the provisions of Article 8(1) to the decisions of the Board of the Central Bank under article 31 and thus concluded that this procedure did not respect the right of everyone to be heard in the terms and before

[54] Para. 102

[55] Para. 128.

[56] Para. 226.

[57] Para. 228.

[58] Para. 229.

[59] Para. 228.

the authority indicated in Article 8(1). Furthermore, with regard to the remedies filed by some interested parties before both the Contentious-Administrative Tribunal and the ordinary system of justice, it also determined that, since they were not heard in the terms established in the said provision, they did not constitute effective remedies in the terms of Article 25(1). Thus, ultimately, the judgment founds its entire analysis on the provisions of Article 8(1) in relation to the contents of article 31.

Hence, because, for the above-mentioned reasons, I disagree with the judgment's assessment that article 31 granted the Bank the authority to act as a body with jurisdictional powers and, consequently, because I consider that Article 8(1) is not applicable in the instant case and, therefore, neither is Article 25(1) in the terms of that assessment, I emit this opinion concerning everything that was decided in the instant case. It is therefore unnecessary for me to go on record with regard to the other matters dealt with and decided in it.

Nevertheless, I find it appropriate to make some general observations in which I include what I have stated previously in this dissenting opinion.

First, regarding the powers of the Court, which are to interpret and apply the Convention,[60] and thus determine, in keeping with international law, both treaty-based and customary, the international responsibility of the State under international law.[61] In this regard, the role of the Court is to do justice by applying the law; in other words, to seek justice in the law. And this, on the basis that, although its judgments have a relative effect,[62] they are only an auxiliary source of international law[63] and, thus, even though its case law is reiterated, consistent and uniform, it is not an autonomous source of international law. In other words, it does not create law and, consequently, it does not have the legitimacy to modify it, a function that, in the case of treaties, corresponds by express mandate to the States Parties,[64] as in the case of the Convention.[65]

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[60] Art. 62 of the Convention: *"1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it 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.[…]*

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."

[61] Art. 27 of the Vienna Convention on the Law of Treaties: *"Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."*

Article 3 of the draft articles prepared by the United Nations International Law Commission on Responsibility of States for internationally wrongful acts, contained in a resolution adopted by the General Assembly on the report of the Sixth Committee (A/56/589 and Corr.1)] 56/83. Responsibility of States for internationally wrongful acts, eighty-fifth session, 12 December 2001, Official Documents of the Genera Assembly, fifty-sixth session. Supplement No. 10 and corrections (A/56/10 and Corr.1 and 2). 2 Ibíd., paras. 72 and 73.: "*Characterization of an act of a State as internationally wrongful. The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."*

[62] Art. 59 of the Statute of the International Court of Justice: "*The decision of the Court has no binding force except between the parties and in respect of that particular case."*

[63] Art. 38(1)(d) of the Statute of the International Court of Justice: "*1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:…d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."*

[64] Art. 9 of the Vienna Convention on the Law of Treaties: "*General rule regarding the amendment of treaties. A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide*."

Art. 41(1) of the same text: "*Agreements to modify multilateral treaties between certain of the parties only.*

I state the foregoing because I consider that, with the rulings in the instant case, the Court is in fact modifying the provisions of Article 8(1), especially when it does not invoke or apply the rules for the interpretation of treaties included in the Vienna Convention on the Law of Treaties, particularly those relating to agreements between States,[66] to support the interpretation adopted, but rather exclusively case law which, although consistent, reiterated and uniform, is insufficient for this purpose.
This does not mean, however, that case law should not give expression to the law, as the living, active and dynamic discipline that it should be. The role of justice is rooted precisely in deciding whether the law invoked is applicable to each specific case, and this is because, obviously and as is normal, the case probably does not correspond exactly to the circumstances that existed when the law was enacted, because, if it did, it is possible that no interpretation would be needed.

But, in the instant case, it is not that the matter to be decided concerned the application of Article 8(1) to the reality that existed when it was adopted, but rather as it has evolved up until today. However, the result has been to make it applicable to totally different circumstances by taking its interpretation to extremes, which is what happens when it is considered that Article 8(1) has been violated in a procedure before an administrative authority, in which there was no dispute.

Lastly, this dissenting opinion is evidently emitted with the greatest respect for the decision of the majority of the members of the Court; in other words, by the Court. It is not intended to question the legitimacy of the decision. To the contrary, it seeks to express the purpose of a dissenting opinion and, to some extent also, a concurring opinion;[67] that is, to demonstrate not only the dedication with which a collegiate court

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1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:

(a) the possibility of such a modification is provided for by the treaty; or

(b) the modification in question is not prohibited by the treaty and:

(i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;

(ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole."

[65] Article 76: "*1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.*

2. *Amendments shall enter into force for the States ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification."*

[66] Art. 31(2) and 31(3) of the Vienna Convention on the Law of Treaties*: "2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties."

[67] Regarding concurring opinion and dissenting opinion, see brief on constancia of complaint filed by the undersigned on August 17, 2010, related to the dissenting opinion and the concurring opinions issued in

acts, but also due respect to both the majority and the minority within it when deciding the corresponding case. Concurring and dissenting opinions are part of the essence of a collegiate court, where the opinions of all its members contribute to enhancing the decisions and the search for justice, in this case, in the domain of human rights.

This opinion is emitted considering, also, one of the characteristic imperatives of a tribunal such as the Court, which is that of adapting its conduct to the provisions of law, without, as an autonomous and independent entity, a superior authority that controls it. This means that it is the Court itself that, in deference to the vital function assigned to it, strictly respects the limits of this function and remains and evolves in the sphere inherent to a jurisdictional entity. Without doubt, this contributes to strengthening the institutional framework of inter-American human rights, a *sine qua non* requirement for their proper safeguard.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

relation to the Orders of the Court relating to "*Provisional measures with regard to the Republic of Colombia, Case of Gutiérrez Soler v. Colombia,*" of June 30, 2011, "*Provisional measures with regard to the United Mexican States, Case of Rosendo Cantú et al. v. Mexico*", of July 1, 2011 and "*Provisional measures with regard to the Republic of Honduras, Case of Kawas Fernández v. Honduras*", of July 5, 2011.

CONCURRING OPINION OF JUDGE DIEGO GARCIA-SAYÁN
JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF BARBANI DUARTE *ET AL. v.* URUGUAY
OF OCTOBER 13, 2011

1. This judgment reiterates the consistent case law of the Inter-American Court concerning the guarantees that protect the individual in both judicial and non-judicial proceedings in which their rights or obligations are determined. Indeed, the judgment states that: "Article 8 of the American Convention establishes the standards of due process of law, which consists of a series of requirements that must be observed by the procedural instances, so that every person may defend his rights adequately when faced with any type of act of the State that may affect them" (para. 116). In this concurrent opinion I wish to emphasize that, on this issue, the Court is not innovating – and does not have to do so – but rather reiterating its case law on the scope of the guarantees of due process in non-judicial or administrative proceedings.

2. In this judgment, the Court specified that "Article 8(1) of the Convention is not applicable only to judges and courts. The guarantees established by this norm must be observed in the different procedures in which State bodies adopt decisions determining a person's rights, because the State also entrusts the function of adopting decisions that determine rights to administrative, collegiate or single-person authorities" (para. 118). Similarly, the Court emphasized that "[t]he guarantees established in Article 8(1) of the Convention are also applicable to the hypothesis in which a public authority adopts decisions that determine such rights, taking into account that the guarantees inherent in a jurisdictional body cannot be required of the former, but nevertheless it must comply with the guarantees designed to ensure that the decision is not arbitrary" (para. 119).

3. Overall, the issue of due process and judicial guarantees in proceedings before public bodies has been of fundamental importance in the case law of the Inter-American Court. And this is because, as the circumstances of the cases submitted to the Court have revealed, this is a matter that affects the rights of the individual very extensively and in different ways. When this judgment was adopted, in October 2011, the Court had declared a violation of Article 8 of the Convention in more than 95% of the cases it had heard and had referred to the content and requirements of this article in 50% of its advisory opinions. Thus, the issue of due process of law has been and continues to be present permanently in the cases submitted to the Inter-American Court.

4. The Court's consistent case law has interpreted broadly, in compliance with its mandate, the guarantees established in Article 8(2) of the Convention. Thus, it has consistently understood that the main elements of judicial protection extend to a wide range of presumptions and matters. Indeed, "even though the said article does not specify minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal or any other nature, the minimum guarantees established in the second paragraph of this article also apply in these areas and, consequently, in these areas the individual has the right to due process in the terms recognized by criminal law, to the extent applicable to the respective proceeding."[1]

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[1] *Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*. Judgment of February 6, 2001. Series C No. 74, para. 103; *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001. Series C No. 71, para. 70, and *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights)*. Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28.

5. The Court has been very specific and precise when establishing that certain components of the guarantees required to ensure due process are also applicable to the non-judicial sphere in a context in which issues that are relevant for the rights of the individual could be examined. Thus, the Court has understood in its previous case law that "the characteristics of impartiality and independence […] must govern every body responsible for determining the rights and obligations of the individual. In this regard, […] this should correspond not only to the organs that are strictly jurisdictional, but rather the provisions of Article 8(1) of the Convention also apply to the decisions of administrative bodies."[2]

6. Article 8 is called "right to a fair trial [Note: in Spanish "*garantías judiciales*"] and then refers to a "judge or court." However, the interpretation of this provision of the Convention cannot be restricted to the judicial sphere. To leave the understanding and interpretation of the article at this point would be exercising excessive self-restraint, and an unreasonable restrictive literal interpretation would immobilize its interpretation. Even without the said consistent case law, the fact is that the purpose of providing guarantees in the determination of rights and obligations flows from the very wording of Article 8(1) of the American Convention.

7. Indeed, from Article 8(1) it can be inferred that the evident significance of the treaty is its guarantee-based approach, because the judicial guarantees must be ensured "for the determination of [the] rights and obligations of a civil, labor, fiscal or any other nature" (*underlining added).* Consequently, the fact is that, despite the title of the said article, the guarantees extend to proceedings of other types. This has been and is the Court's consistent interpretation, which has elected invariably to favor the guarantees in the diverse situations that have been submitted to it in the cases subject to its consideration.

8. This does not mean that the Inter-American Court is using a discretionary criterion. To the contrary, in order to decide disputes concerning the interpretation of its provisions, the Court has made use,[3] as appropriate, of the rules of interpretation established in the Vienna Convention on the Law of Treaties, as well as the rules of interpretation established in the American Convention itself. The pertinent part of the Vienna Convention stipulates:

> *Article 31. General rule of interpretation*
>
> *1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. […]*
>
> *4. A special meaning shall be given to a term if it is established that the parties so intended.*

9. In this regard, the Court has taken into consideration, consistently, that the "ordinary meaning" of the treaty is related to its object and purpose so that the interpretation

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[2] *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010 Series C No. 218, para. 108.

[3] *Cf. Case of Ivcher Bronstein v. Peru. Competence.* Judgment of September 24, 1999. Series C No. 54, para. 38*; Case of Blake v. Guatemala. Interpretation of the judgment on reparations and costs.* Judgment of October 1, 1999. Series C No. 57, para. 21*, and Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 32.

made of it cannot result in any weakening of the system of protection embodied therein.[4] This is even more rigorous in the case of a human rights treaty such as the American Convention, in which there is an express intention of the parties to protect human rights in the sense defined by the Convention itself. Indeed, as we know, Article 29 of the Convention, entitled "Restrictions regarding Interpretation," stipulates precise guiding hermeneutic criteria that reveal the guaranteeing intention of the parties, from the perspective that, under no circumstance, the interpretation of the American Convention shall permit "any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein."

10. With regard to the matter in question, this "guarantee-based approach" points precisely to the fundamental elements of due process and the procedural guarantees. Hence, over and above whether the proceedings are before judicial authorities or before other mechanisms of the public authorities, in its consistent case law, the Court has reaffirmed – and reaffirms in this judgment – that the individual must have adequate guarantees to act and to defend his legitimate interests before the public authorities, with appropriate conditions of legality and rationality in proceedings in which his rights are defined.

11. This guarantee-based approach is fundamental. A restrictive and limited interpretation of the guarantees would not only go against the meaning and purpose of the treaty, but against the beneficial evolution of the institutional reality of our societies in the more than four decades that have elapsed since the approval of the Convention in 1969. To the interpretative basis reiterated in the case law of the Court and in separate opinions such as that of Sergio García Ramírez in the case of *Claude Reyes et al. v. Chile*[5] of September 19, 2006, I add this fundamental consideration related to an evolution in the functions and procedures of the States in most of the countries of the hemisphere.

12. Indeed, the sphere of competences for the determination of rights and obligations by non-judicial bodies is increasing in our societies. Consequently, the consistent case law of the Court, which indicates that it is not only in judicial proceedings that an individual has guarantees to assert his fundamental rights, and that the essence of these guarantees is established in Article 8, is fully coherent and meaningful. Evidently, a growing number of "rights and obligations" are decided in extrajudicial bodies, whether they be administrative, regulatory or extrajudicial. Ranging from matters that could be classified as "traditional" (such as those that are tax-related), to many others with profound patrimonial repercussions that fall within the broad and very diverse activities of regulation assigned to non-judicial bodies, such as, arbitration bodies, in the modern State.

13. According to the logical and teleological meaning of the purpose and contents of human rights instruments in general, and of the American Convention, in particular, because it is clear and essential that individuals should have firm guarantees in the situations in

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[4] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 30; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 42*; "Other treaties" subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights).* Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, paras. 43 to 48; *Restrictions to the Death Penalty (Arts. 4.2 and 4.4 American Convention on Human Rights).* Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paras. 47 to 50, and *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica.* Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 20 to 24, among others.

[5] *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs.* Judgment of September 19, 2006. Series C No. 151.

which their rights and obligations are established by public entities. And these guarantees do not emanate from discretional or arbitrary criteria of the Inter-American Court, but are supported by those that the States incorporated explicitly into the American Convention, in order to provide the individual with a basis of guarantees for the processing of his rights.

14. This consistent interpretation of the Court merely seeks to establish, in the exercise of its authority, that the States are obliged to ensure that the State organs that are called on to determine rights and obligations do so in a proceeding that grants the individual the necessary means to defend his legitimate interests and, consequently, the possibility of obtaining a decision that is duly founded, a fundamental requirement to ensure justice in each specific case.

15. Thus, the essential aspect of the contents of Article 8, does not reside in the nature of the authority within the constitutional system of a country, but rather in what the proceeding seeks to determine and decide concerning the guarantees in favor of the individual. If the meaning of the article is to offer certain basic guarantees in the determination of rights or obligations of the individual, it seems clear that the crucial and significant aspect is this, and not the nature of the authority. Hence, this appears to be the central criterion to establish that it is obligatory to respect the pertinent requirements of Article 8 in extrajudicial mechanisms. In other words, it is clear that the Convention has established that the rights of the individual must be ensured in both the non-judicial and judicial spheres, taking into account what is applicable in a non-judicial proceeding.

16. In this case we find ourselves faced with administrative proceedings filed against the Central Bank of Uruguay in which the Court has found a violation of the procedural guarantees of the individuals who initiated a procedure before this non-judicial entity of the Oriental Republic. Even though it is not a judicial authority, the Central Bank of Uruguay was obliged to respect the procedural guarantees established in Article 8 of the Convention, because the applicants' rights would be determined in this procedure. As the Court has established in its judgment, this did not happen in this case, both as regards the right to be heard of 539 victims and the due founding of the decision in the case of two of them.

17. Failure to observe some of these guarantees in the procedure before the Central Bank of Uruguay is the aspect that has led the Court to establish failure to respect the guarantees of Article 8 of the Convention in this case. Indeed, as stated in this judgment (para. 142), the "special administrative procedure was ineffective, in light of what it had to determine […], because the Central Bank made an incomplete analysis of the merits of the petitions; this meant that the State violated the material sphere of the right to be heard protected by Article 8(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 539 persons who filed a petition under article 31 of Law 17,613." The Court decided also (para. 185) that, since the State had not ensured an adequate founding of the decisions of the Central Bank corresponding to the claims of the victims Alicia Barbani Duarte and Jorge Marenales, a violation of the right to non-discriminatory treatment had been constituted, in relation to the procedural guarantee of an adequate reasoning [of the decision], protected in Articles 1(1) and 8(1) of the Convention.

18. The foregoing is particularly relevant not only for the development of non-judicial proceedings for the determination of rights and obligations, but also for the social need that the regulatory capacity of the State is strengthened and enhanced in areas such as

that of financial capital and banking institutions, in order to guarantee transparency, seriousness and rigor in the administration of financial resources that belong to thousands or millions of persons and to ensure conditions for the administration of these resources that do not affect financial and fiscal stability. All of this points to the need to expand and enhance the State's regulatory capacity, reinforcing non-judicial monitoring and control entities whose daily task involves determining the rights and obligations of many.

19. Thus, there is a great deal related to the future which is determined in criteria such as that contained in the consistent case law of the Court. An even though, in a judgment such as this one, it does not establish a public policy on the regulation of financial capital, it relates to the need of society and of the markets to strengthen this regulatory capacity. This requires reaffirming and, eventually, expanding the public capacity to determine rights and obligations in this area. Hence, it is important that, in this judgment, the Court consolidate its consistent case law, thereby contributing to establish guarantee-based parameters so that this reinforcement and expansion of regulatory faculties is carried out within clear norms of respect for the rights and guarantees of the individual.

Diego García-Sayán
Judge

Pablo Saavedra Alessandri
Secretary

CONCURRENT OPINION JUDGE MARGARETTE MAY MACAULAY
THE BARBANI *ET AL v.* URUGUAY
JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
OCTOBER 13, 2011

1. I feel constrained to state my concurrent opinion to the statements of the Majority decision as they appear in paragraphs 60, 115-123 of the said majority judgment, by adding the following on the issue and applicability of Article 8(1) of the Convention.

2. It is my view that Article 8(1) does not only relate to courts of law in the national arena but that its provisions relate to all tribunals; that is to say, to courts of law and other tribunals and bodies established under national legislation, to examine and decide issues which determine the rights and obligations of persons and impose punishment, liabilities and/or award compensation or other reparatory relief.

3. My view is supported by the ordinary and dictionary meaning of the word "tribunal", that is to say, a court of justice, or a seat or bench for a Judge or Judges, or a place of judgment, or a judicial authority, or a board appointed by the Government to adjudicate in some matter, especially one appointed to investigate a matter of public concern.

4. This consequently clearly encompasses courts of law and all administrative and quasi-judicial tribunals, including but not limited to civil service and police service commissions, professional committees and bodies and school boards which hear and adjudicate criminal charges and constitutional and civil claims and complaints of misconduct and/or mis-behaviour of the members of their respective bodies; and also labour, industrial and gender rights tribunals, which hear and determine matters relating to breaches of special legislative provisions which regulate conduct in those particular spheres.

5. It is my opinion that the wording of Article 8(1) of the American Convention permits no other interpretation but that stated in the existing jurisprudence of the Court, since the case *of The Constitutional Court vs. Peru-Merits, Reparations and Costs*. Judgment of January 31, 2001. Series C No.71 and followed by the majority of the Judges of the Court in the instant case.

6. Finally, to reiterate my opinion, any national tribunal which has the power through its proceedings and decisions to affect adversely or positively the rights and obligations of individuals must adhere to the provisions of Article 8(1) of the Convention.

Margarette May Macaulay
Judge

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE RHADYS ABREU BLONDET
JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF *BARBANI DUARTE ET AL. v. URUGUAY*
OF OCTOBER 13, 2011

1. I have decided to present a concurring opinion to the decision of the Inter-American Court concerning the interpretation and application of Article 8(1) of the American Convention in relation to the actions of the Advisory Commission and the Board of the Central Bank of Uruguay in the case of *Barbani Duarte et al.* I understand that the Court's decision was correct for the following reasons: (1) **No provision of the American Convention can be interpreted restrictively,** and (2) **It accords with the consistent case law of the Court.**

(1) No provision of the American Convention can be interpreted restrictively

2. Article 8(1) of the Pact of San José states the following:

> 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** (emphasis added).

3. According to the Convention, in the determination of the rights and obligations of every person, whether they are of a civil, labor, fiscal, or any other nature, due guarantees must be observed that ensure the right to due process, whatever the proceeding in question. Rather than limiting to the merely juridical sphere everything that relates to the rules of due process, this provision establishes the State's obligation to offer such guarantees in all procedural bodies, whether they are of judicial, administrative or other nature.

4. In addition, Article 29(b) of the Convention stipulates that "[n]o provision of this Convention shall be interpreted as: […] restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party."

5. Consequently, the wording of the article examined is clear to the effect that the States Parties to the Pact of San José are obliged to provide sufficient guarantees to any person who needs to determine his rights and obligations, regardless of the legal matter and the type of authority that decides the dispute (whether jurisdictional, administrative, or military in admissible cases; single person or collective). In addition, Article 29(b) of the Convention prohibits restrictive interpretation of this instrument.

6. Lastly, the principle of the progressive realization of human rights,[1] together with the rule of interpretation in keeping with the object and purpose of the treaty (1969 Vienna Convention) prohibits two aspects: (1) the restrictive interpretation of the articles of a human rights treaty, and (2) regression with regard to acquired rights owing to a broader interpretation applied previously. This assertion leads me to the second part of my opinion.

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[1] AYALA CORAO, Carlos. "*Recepción de la jurisprudencia internacional sobre derechos humanos por la jurisprudencia constitucional*". Revista Jurídica of the Faculty of Jurisprudence and Social and Political Sciences of the Universidad Católica de Santiago de Guayaquil. At: http://www.revistajuridicaonline.com/images/stories/revistas/2005/21/21_Recepcion_de_la_Jur.pdf

(2) The Court has merely ratified its consistent case law

7. Since the cases of the *Constitutional Court v. Peru* and *Baena Ricardo et al. v. Panama,* both in 2001, and up until the case of *Vélez Loor v. Panama* in 2010, ranging through cases such as *Ivcher Bronstein v. Peru* (2001), *Yatama v. Nicaragua* (2005), *Sawhoyamaxa Indigenous Community v. Paraguay* (2006), *Claude Reyes et al. v. Chile* (2006), *Apitz Barbera et al. v. Venezuela* (2008), and *Escher et al. v. Brazil* (2009), the Inter-American Court has reiterated that the Public Administration, in its different manifestations and dimensions, "is not excluded from complying with [the] obligation" to provide the interested party with "all the minimum guarantees that permit reaching just decisions." "The minimum guarantees must be respected in administrative proceedings and in any other proceeding in which the decision may affect the rights of the individual."[2]

8. In this regard, in the *case of Baena Ricardo*, the Inter-American Court considered that "[a]lthough Article 8 of the American Convention is entitled 'Right to a Fair Trial [Note: in Spanish: '*Garantias Judiciales*], its application is not limited strictly to judicial remedies, 'but [to the] whole series of requirements that must be observed in the procedural bodies' to ensure that the individual is able to defend his rights adequately in any type of act of the State that could affect them. In other words, any act or omission of the State bodies within a proceeding, whether it be administrative, disciplinary or jurisdictional, must respect due process of law."[3]

9. Similarly, in the *case of Yatama* with regard to Nicaragua, the Court indicated that "[a]ll the bodies that exercise functions of a jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantees of due process established in Article 8 of the American Convention." In this regard, it interpreted Article 8(1) broadly, establishing that this article refers "to the right of everyone to be heard by a 'competent judge or court' 'for the 'determination of his rights.'" In addition, the Court clarified that this expression refers to any "public authority," whether administrative, legislative or judicial, which, by its decisions, "may affect the determination of [the] rights" of the individual.[4]

10. On this basis, the application of Article 8(1) to decisions that determine rights and obligations of the individual in the administrative sphere is a *fait accompli* in the current status of the Court's case law, and Article 29(b) of the Pact prohibits a regressive interpretation.

11. It would be more interesting to discuss whether, based on the interpretation already made by the Court, Article 8(1) of the Convention would be applicable to the decisions issued by a Council of Elders or the equivalent authority in an indigenous community, taking into account that the latter's source of law, although it would not be the State, is, to a certain extent, sovereign, and its authority is recognized by some States Parties to the Convention for its members, provided that those decisions do not run counter to the norms of the State.

Rhadys Abreu Blondet

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[2] *Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 127.

[3] *Case of Baena Ricardo et al.*, *supra* nota 2, para. 124.

[4] *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs.* Judgment of June 23, 2005. Series C No. 127, para. 149.

Judge

Pablo Saavedra Alessandri
Secretary