INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF SPOLTORE V. ARGENTINA

JUDGMENT OF JUNE 9, 2020

(*Preliminary Objection, Merits, Reparations and Costs*)

In the case of *Spoltore v. Argentina*,

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

Elizabeth Odio Benito, President;
L. Patricio Pazmiño Freire, Vice-President;
Eduardo Vio Grossi, Judge;
Humberto Antonio Sierra Porto, Judge;
Eduardo Ferrer Mac-Gregor Poisot, Judge; and
Ricardo Pérez Manrique, Judge;

also present,

Pablo Saavedra Alessandri, Secretary,

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

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[*] Judge Eugenio Raúl Zaffaroni, an Argentine national, did not participate in the deliberation nor in the signature of this Judgment, in accordance with the provisions of Article 19(1) and 19(2) of the Rules of Procedure.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE CONTROVERSY

1. *The case submitted to the Court.* – On January 23, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of Victorio *Spoltore with regard to the*

Argentine Republic (hereinafter "the State," "the Argentine State" or "Argentina"). The Commission indicated that the case related to "the delay and denial of justice of Victorio Spoltore in the context of a labor proceedings derived from a claim for compensation due to occupational sickness in the company where he worked."[1] The proceedings "lasted 12 years, one month and 16 days. The Commission concluded that "the State did not adequately explain why Mr. Spoltore's legal claim for compensation took 12 years to be settled and that, consequently, the delay was excessive and violated the guarantee of resolution within a reasonable time." It also indicated that "on account of the foregoing, the proceedings did not afford an effective remedy for Mr. Spoltore." The Commission, therefore, concluded that "the Argentine State is responsible for violating the rights to a fair trial and to judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the obligations established in Article 1(1) thereof," to the detriment of Victorio Spoltore, who has since died.

2. *Procedure before the Commission*. – The procedure before the Commission was as follows:

a) Petition. – On September 11, 2000, Victorio Spoltore lodged the initial petition.

b) Admissibility Report. – On June 25, 2008, the Commission adopted Admissibility Report No. 65/08, in which it found the petition admissible.

c) Report on the Merits. – On July 5, 2017, the Commission adopted Report on the Merits No. 74/17, in which it reached a series of conclusions[2] and made several recommendations to the State.

3. *Notification to the State.* – The Report on the Merits was notified to the State on August 23, 2017, granting it two months to report on compliance with the recommendations. The State requested seven extensions, of which the Commission granted six. The Commission considered that while "there existed some progress with regard to compliance with its international obligations regarding a reasonable period for labor proceedings with the Reform of the Labor Justice in November 2018," the State had not "effectively complied with regard to the compensatory aspect of the recommendations." The Commission, therefore, decided not to grant the last request for an extension.

4. *Submission to the Court*. – On January 23, 2019, the Commission submitted the present case to the Court due to "the need to obtain justice and reparations."[3] This Tribunal notes with concern that more than 18 years had passed between the lodging of the initial petition to the Commission and the submission of the case to the Court.

5. *Requests of the Commission.* – Based on the foregoing, the Inter-American Commission requested that the Court conclude and declare the international responsibility of the State for the violations contained in the Report on the Merits and that it order the State, as measures of reparations, those included in the aforementioned Report.

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[1] Mr. Spoltore suffered a heart attack on May 14, 1984 and a second heart attack on May 11, 1986.

[2] The Commission concluded that the State is responsible for the violation of the rights to a fair trial and to judicial proceedings guaranteed by Articles 8(1) and 25(1) of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of Victorio Spoltore.

[3] The Commission appointed Commissioner Luis Ernesto Vargas Silva and its Executive Secretary, Paulo Abrão, as its delegates before the Court and Silvia Serrano Guzmán and Piero Vásquez Agüero, then lawyers of the Executive Secretariat, as its legal advisors.

II
PROCEDURE BEFORE THE COURT

6. *Notification to the State and to the representatives.* – The submission of the case was notified to the State and to the representatives on February 22, 2019.

7. *Brief with requests, arguments and evidence.* – On April 25, 2019, the Yopoi Collective on Human Rights (hereinafter "the representatives") presented its brief with requests, arguments and evidence (hereinafter "brief with requests and arguments"), in accordance with Articles 25 and 40 of the Rules of Procedure of the Court. The representatives took the same position as the Commission, adding that the State was also responsible for the violation of the rights to personal integrity (Article 5(1) of the Convention), to enjoy equitable and satisfactory working conditions and the enjoyment of the highest possible level of physical and mental health (Article 26 of the Convention), as well as to appeal a judgment and the duty to adopt provisions of domestic law (Article 8(2)(h) of the Convention, in relation to Articles 1(1) and 2 thereof). It also requested that the Court include family members of Mr. Spoltore as presumed victims in the case, alleging the violation of their right to personal integrity (Article 5(1) of the Convention). In addition, the representatives asked that the Court order the State to adopt various measures of reparations and the reimbursement of certain costs and expenses.

8. *Answering brief.* – On July 3, 2019, the State presented its brief on a preliminary objection and its response to the Commission's submission of the case, as well as its observations (hereinafter "answering brief") on the brief with requests and arguments. In its answering brief, the State filed a preliminary objection with regard to the failure to exhaust domestic remedies, disputing the alleged violations and the requests of measures of reparations made by the Commission and the representatives.

9. *Observations to the preliminary objection.* – On September 19, 2019, both the representatives and the Commission presented their observations on the preliminary objection.

10. *Public hearing.* – By Order of December 16, 2019, the President convoked the parties and the Commission to a public hearing in order to receive their final oral arguments and observations on the preliminary objection and the eventual merits, reparations and costs.[4] In addition, the Order convoked a witness to give testimony at the public hearing and authorized the receipt of the notarized statements of two witnesses and an expert. It also mandated the State to provide certain documentary evidence, pursuant to Article 58 of the Rules of Procedure. On January 8, 2020, the representatives requested that the notarized statement of the expert Mariano Rey be substituted for that of another expert. The State presented its observations to that request on January 13, 2020. By Order of the Court of January 27, 2020, it was decided to partially accept the request of the representatives and to order that the statement of the expert Mariano Rey be substituted for that of the expert Cintia Oberti.[5] The public hearing was held February 5, 2020 in San José, Costa Rica.[6] At the hearing, the judges requested the Commission and the parties to provide certain information.

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[4] *Cf. Case of Spoltore v. Argentina. Convocation to a Hearing.* Order of the President of the Court of December 16, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/spoltore_16_12_19.pdf

[5] *Cf. Case of Spoltore v. Argentina. Convocation to a Hearing.* Order of the President of the Court of January 27, 2020. Available at:http://www.corteidh.or.cr/docs/asuntos/spoltore_27_01_2020.pdf

[6] Appearing at the hearing were: a) for the Inter-American Commission: Marisol Blanchard, Deputy Executive Secretary, Jorge H. Meza Flores and Christian Gonzáles, Advisors to the Commission; b) for the representatives of the alleged victim: Marcos Ezequiel Filardi, lawyer, and Gabriel Fernando Bicinskas, lawyer, and c) for the Argentine State: Javier A. Salgado, Director of International Litigation in the Area of Human Rights of the Ministry of Foreign Affairs and Titular Agent in the present case; Gonzalo Bueno, lawyer in the Office of International Litigation in the

11. *Partial recognition of international responsibility.* – On February 5, 2020, at the public hearing, the Argentine State partially recognized, subsidiarily in the event that the preliminary objection was not accepted, international responsibility for the human rights violations alleged in the Report on the Merits.

12. *Amici Curiae.* – The Tribunal received *amicus curiae* briefs from: 1) Servicio Paz y Justicia (SERPAJ);[7] 2) Espacio Intersindical, Salud, Trabajo y Participación de los Trabajadores;[8] 3) Foro Medio Ambiental de San Nicolás, Generaciones Futuras and Cuenca del Rio Paraná;[9] 4) Alejandra Gonza, as Director of Global Rights Advocacy,[10] and 5) Xavier Flores Aguirre.[11]

13. *Final written arguments and observations and evidence obtained de oficio*. – On March 6, 2020, the State, the representatives and the Commission submitted their final written arguments and final written observations. On the same date, the State submitted the documentary evidence obtained *de oficio* in the Order of Convocation.

14. *Observations on the evidence obtained de oficio*. – On April 30 and May 15, 2020, the Commission and the representatives, respectively, presented their observations to the documentary evidence requested by the Court and submitted by the State with its final written arguments

15. *Deliberation of the present case.* – The Court deliberated on this Judgment, in virtual sessions, on June 8 and 9, 2020.[12]

III
JURISDICTION

16. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, because Argentina has been a State Party to the Convention since September 5, 1984 and it accepted the contentious jurisdiction of the Court on that same date.

IV
PRELIMINARY OBJECTION

A. Arguments of the parties and of the Commission

Area of Human Rights in the Ministry of Foreign Affairs and Alternate Agent in the present case, and Andrea Pochak, Under Secretary for the Protection of Human Rights and International Liaison and Alternate Agent in the present case.

7 The brief was signed by Ana Almada, Adolfo Pérez Ezquivel, Elizabeth Quintero, Cecilia Valergas and Mariana Katz. The brief describes the problems caused by the failure to recognize Mr. Spoltore's family members as alleged victims and the importance of training in human rights.

8 The brief was signed by Elsa Lilian Capone and Gastón Valente. The brief describes the relationship between the rights to the protection of judicial guarantees and to judicial protection with regard to the health of workers.

9 The brief was signed by Lucas Landívar, Juan Ignacio Pereyra Queles and Fabián Andrés Maggi. The brief argues that the Argentine State should ensure access to jurisdiction for State responsibility as much on the national level on the provincial.

10 The brief was signed by Alejandra Gonza. The brief argues that the Court should review its interpretation on its authority to include, as victims, individuals who have not been mentioned in the Report on the Merits.

11 The brief was signed by Xavier Flores Aguirre. The brief describes the standards to view the case in light of the relationship between human rights and businesses.

12 Due to the exceptional circumstances caused by the COVID-19 pandemic, this Judgment was deliberated and adopted during the Court's 135th Session, which was held virtually using technological resources, in accordance with the provisions of the Rules of Procedure. See Press Release No. 39/2020 of May 25, 2020. Available at: http://www.corteidh.or.cr/docs/comunicados/cp_39_2020.pdf

17. The ***State*** alleged that the domestic remedies were not adequately exhausted. It stated that the remedies pursued by Mr. Spoltore "were not appropriate to claim reparations for the harm caused by the alleged unjustified delay in the administration of justice." It indicated that the complaint presented to the Office of the Inspector General of the Supreme Court of Justice of the Province of Buenos Aires to determine administrative responsibilities could not grant Mr. Spoltore reparations for the harm caused "although it could hold the individuals allegedly responsible for the delay in the administration of justice, in view of the broadening of the disciplinary sanctions." The State maintained that the *recurso de inaplicabilidad,* or appeal for reversal of a decision that contradicts established doctrine (hereinafter "appeal for reversal"), that was filed "has as its object to verify and, if necessary, to rectify the errors of law that the appeals courts and the courts of first instance might have made in the judgment (errors *in judicando*)." On the other hand, the *recurso de nulidad* (hereinafter "motion to vacate") filed to the Supreme Court of Justice of the Province of Buenos Aires (hereinafter "SCJBA") "is a motion that requests the SCJBA to vacate the judgments that have not observed the formal requisites established by the provincial Constitution" and the SCJBA can only "vacate the decision and order the matter returned to another court for a new judgment." The State indicated that "although these special appeals might have reversed the decision of the court of the first instance, the alleged harm caused by the alleged delay in the labor proceedings would not have resulted in any reparation, except for the possibility that the eventual success of the complaint regarding an occupational sickness is confused with the possible harmful consequence of a delayed judicial process."

18. The State further alleged that, although Mr. Spoltore claimed a harm caused by the alleged delay in the administration of justice, "he should have pursued those remedies available domestically that might determine the civil liability of the State for the harm allegedly caused." The State pointed out that "in order to claim full reparation for the harm presumably caused him, the petitioner should have filed suit for economic injury against the provincial government for the irregular exercise of its judicial function, a circumstance that is not substantiated in the present case." It further maintained that "the adequacy and efficacy of this action is clearly revealed in the jurisprudential precedents that have allowed for the possibility of obtaining redress for the harm done in circumstances similar to those denounced by the petitioner."

19. The ***Commission*** indicated that in the admissibility phase "it corroborated that the requirement of the prior exhaustion of domestic remedies was met by the labor proceedings. At the same time, Mr. Spoltore filed a complaint to the Office of the Inspector General to resolve his case, which resulted in a disciplinary sanction for those responsible for the delay." The Commission considered that "a different rationale, or requiring the exhaustion of other alleged remedies that do not meet the requirement of exhaustion in the terms of Article 46(1) of the American Convention and Article 31 of the Rules of Procedure would have aggravated the victim's situation." Bearing in mind the information on doctrine provided by the State, the Commission found that it did not demonstrate, *prima facie*, that the remedy that the State claimed was not exhausted complied with the Convention's requirement that it be adequate and effective. It also pointed out the "lack of a specific norm in the Province of Buenos Aires for filing a reparatory action for the violation in question." Finally, it indicated that "while the State invoked an action of damages at the admissibility phase, the basis for its adequacy and effectiveness is distinct from what it submitted to the […] Court in its answer." Moreover, the Commission informed that the judicial precedents submitted to the Court had not been submitted to the Commission.

20. The ***representatives*** maintained that, in view of the State's acceptance of international responsibility in this case, the preliminary objection should be rejected as incompatible with that recognition. The representatives also indicated that the circumstances of the precedents cited by the State were not analogous to those of the present case. As the Commission indicated, "an action of damages against the State for judicial delay in a case with these

characteristics is a theoretical possibility based on one part of the doctrine, but it has not had any influence on jurisprudential practice to date." They stated that, after proceedings that exceeded a reasonable period and the filing of special remedies, to require the alleged victim to initiate "an action of damages against the provincial State is at the very least excessive." They underscored that "after having presented two appeals, consecutively and not simultaneously, to exhaust the domestic remedies and now to resort to the [inter-American system] extends even further the length of time of the claims."

B. Considerations of the Court

21. The Court notes that, at the public hearing, the State indicated that, in the event that its preliminary objection was not accepted, it would recognize its responsibility for the excessive delay of the judicial proceedings in which Mr. Spoltore requested compensation for occupational sickness, The Court has stated, on previous occasions, that by recognizing responsibility the State has accepted the full jurisdiction of the Court to hear the case and, thus, the filing of a preliminary objection on the failure to exhaust domestic remedies is, in principle, incompatible with that recognition.[13] In the present case, the State was emphatic in pointing out that the recognition of responsibility was made subsidiarily in the event that the preliminary objection was rejected. It also recalled that, due to the complementary nature of the inter-American system, States should be able to resolve possible breaches of the rights established in the Convention in their domestic courts. This possibility of resolving the breaches is ensured by the requirement that domestic remedies be exhausted in order that the petition be admissible. By assuming responsibility, the State accepts that the length of the proceedings involving Mr. Spoltore and a private company was excessive. Nonetheless, such recognition of responsibility does not include an acceptance of the facts on whether there was an exhaustion of domestic remedies for the violation of the American Convention accepted by the State or whether any of the exceptions established by the Convention for the exhaustion of domestic remedies were applicable. Therefore, the Court does not consider that they are incompatible in this case and will proceed to examine the issues that have been raised.

22. Article 46(1) of the American Convention states that, in order to determine the admissibility of a petition or communication lodged with the Inter-American Commission, in accordance with Articles 44 or 45 of the Convention, the domestic remedies must be pursued and exhausted in accordance with generally recognized principles of international law.[14] The Court recalls that the rule of the prior exhaustion of domestic remedies is conceived in the interest of the State since it seeks to excuse it from answering to an international body for acts that have been imputed to it before having the possibility of rectifying them by its own means.[15] This means that not only must those remedies formally exist but they also must be adequate and effective, as a result of the exceptions found in Article 46(2) of the Convention.[16]

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[13] Similarly, with regard to preliminary objections for the failure to exhaust domestic remedies, *cf. Case of the Mapiripán Massacre v. Colombia. Preliminary Objections.* Judgment of March 7, 2005. Series C No. 122, para. 30 and *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2013. Series C No. 266, para. 29.

[14] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 85 and *Case of the Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 394, para. 18.

[15] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, *supra*, para. 61 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, para. 25.

[16] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, *supra*, para. 86 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 25.

23. This Court has constantly been of the view that an objection to the exercise of the jurisdiction of the Court, based on the alleged failure to exhaust domestic remedies, must be presented at the appropriate procedural moment, that is, during the admissibility stage before the Commission,[17] after which the principle of procedural preclusion governs.[18] In this regard, the Court reiterates that it is not the task of the Court, nor of the Commission, to identify *ex oficio* which domestic remedies are to be exhausted, since it is not incumbent on the international bodies to rectify the lack of precision of the State's arguments.[19]

24. In view of the above, the Court finds it necessary in the present case to examine: a) whether the objection on the exhaustion of remedies was presented at the appropriate procedural moment and b) whether adequate and effective remedies to exhaust exist in the domestic jurisdiction.

B.1 The presentation of the objection at the appropriate procedural moment

25. The Court notes that the Commission began to process the petition on October 6, 2003. On November 25, 2003, the State requested that the Commission grant it an extension of one month to submit its observations. On December 16, 2003, the Commission granted the extension.

26. The State submitted its report on June 17, 2004, in which it indicated that "Victorio Spoltore had not exhausted the remedies available in the local jurisdiction to repair the violation." The State specifically maintained that he "should have filed suit for economic injury against the provincial government for the irregular exercise of its judicial function." It also noted that "according to the national doctrine regarding civil liability, in cases in which judicial officers fail to abide by their legal obligation to administer justice, the State is directly responsible." The State explained that "its jurisprudence has opened the possibility of obtaining redress for damages under similar circumstances as that claimed by the petitioner. To date, the Supreme Court has not had the opportunity to specifically intervene in a case on the alleged unreasonable length of a judicial proceeding. The Supreme Court has, however, through numerous decisions developed general criteria that define the conditions for filing an action of damages against the State based on the unlawful administration of justice, when that implies the inadequate compliance of the functions that belong to the judiciary." The State thus affirmed that, in the present case, a suit for damages against the provincial government was the appropriate remedy to be exhausted by the petitioner.[20]

27. Note is taken that the State identified with sufficient clarity that the remedy that was not exhausted was a suit for damages against the provincial government. The State also explained that the remedies filed by the alleged victim were not those that were adequate to resolve the situation.[21] Before the Commission, the petitioner did not deny that a suit for damages was available.

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[17] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, *supra*, para. 88 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 26.

[18] *Cf. Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 22, 2015. Series C No. 293, para. 28 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 26.

[19] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, *supra*, para. 88 and *Case of Gómez Virula et al. v. Guatemala*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 393, para. 17.

[20] *Cf.* Report submitted by the State to the Commission on June 17, 2004 (evidence file, folios 277 to 279).

[21] *Cf.* Report submitted by the State to the Commission on June 17, 2004 (evidence file, folios 280 a 281).

28. Furthermore, according to the Tribunal's jurisprudence, the arguments that substantiate the preliminary objection filed by the State during the admissibility stage should be similar to those presented to the Court.[22] The Court notes that, in its answering brief and at the public hearing, the State made statements that agreed with those that it made before the Inter-American Commission. It is important to mention that the State may clarify its arguments and present additional evidence before the Court, without that implying a modification in the arguments on which it based its preliminary objection. This Tribunal notes that the argument made before the Court on judicial precedents that were not made before the Commission does not imply that the State had modified the substance of its arguments.

B.2 The existence of adequate and effective remedies to exhaust in the domestic jurisdiction

29. The present case concerns the alleged excessive length of a judicial proceeding initiated against a private business which employed the alleged victim. Unlike other cases of an alleged violation of a reasonable period, the alleged international violation had been produced during the proceedings in the present case. Therefore, to comply with the requirement of the exhaustion of domestic remedies it was necessary to exhaust some remedy that would give the State the opportunity to resolve the matter internally.

30. After the decision of the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires (hereinafter "Labor Court") of June 3, 1997, Mr. Spoltore filed a special appeal for reversal and a motion to vacate.[23] In the appeal for reversal, he alleged that the decision of the Labor Court was "intrinsically defective, since it was the result of an interpretation that is contrary to the rules of logic and to the history of analyzing and assessing the evidence."[24] He also claimed that the proceedings before the Labor Court were neither simple nor brief.[25] He requested an order for "the full reparation that the law allows to the petitioner, as well as for his condition of anomia that was placed on the record."[26] In the motion to vacate, he asked that the decision of the Labor Court be revoked, alleging, among others, the excessive length of the proceedings before the Labor Court.[27] On August 16, 2000, the SCJBA rejected both appeals.[28]

31. This Court notes that those remedies were not capable of rectifying the harm caused by the alleged delay of the judicial proceedings. With respect to the special appeal for reversal, the Code of Civil and Commercial Procedure of the Province of Buenos Aires establishes that it should be "based on some of the following causes: a) that the decision has violated the law or the legal doctrine and b) that the decision has erroneously applied the law or the legal doctrine." This remedy can "rectify errors of law in which the appeals courts or courts of first instance may incur." The purpose of the motion to vacate is to render without effect a decision and to send the case to another court so that it might be newly decided.

32. Concurrently, the alleged victim requested that an administrative disciplinary investigation be opened to examine the conduct of the Labor Court. On April 13, 1999, the

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22 *Cf. Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2012. Series C No. 246, para. 29 and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of September 26, 2018. Series C No. 362, para. 22.

23 *Cf.* Special appeal for reversal of September 2, 1997 (evidence file, folio 25) and motion to vacate of April 29, 1999 (evidence file, folios 45 and 47).

24 *Cf.* Special appeal for reversal of September 2, 1997 (evidence file, folio 27).

25 *Cf.* Special appeal for reversal of September 2, 1997 (evidence file, folio 35).

26 *Cf.* Special appeal for reversal of September 2, 1997 (evidence file, folio 36).

27 *Cf.* Motion to vacate of April 29, 1999 (evidence file, folios 45 and 47).

28 *Cf.* Order of the SCJBA of August 16, 2000 (evidence file, folios 21 and 22).

SCJBA issued a resolution whereby it held as proved "two anomalies" regarding the delays in the case before the Labor Court. The SCJBA explained that "the excessive amount of work in the Court during the period investigated, the health problems of the official responsible for the file and the lack of disciplinary antecedents resulted in a failure to rectify the situation, but that it would take the necessary measures to avoid a repetition of similar situations in the future." For these reasons, the SCJBA decided "to reprimand the secretariat of the Labor Court No. 3 of San Isidro."[29] This Tribunal, however, considers that the disciplinary investigation in the present case does not constitute a remedy capable of protecting the legal situation that was breached.

33. According to the State, the effective remedy to resolve the petitioner's situation was a suit for damages that would grant the alleged victim reparations for the harm caused.

34. The Argentine Civil Code, in force at the time of the events, established that a suit for damages was appropriate for "the acts and omissions of public officials in the exercise of their functions, for not complying, except in an irregular manner, with their legal obligations that are included in the provisions of this Code."[30]

35. The State referred to two decisions of the Supreme Court of Justice of the Nation and a decision of the Judge of the Contentious-Administrative Court of the First Instance No. 1 of the Judicial Department of La Plata that heard suits for damages due to judicial delays in non-labor proceedings.[31] The State, however, did not provide copies of those decisions. The Court clarifies that the State has the burden of proof to show the availability, adequacy and practical effectiveness of the remedy that it alleges should have been exhausted.[32] In addition, Argentina recognized that suits for damages have not been utilized in cases of excessive judicial delays in labor proceedings. This Tribunal, therefore, considers that it was an excessive burden for the alleged victim to be required to exhaust a remedy that had not been utilized in practice for the purposes that the State claims that it had. Therefore, this preliminary objection is rejected.

V
PARTIAL RECOGNITION OF INTERNATIONAL RESPONSIBILITY

A. Observations of the parties and of the Commission

36. The ***State***, subsidiarily to its arguments on the preliminary objection, partially recognized its international responsibility. It stated that "the position of the new authorities in charge of the Secretariat of Human Rights is that the judicial proceedings in question were not particularly complex and that, generally speaking, the petitioner who, in addition was a person with a disability, gave an expected boost to the proceedings. It is, therefore,

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29 *Cf.* Order of the SCJBA of April 16, 1999 (evidence file, folio 324).

30 Civil Code of Argentina of September 25 1869, Articles 1109 and 1112.

31 The precedent of 1999 "Rosa, Carlos Alberto v. Ministry of Justice et al./various damages" implied the responsibility of the State for the length of preventive detention during a criminal process. The precedent "Arisnabarreta, R.J v. Ministry of Education and Justice) on trials on the merits" regarding State responsibility for the excessive length of a criminal proceeding that ended in acquittal and in which preventive detention had been ordered without effective detention. The precedent "Rosales, Miguel Angel v. Judicial Branch on compensation claims" concerning State responsibility for the unjustified delay in the return of an automobile subject to the measure of judicial deposit.

32 *Cf*. *Mutatis mutandis*, *Case of Galindo Cárdenas et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 2, 2015. Series C No. 301, para. 42 and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329. Series C No. 315, para. 38.

unreasonable to think that the judicial authorities would have taken twelve years to clarify whether the law was favorable to his claim of occupational sickness against his employer." At the public hearing, the State manifested the following:

> With exclusive attention to the special nature of this case, Argentina agrees that it should recognize the responsibility of the State for the violation of the guarantee of a reasonable period enshrined in Article 8(1) of the American Convention on Human Rights and, consequently, of the right to judicial protection set forth in Article 25 of the Convention, in relation to Article 1(1) thereof.
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> [The State requested] that Alejandro Nicolás Spoltore, Liliana Estela Spoltore and Rosalinda Campitelli be rejected as victims in the present case; that the allegations included in the [brief with requests and arguments] for the alleged violation of Articles 5, 8(2)(h), 25 and 26, in relation to Articles 1(1) and 2 of the American Convention be rejected, as well as the recent arguments regarding Article 17. That the requested compensation be rejected and that the only appropriate measures of reparations in the present case would be to publish this Judgment and to develop international standards that could be of interest in selecting the institutional measures that would contribute to the improvement of the administration of justice in labor matters in the Province of Buenos Aires and throughout our country.

37. The ***representatives*** reacted positively to the partial recognition of responsibility. However, they reiterated that the State had also violated the right to appeal a judgment (Article 8(2)(h) of the Convention), the obligation to adapt its domestic order (Article 2 of the Convention), the right to equitable and satisfactory working conditions and the right to health (Article 26 of the Convention), the right to personal integrity (Article 5(1) of the Convention), the right to protection of the family (Article 17 of the Convention), in relation to the obligations of respect and guarantee (Article 1(1) of the Convention), to the detriment of Mr. Spoltore. With regard to the family members of Mr. Spoltore, they alleged violations of their rights to personal integrity and to the protection of the family, in relation to the obligations to respect and to guarantee (Articles 5 and 17 of the Convention, in relation to Article 1(1) thereof).

38. The ***Commission*** manifested that the State's recognition of the violation of the guarantee of a reasonable period in the present case "represents a very positive step for the dignity and for the reparation of the victim. It, therefore, considered settled the part of the complaint brought by the victim regarding "the controversy on the violation of Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, with regard to the violation of the guarantee of a reasonable period in the context of the proceedings initiated by the victim. The Commission noted that "the controversy on the other aspects raised by the representatives, including some components of Article [8] of the Convention, such as the right to health of the victim and the right to integrity of the family, was still under consideration." The Commission also observed that the State did not recognize the right to integral reparation derived from the recognition of responsibility, which in its opinion would contradict the meaning of the recognition. The Commission, therefore, requested that the Court evaluate the recognition of the State and give it full legal effect.

B. Considerations of the Court

39. Pursuant to Articles 62 and 64 of the Rules of Procedure, and in exercise of its international judicial oversight of human rights, which is a matter of public international order, it is incumbent on this Tribunal to ensure that acts of recognition of responsibility meet the aims that the inter-American system seeks to fulfill.[33] The Tribunal shall now analyze the situation presented in this case.

B.1. As to the facts

[33] *Cf. Case of Manuel Cepeda Vargas v. Colombia*. *Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213, para. 17 and *Case of Noguera et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of March 9, 2020. Series C No. 401, para. 21.

40. In the present case, the State partially recognized its responsibility with respect to certain alleged violations of the American Convention, without admitting clearly and specifically which acts, described in the Commission's Report on the Merits or in the representatives' brief with requests and arguments, formed the basis of the recognition. As it has stated in other cases,[34] this Tribunal considers that it should be understood that the State accepted the facts that, according to the Report on the Merits that established the facts, make up the violation recognized in the terms in which the case was submitted. Thus, the Court understands that the State has recognized the excessive delay in the proceedings for compensation for occupational sickness. Not included in that acceptance are the facts presented by the representatives that substantiate the violations of the American Convention that they autonomously alleged.

B.2. As to the law

41. Bearing in mind the violations recognized by the State, as well as the observations of the representatives and of the Commission, the Court considers that the controversy has ceased with respect to the violation of the guarantee of a reasonable period and of the judicial guarantee established in Articles 8(1) and 25 of the American Convention, to the detriment of Victorio Spoltore, as a consequence of the excessive delay of the proceedings in which Mr. Spoltore requested compensation for occupational sickness.

42. The controversy remains, nevertheless, for the violations alleged autonomously by the representatives regarding the obligation to adopt provisions of domestic law, the right to personal integrity, the right to appeal a judgment, the right to protection of the family, to judicial protection, the right to health and to equitable and satisfactory working conditions, established in Articles 2, 5, 8(2)(h), 17, 25 and 26 of the American Convention.

B.3. As to the reparations

43. With reference to the measures of reparation, the Court notes that the State considered compensation inappropriate and that "the only appropriate measures of reparations in the present case would be to publish this Judgment and to develop international standards that would be of interest in selecting the institutional measures that would contribute to the improvement of the administration of justice in labor matters in the Province of Buenos Aires and throughout our country." In the relevant Chapter, the Court shall assess the need to grant measures of reparation, taking into account the requests presented by the Commission and by the representatives, the Court's jurisprudence and the State's arguments on the matter (*infra* Chapter X).

B.4. Evaluation of the partial recognition of responsibility

44. The recognition made by the State is a partial acceptance of the facts and a partial recognition of the alleged violations. This Tribunal considers that the recognition of international responsibility is a positive contribution to this process and to the validity of the principles that inspire the Convention, as well as the reparative needs of the victims.[35] The recognition made by the State has full legal effect, in accordance with the aforementioned Articles 62 and 64 of the Rules of Procedure, and has a high symbolic value with a view to the non-repetition of similar acts. In addition, the Court notes that the recognition of the facts and

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[34] *Cf. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of July 4, 2007. Series C No. 16, para. 17 and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs*, *supra*, para. 29.

[35] *Cf. Case of Benavides Cevallos v. Ecuador. Merits, Reparations and Costs.* Judgment of June 19, 1998. Series C No. 38, para. 57 and *Case of Noguera et al. v. Paraguay. Merits, Reparations and Costs*, *supra*, para. 27.

specific violations may have effects and consequences on the analysis that the Court may make on the other alleged facts and violations as they are all a part of the same set of circumstances.[36]

45. In view of the special circumstances of the present case, the Tribunal does not find it necessary to open a discussion on the point that was the reason for recognizing responsibility, that is, the excessive length of the proceedings for compensation for an occupational sickness and the ensuing violation of the rights to a fair trial and to judicial protection, to the detriment of Victorio Spoltore. The Court recalls that in cases that involve harm to an individual who is in a situation of vulnerability, as in cases of a person with a disability, the Court has been clear in stating that the judicial authorities must act with greater diligence.[37] In those cases, it is imperative that the authorities in charge give priority to closely following and resolving the proceedings in order to avoid delays in processing the cases so as to ensure their prompt resolution and execution.[38]

46. The Court shall now examine the scope of the violations, on which the controversy is based and which has been invoked autonomously by the representatives. Finally, the Tribunal shall decide on the underlying controversy regarding the reparations requested by the Commission and by the representatives.

VI
PRIOR CONSIDERATION

A. Arguments of the parties and of the Commission

47. The ***representatives*** requested that the Court consider Liliana Spoltore, Alejandro Spoltore and Rosalinda Campitelli as presumed victims in the case. They specifically alleged that family members of Mr. Spoltore "suffered the consequences of the occupational sickness of Victorio, the loss of work, the disability, the economic consequences and the subjection to an interminable judicial proceeding that did not meet the minimum guarantees of due process of law." They added that: i) Article 35 of the Rules should be interpreted in light of the *pro homine* principle and that of *effet utile* and that ii) Article 35 of the Rules cannot be interpreted harmonically with the current position of the Court, which "directly clashes with Article 63 of the Convention" by limiting the *locus standi* of the alleged victims. They, therefore, requested that the Court "ignore that part of the Rules and, in seeking the *effet utile* of Article 63(1) of the Convention, begin an analysis of this controversy by examining whether there was a violation of the [Convention]."

48. The ***State*** maintained that "any characterization of family members of Victorio Spoltore as presumed victims should be rejected." Argentina argued that such a characterization was not argued before the Commission, which did not consider them as such. Therefore, "to incorporate them at this instance not only alters the procedural object of the case, but also would violate the proper exercise of the defense of the State"

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[36] *Cf. Case of Rodríguez Vera et al. (The disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 14, 2014. Series C No. 287, para. 27 and *Case of Noguera et al. v. Paraguay. Merits, Reparations and Costs*, *supra*, para. 27.

[37] *Cf. Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs, supra,* para. 202 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 157.

[38] *Cf. Mutatis mutandis, Case of Furlan and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 196 and *Case of the Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 148.

49. The ***Commission*** stated, in its Report on the Merits No. 74/17, that the alleged victim is Victorio Spoltore.

B. Considerations of the Court

50. With respect to the identification of the alleged victims, the Court recalls that Article 35(1) of its Rules of Procedure states that the case shall be submitted by means of the presentation of the Report on the Merits, which must identify the alleged victims. Thus, it is for the Commission to identify, precisely and at the proper procedural moment, the alleged victims in a case brought before the Court,[39] except in the exceptional circumstances cited in Article 35(2) of the Rules, according to which it may be justified when it is not possible to identify them as in the case of massive or collective violations. The Tribunal shall then decide at the appropriate moment whether they should be considered victims, depending on the nature of the violation.[40]

51. This Tribunal notes that the Commission, in its Report on the Merits, did not determine that those persons were presumed victims. The Court points out that the representatives made this argument for the first time before the Court in their brief with requests and arguments.

52. In view of the foregoing, the Court deems that, pursuant to Article 35(1) of the Rules of Procedure, in order to safeguard the procedural balance of the parties and the right of defense of the State, the request of the representatives to include the family members of the alleged victim is improper.[41] Consequently, the only individual who can be considered an alleged victim, identified as such in the Report on the Merits, is Victorio Spoltore.

VII
EVIDENCE

A. Admission of documentary evidence

53. In the present case, as in others, this Tribunal admits those documents presented in a timely fashion by the parties and by the Commission, as well as the evidence submitted by the State at the request of the President, pursuant to Article 58, which was not challenged or objected to[42] and the authenticity of which was not challenged. Nonetheless, the Court shall make certain relevant considerations on the matter.

54. The Court recalls that, in the Order of Convocation, and at the request of the representatives, the President of the Court ordered the State to provide, pursuant to Article 58 of the Rules of Procedure (*supra*, para. 7), two files that are relevant to the present case.[43]

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[39] *Cf. Case of the Massacres of Ituango v. Colombia. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2006. Series C No. 148, para. 98 and *Case of Noguera et al. v. Paraguay. Merits, Reparations and Costs*, *supra*, para. 15.

[40] *Cf. Case of the Massacres of Río Negro v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 4, 2012. Series C No. 250, para. 48 and *Case of Arrom Suhurt et al. v. Paraguay. Merits.* Judgment of May 13, 2019. Series C No. 377, para. 26.

[41] *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359, para. 29.

[42] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 21, 2018. Series C No. 368, para.64.

[43] The President requested the State to submit: i) file 12.515 of the Registry of the Labor Court No. 3 of San Isidro and ii) administrative file IGSCPBA No 3.001-1.225/97 lodged by Victorio Spoltore before the General Direction of the SCJBA. *Cf. Case of Spoltore v. Argentina. Convocation to Hearing.* Order of the President of the Court of December 16, 2019, Consideration 10 and Point 14.

At the hearing, the Court also requested information concerning the file on the dismissal of Mr. Spoltore.

55. In response the request, the ***State*** submitted a certified copy of the file of the judicial proceedings for occupational sickness, which the Court admitted and incorporated into the record of the case.[44] As to the second request for evidence, the State informed the Court that the file of the complaint made by Mr. Spoltore to the Office of the Inspector General of the SCJBA "has been misplaced, so that unfortunately it cannot be produced." As to the file of the judicial proceedings on the dismissal of Mr. Spoltore, Argentina stated that "the Under Secretariat of Management Control of the Supreme Court of Justice of the Province of Buenos Aires has informed that the [file] cannot be found."

56. The ***Commission*** argued that "the State simply certified that those files are lost, but it did not inform whether the respective tribunals had issued orders to locate them, or that they had initiated procedures to reconstitute them or to determine the possible responsibilities for their loss or theft. It was the State itself, however, that was the custodian of such records." In view of the State's lack of evidence to support its arguments, the Commission requested this Tribunal to ignore the State's arguments that were based on the existence of the procedure for indirect dismissal, since such determinations had not been reliably accredited.

57. The ***representatives*** observed that the records that were misplaced "had elements of interest that would clear up some questions related to the present case." In addition, with respect to the file on the proceedings related to the dismissal, they indicated that the State's response to the request "mentions another file number," which means that "it is not possible to know for sure whether the search was carried out for the file with the [correct] number."

58. The Court takes note that the State did not provide a part of the evidence that had been requested because it had been misplaced. The Tribunal shall evaluate those circumstances, together with the totality of the record, to determine the facts and the scope of State responsibility, bearing in mind that "for the effects of the international jurisdiction of this Tribunal, it is the State that has control of the means to clarify the facts that occurred within its territory and, therefore, its defense cannot rest on the impossibility of the petitioner to provide evidence that, in many cases, cannot be obtained without the cooperation of the State authorities."[45]

59. For its part, the ***State*** objected to the admissibility of Appendix 15 to the brief with requests and arguments that deals with the "clinical history and epicrisis of Rosalinda Campitelli." The State requested that such evidence not be admitted because it considered it "improper and outside the object of the present case."

60. The Court observes that the evidence challenged by the State refers to the effect on the health of Rosalinda Campitelli, who is not an alleged victim in the present case (*supra* para. 52). Therefore, the Court considers that Appendix 15 to the brief with requests and arguments is not admissible.

C. Admissibility of the testimonial and expert evidence

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[44] *Cf*. File 12.515/88 of the Labor Court No. 3 of San Isidro (evidence file, folios 2017 to 2854).

[45] *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 89 and *Case of López Soto et al. v. Venezuela. Merits, Reparations and Costs*, *supra*, para. 53. See also: *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra*, para. 135 and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 230.

61. The Court is of the opinion that it is relevant to admit the statements of the witnesses in the public hearing[46] and before a public notary,[47] which are germane to the object that was defined by the President in the order that authorized their reception and the object of the present case.

62. For its part, the ***State*** made observations on the content of the testimony of Cintia Oberti, an expert who was offered by the representatives. The State pointed out that: i) the State was not provided the opportunity to ask questions; ii) its object "appears to anticipate possible conclusions" and iii) "there is no record that the family members had intervened in anything relating to the judicial proceedings initiated by Victorio Spoltore."

63. In the first place, the Court recalls that, by means of the Order of January 27, 2020, the Tribunal accepted the replacement of the expert Mariano Rey by the expert Cintia Oberti, respecting the object of the expert opinion originally offered, pursuant to Article 49 of the Rules of Procedure.[48] The Court recalls that, by note of January 20, 2020, the Secretariat preliminarily informed the State that the Court would proceed with the replacement of the expert, indicating that "following the instructions of the President, the State was granted until January 23, 2020 to present the questions that it deemed relevant to Mrs. Oberti." The State did not present any questions to the expert witness.

64. Secondly, the Court considers that the other observations of the State regarding the expert opinion of Mrs. Oberti refer to its content and eventual evidentiary value, but did not question its admissibility.

65. The Court, therefore, deems it pertinent to admit the expert opinion of Cintia Oberti offered by the representatives, which deals with the matter defined in the Order of January 27, 2020. The Court shall take into consideration, to the extent that they are relevant, the observations of the State when it assesses the evidence.

VIII
FACTS

66. The present case refers to the alleged denial of justice and the excessive delay in the judicial proceedings of Victorio Spoltore against his employer. Attending the arguments presented by the parties and by the Commission, the main facts of the case shall be presented in the following order: a) the labor situation of Victorio Spoltore; b) the judicial proceedings initiated by Mr. Spoltore, and c) the disciplinary complaint.

A. Labor situation of Victorio Spoltore

67. Victorio Spoltore worked for a private company for more than 20 years during which he had many jobs, the last that of foreman.[49] On May 14, 1984, the alleged victim had a heart attack while at work within the installations of his factory.[50] After six months, he returned to

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[46] The Court heard the statement of the witness Liliana Spoltore at the public hearing.

[47] The Court received the affidavits of Alejandro Spoltore and Rosalinda Campitelli. It also received the notarized expert testimony of Cintia Oberti. *Cf.* Affidavit of Alejandro Spoltore of January 27, 2020 (evidence file, folios 1964 to 1974) and Affidavit of Rosalinda Campitelli of January 27, 2020 (evidence file, folios 1976 to 1985).

[48] *Cf*. *Case of Spoltore v. Argentina.* Order of the Court of January 27, 2020, Point 1.

[49] *Cf*. Labor complaint filed by Victorio Spoltore before the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires on June 30, 1988 (evidence file, folios 2040 to 2054) and decision of the Labor Court of June 3, 1997 (evidence file, folio 4).

[50] *Cf.* Labor complaint filed by Victorio Spoltore before the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires on June 30, 1988 (evidence file, folio 2042).

his job.[51] In view of his situation, on October 24, 1985 Mr. Spoltore applied to the Welfare Office for Industry, Trade, and Civilian Activities for retirement for reasons of disability.[52] On May 11, 1986, Mr. Spoltore had another heart attack.[53] On July 21, 1986, the Medical Board of the Welfare Office decided that Mr. Spoltore had a 70% work disability due to a "severe coronary cardiopathy and neurotic depression."[54] And, on that basis, declared his right to retire on November 28, 1986.[55] On May 8, 1987, Mr. Spoltore, at the age of 50, left the company. According to his family, the amount of Mr. Spoltore's pension was much less than his former salary.[56]

68. Mr. Spoltore died on January 29, 2012.[57]

B. As to the judicial proceedings initiated by Mr. Spoltore

69. On June 30, 1988, Mr. Spoltore filed a suit before a labor court against his employer "for compensation for occupational sickness."[58] The victim claimed that he had "acquired his medical problem in his work and because of his work" and that the deterioration of his health had resulted in a hostile work environment.[59] He, therefore, claimed compensation for his inability to work and for pain and suffering.[60]

70. On August 26, 1988, the company raised the issue of the expiration of statutory limitations and pending litigation, answered the complaint and requested that two insurance companies with which it had workplace policies be summoned.[61] On September 20, 1988, Mr. Spoltore answered the brief presented by his employer and asked that the company's objections be rejected.[62] On October 5, 1988, the Labor Court rejected the objection of pending litigation and stated that the question of the expiration of statutory limitations would be considered at the proper time.[63]

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51 *Cf*. Affidavit of Rosalinda Campitelli of January 27, 2020 (evidence file, folio 1980).

52 *Cf*. Welfare Office for Industry, Commerce and Civilian Activities. Application form for retirement for reasons of disability of October 24, 1985 and decision of the Labor Court of June 3, 1997 (evidence file, folio 4).

53 *Cf*. Labor complaint filed by Victorio Spoltore before the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires of June 30, 1988 (evidence file, folio 2043).

54 *Cf*. National Direction of the Welfare Office for Industry, Commerce and Civilian Activities. Resolution granting the right to retirement of the Social Department. Decision No. 5/35 of July 21, 1986 (evidence file, folio 2029).

55 *Cf*. Opinion of the Medical Board of the Social Department of the Welfare Office for Industry, Commerce and Civilian Activities of July 21, 1986 (evidence file, folio 2029).

56 *Cf.* Affidavit of Liliana Spoltore and affidavit of Alejandro Spoltore of January 27, 2020 (evidence file, folio 1968).

57 *Cf.* Civil and Commercial Court of the First Instance of the Judicial Department of San Isidro. Testimony of October 21, 2016 (evidence file, folio 622).

58 *Cf*. Labor complaint filed by Victorio Spoltore before the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires of June 30, 1988 (evidence file, folio 2040).

59 *Cf*. Labor complaint filed by Victorio Spoltore before the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires of June 30, 1988 (evidence file, folios 2042 to 2045).

60 *Cf*. Labor complaint filed by Victorio Spoltore before the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires of June 30, 1988 (evidence file, folio 2049).

61 *Cf*. Brief with objections and subsidiary answer submitted by the legal office of the company of August 26, 1988 (evidence file, folios 2063 to 2075).

62 *Cf*. Brief submitted by Victorio Spoltore to the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires of September 20, 1988 (evidence file, folios 2079 to 2087).

63 *Cf*. Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires, Resolution No. 1147 of October 5, 1988 (evidence file, folios 2088 a 2089).

71. On October 4, 1988, the two insurance companies were summoned to appear.[64] On April 18, 1989, the company asked that an additional insurance company be summoned, which was done on October 2, 1989.[65]

72. On November 30, 1989, the evidentiary stage of the proceedings was opened,[66] during which hearings were set for experts on several topics.[67] Hearings were held on the following dates: i) May 10, 1995[68]; ii) March 21, 1996[69]; iii) August 21, 1996[70]; iv) October 16, 1996[71]; v) March 3, 1997[72] and vi) June 3, 1997.[73]

73. The Labor Court delivered its decision on June 3, 1997, nine years after the case was initiated. That Court rejected the complaint filed by Mr. Spoltore because a) the cardiopathy suffered by Mr. Spoltore was not related to his work; b) it was not proved during the proceedings that, in his duties, Mr. Spoltore "was subjected to physical or mental pressures, extremely noisy environment or extraordinary activity"; c) it was not proved that "he suffered mistreatment or aggression at the hands of his superior or managers"; d) the tasks performed were not shown to be dangerous or irregular; e) the complaints lodged with the police were not suitable to establish the workplace harassment of Mr. Spoltore, and f) no difficulty, dedication or demand for speed was detected in Mr. Spoltore's work.[74]

74. On September 2, 1997, Mr. Spoltore filed a special appeal for reversal and a motion to vacate against the decision,[75] the admissibility of which was decided on February 4, 1998.[76]

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64 *Cf*. Resolution of October 4, 1988 (evidence file, folio 2095).

65 *Cf*. Brief submitted by the legal office of the company of April 18, 1989 (evidence file, folios 2180 to 2181), and notification of October 2, 1989 (evidence file, folios 2190 and 2191).

66 *Cf*. Resolution of November 30, 1989 of the Labor Court (evidence file, folio 2224) and Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Note on the selection of the expert witness of December 1, 1989 (evidence file, folio 2226).

67 *Cf*. Resolution of November 30, 1989 of the Labor Court (evidence file, folio 2224) and of the Office of the Head of Experts Division of the Judicial Department of February 23, 1990 (evidence file, folio 2230).

68 *Cf*. Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Minutes of the hearing of May 10, 1995 (evidence file, folios 2530 and 2531).

69 *Cf*. Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Minutes of the hearing of March 21, 1996 (evidence file, folios 2554 and 2555).

70 *Cf*. Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Minutes of the hearing of August 21, 1996 (evidence file, folio 2588).

71 *Cf*. Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Minutes of the hearing of October 16, 1996 (evidence file, folio 2605).

72 *Cf*. Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Minutes of the hearing of March 3, 1997 (evidence file, folio 2638).

73 *Cf*. Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Minutes of the hearing of June 3, 1997 (evidence file, folios 2667 and 2668).

74 *Cf*. Decision of the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires of June 3, 1997 (evidence file, folios 2674 and 2675) and Agreement of the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires of June 30, 1997 (evidence file, folios 2683 and 2685).

75 *Cf*. Special appeal for reversal of September 2, 1997 (evidence file, folios 25 to 37) and special motion to vacate (evidence file, folios 2725 to 2741).

76 *Cf.* Resolution of the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires. Order of September 9, 1997 (evidence file, folio 2743).

On February 25, 1998, the Attorney General's opinion was requested on the special appeal for reversal,[77] which was submitted on April 14, 1998.[78]

75. The SCJBA rejected the appeals on August 16, 2000.[79] With regard to the motion to vacate, the SCJBA determined that: i) the alleged omissions of the Labor Court "do not have the note of necessary essentiality […] so that their lack of express consideration in the decision would compromise their formal legitimacy, pursuant to Article 166 of the provincial Constitution,"[80] and that ii) "a review of the factual and legal record of the appealed decision can only be done through a special appeal for reversal."[81] With respect to that appeal, the SCJBA held that the petitioner did not "file the required complaint on the mistaken legal precepts of substance related to the errors that motivated the appeal, an omission that cannot be rectified,"[82] and ii) the criticism that had as its purpose devaluating the assessment that the lower court made of the evidence is not sufficient since "the system of sound judicial discretion in evaluating the evidence […] does not apply in labor matters."[83]

C. Disciplinary complaint

76. On September 16, 1997, Mr. Spoltore lodged a disciplinary complaint with the Office of the Inspector General of the SCJBA for delays and negligence in the proceedings before the Labor Court. On April 15, 1999, the SCJBA acknowledged that there had been "a delay in sending the case to the Division of Witnesses and "a delay in preparing and signing the deeds of notification."[84] However, it resolved that because of "the excessive workload of the Labor Court during the period being investigated, the health problems of the official responsible for the file and the lack of disciplinary precedents," the only appropriate action was to reprimand the Tribunal's secretariat for the delay in the processing of the case.[85]

IX
MERITS

77. The present case concerns acts that took place during the judicial proceedings initiated by Mr. Spoltore against a private company and the appeals filed as part of the proceedings. During the proceedings, Mr. Spoltore requested that his health problems be recognized as an occupational sickness and that he be granted compensation. According to the issues raised by the Commission in its Report on the Merits, the case is not "to establish whether or not Mr. Spoltore was entitled to the compensation that he sought nor to question the result of the labor proceedings." Neither the acts alleged by the representatives on the claims of harm to the health and personal integrity of Mr. Spoltore nor the alleged lack of substantiation of the labor judgment are part of the present case. Therefore, these arguments will not be analyzed by the Court.

78. The State partially recognized responsibility (*supra* Chapter V), so therefore the Court shall only examine the other legal controversies. Thus, this Tribunal shall assess 1) the right

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77 *Cf.* Resolution of February 25, 1998 (evidence file, folio 2770).

78 *Cf.* Opinion of the Attorney General of the SCJBA (evidence file, folios 2771 and 2772).

79 *Cf.* Resolution of the SCJBA of August 16, 2000 (evidence file, folios 11 to 23).

80 *Cf*. Resolution of the SCJBA of August 16, 2000 (evidence file, folio 13).

81 *Cf*. Resolution of the SCJBA of August 16, 2000 (evidence file, folio 14).

82 *Cf*. Resolution of the SCJBA of August 16, 2000 (evidence file, folio 18).

83 *Cf*. Resolution of the SCJBA of August 16, 2000 (evidence file, folio 19).

84 *Cf*. Resolution of the SCJBA of April 16, 1999 (evidence file, folios 322 and 323).

85 *Cf*. Resolution of the SCJBA of April 16, 1999 (evidence file, folio 324).

to equitable and satisfactory working conditions that ensure the health of the worker, in relation to access to justice and 2) the right to appeal a judgment. The Court also notes that at the hearing the representatives alleged for the first time a violation of the right to the protection of the family. However, that allegation is time-barred and thus will not be examined.

IX-1
RIGHT TO EQUITABLE AND SATISFACTORY WORKING CONDITIONS THAT ENSURE THE HEALTH OF THE WORKER,[86] IN RELATION TO ACCESS TO JUSTICE

A. Arguments of the parties and of the Commission

79. The ***representatives*** argued that Argentina had violated the right to enjoy equitable and satisfactory working conditions, to the detriment of Victorio Spoltore. They claimed that i) "during the judicial proceedings [Mr.] Spoltore expressly claimed that [the company] had not met the standards on security and hygiene then in effect"; ii) when the State, through its judicial authorities, learned of the allegation of occupational sickness as a result of the claim filed by Spoltore, it should have put in place measures to diligently investigate the case and, if relevant, to order the employer to pay the appropriate compensation"; iii) the State's obligations with respect to that right include "adopting adequate measures for its proper regulation and oversight" and protecting workers "through its competent bodies by preventing occupational sickness," and iv) the State should have effective complaint mechanisms for situations of occupational sickness in order to ensure access to justice and effective judicial control of that right.

80. The ***State*** requested that the representatives' arguments be rejected since "they go beyond the factual framework of the case," which concerns the "the reasonableness of the length of the proceedings for occupational sickness that were initiated by Victorio Spoltore." The State argued that "to treat those questions here would imply creating a fourth instance for judicial action for occupational sickness" since i) "in the suit for occupational sickness the only issue in play here is the length of time that it took to reject the claim, an issue in any event regarding Articles 8(1) and 25 of the Convention, in accordance with the recognition already made"; ii) the State responded in a timely fashion with respect to Mr. Spoltore's disability, granting him a partial retirement, and iii) "in accordance with newly available information, there was even another proceeding brought by Mr. Spoltore [on the illegality of his dismissal] in which Argentine justice not only granted him a compensation due to his work relationship with the company, but it was also done within a reasonable period."

81. The ***Commission*** pointed out that the victims and their representatives may claim a violation of different rights as long as they fall within the factual framework and that "the facts on the health of the victim and the situation of his health form part of the factual framework." The Commission, therefore, requests that the Court evaluate, in accord with its jurisprudence, the arguments of new rights presented by the representatives.

B. Considerations of the Court

82. The Tribunal notes that, in the present case, the legal issue raised by the representatives concerns the scope of the right to work and, specifically, the content of the right to equitable and satisfactory working conditions, understood as a right protected by Article 26 of the American Convention. The argument of the representatives thus follows the approach adopted by this Tribunal since the *Case of Lagos del Campo v. Peru,*[87] which has been followed in later

[86] Article 26 of the Convention.

[87] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2017. Series C No. 340, paras. 141 to 150 and 154.

decisions.[88] The Court recalls that, in the *Case of Poblete Vilches et al. v. Chile,* it stated the following:

> Thus, it can clearly be interpreted that the American Convention incorporated into its list of protected rights the so-called economic, social, cultural and environmental rights (ESCER), derived from the norms recognized in the Charter of the Organization of American States (OAS), and also the rules of interpretation established in Article 29 of the Convention itself; particularly, insofar as they prevent excluding or limiting the enjoyment of the rights established in the American Declaration and even those recognized by domestic law. Furthermore, based on a systematic, teleological and evolutive interpretation, the Court has resorted to the national and international *corpus iuris* on the matter to give specific content to the scope of the rights protected by the Convention, in order to derive the scope of the specific obligation related to each right.[89]

83. In this Chapter, the Court shall comment on the equitable and satisfactory working conditions that ensure the health of the worker as a part of the right to work.[90] The Court shall follow this order: 1) the right to equitable and satisfactory working conditions that ensure the health of the worker; 2) the content of the right to equitable and satisfactory working conditions that ensure the health of the worker, and 3) the harmful effect on the right to equitable and satisfactory working conditions that ensure the health of the worker in the present case.

B.1 The right to equitable and satisfactory working conditions that ensure the health of the worker

84. To identify those rights that can be derived by means of an interpretation of Article 26 of the Convention, it is necessary to consider that the article is a direct referral to the economic, social and educational, science and cultural rights set forth in the OAS Charter.

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[88] *Cf. The environment and human rights (State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity – interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights).* Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 57; *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2017. Series C No. 344, para. 192; *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348, para. 220; *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349, para. 100; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 73; *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 170; *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 22, 2019. Series C No. 395, para. 62 *Case of the Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2019. Series C No. 394, para. 154 and *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs*. Judgment of February 6, 2020. Series C No. 400, paras. 194, 201 and 222.

[89] *Cf*. *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*, *supra*, para. 103 and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 73.

[90] The Committee of Economic, Social and Cultural Rights in General Comment No. 18 indicated that: "Work as specified in Article 6 of the Covenant must be *decent work*. This is work that respects the fundamental rights of the human person in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment." And that "8. Articles 6 [and] 7 […] of the Covenant are interdependent." [paras. 7 and 8 of General Comment No. 18 of the ESCR Committee]. For its part, General Comment No. 23 added that "Following up on general comment No. 18 on the right to work, […] the present general comment has been drafted by the Committee with the aim of contributing to the full implementation of article 7 of the Covenant" [para. 4 of General Comment No. 23].

From a reading of that instrument, the Court notes that Articles 45(b) and (c)[91], 46[92] and 34(g)[93] of the Charter establish a series of norms that define the right to work.[94] Specifically, the Court notes that Article 45(b) of the Charter states that "work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working." The Court considers that there is a reference with a sufficient degree of specificity to the right to equitable and satisfactory working conditions to derive its existence and implicit recognition from the OAS Charter. The Court, therefore, deems that it is a right protected by Article 26 of the Convention.

85. Therefore, it is for this Tribunal to determine the scope of the equitable and satisfactory working conditions that ensure the health of the worker within the context of the present case and in light of the international *corpus iuris* in the matter. The Court recalls that the obligations contained in Articles 1(1) and 2 of the American Convention are the basis for definitively determining the international responsibility of a State for violations of the rights recognized in the Convention,[95] including those recognized under Article 26. However, the same Convention makes express reference to the norms of general international law for its interpretation and application, specifically through Article 29, which encapsulates the principle of *pro persona.*[96] In order to determine the compatibility of the acts and omissions of a State or of its norms with the Convention or other treaties over which the Court has jurisdiction, it has been the

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[91] Article 45 of the OAS Charter. -The Member States, convinced that man can only achieve the full realization of his possibilities within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: […] b) Work is a right and a social duty, it gives dignity to the one who performs it and it should be performed under conditions that, including a system of fair wages that ensure life, health and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and the recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with the applicable laws […].

[92] Article 46 of the OAS Charter. – The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.

[93] Article 34(g) of the OAS Charter. -The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development, are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplish the following basic goals: fair wages, employment opportunities and acceptable working conditions for all.

[94] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 143.

[95] *Cf. Case of the Mapiripán Massacre v. Colombia*, *supra*, para. 107 and *Case of the Association of Discharged and Retired Employees of the National Tax Association Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 158.

[96] *Cf. Case of the Pacheco Tineo family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2013. Series C No. 272, para. 143 and *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs*, *supra*, para. 196.

consistent practice of this Tribunal[97] to interpret the obligations and rights contained in them in light of other relevant treaties and norms.[98]

86. The Court shall, thus, utilize the sources, principles and criteria of the international *corpus iuris* as a special set of norms that can be applied to determine the content of the right to equitable and satisfactory working conditions that ensure the health of the worker. This Tribunal notes that the aforementioned set of norms for determining the right in question shall be utilized to complement the Convention. The Court affirms that it is not assuming jurisdiction on treaties that it does not have, nor is it granting conventional hierarchy to norms contained in other national or international instruments related to the ESCR.[99] On the contrary, the Court shall make its interpretation under the guidelines set out in Article 29 and under its own jurisprudence to allow it to make current the meaning of the rights derived from the OAS Charter that are recognized by Article 26 of the Convention. The determination of the right to working conditions that ensure the health of the worker will give a special emphasis to the American Declaration, as this Tribunal has established:

> […] [T]he member states have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.[100]

87. This Tribunal has maintained on other opportunities that human rights treaties are living instruments, the interpretation of which must take into account the evolution of the times and the conditions of present-day life. Such an evolutive interpretation is in line with the general rules of interpretation established in Article 29 of the American Convention, as well as in the Vienna Convention.[101] Moreover, Article 31(3) of the latter treaty authorizes the use of interpretive means such as agreements or practice or relevant rules of international law that the States have manifested on the subject of a treaty, which are some of the methods that are related to the evolutive vision of the treaty. Thus, in order to determine the scope of the right to equitable and satisfactory working conditions that ensure the health of the worker, as

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97 *Cf. Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, paras. 78 and 121; *Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 83; *Case of the Pacheco Tineo family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 129; *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 168; *Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 145; *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*, *supra*, para. 103; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 100; *Case of the Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 158 and *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs*, *supra*, para. 196.

98 *Cf. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 176 and *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs*, *supra*, para. 196.

99 *Cf. Case of the Pacheco Tineo family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 143 and *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 66.

100 *Cf. Interpretation of the American Declaration of the Rights and Duties of Man, in the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10. para. 43 and *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 66.

101 *Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114 and *The Institution of Asylum and its Recognition as a Human Right under the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8), in relation to Article 1(1) of the American Convention on Human Rights).* Advisory Opinion OC-25/18 of May 30, 2018. Series A No. 25, para. 137.

derived from the economic, social and educational, scientific and cultural norms of the OAS Charter, the Tribunal shall refer to the relevant instruments of the international *corpus iuris*.

88. The Court shall now proceed to verify the scope and content of this right as applied to the present case.

B.2 The content of the right to equitable and satisfactory working conditions that ensure the health of the worker

89. As has been pointed out, Article 45(b) of the OAS Charter expressly states that work should be performed under conditions that ensure the life and health of the worker (*supra* para. 84). Article XIV of the American Declaration likewise identifies the right to equitable and satisfactory working conditions by stating that every person has the right "to work under proper conditions."

90. Similarly, Article 7 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (hereinafter "Protocol of San Salvador)[102] establishes that "the States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to: […] safety and hygiene at work."

91. On the universal level, Article 23 of the Universal Declaration of Human Rights establishes that "Everyone has the right to […] just and favourable conditions of work."[103] For its part, the International Covenant on Economic, Social and Cultural Rights establishes that "the States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: […] Safe and healthy working conditions."[104]

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[102] Adopted at San Salvador, El Salvador on November 17, 1988, confirmed by the General Assembly at its 18th Regular Session. Entered into force on November 16, 1999. Argentina signed it on November 17, 1988 and ratified it on June 30, 2003. Article 7 establishes that: The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to: a. Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction; b. The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations; c. The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority; d. Stability of employment subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or reinstatement on the job or any other benefits provided by domestic legislation; e. Safety and hygiene at work; f. The prohibition of night work or unhealthy or dangerous working conditions and, in general, all of work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the workday shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received; g. A reasonable limitation of working hours, both daily and weekly. The day shall be shorter in the case of dangerous or unhealthy work or of night work; h. Rest, leisure and paid vacations as well as remuneration for national holidays.

[103] Adopted and proclaimed by Resolution of the General Assembly 217 A (III) of December 10, 1948 in Paris. Article 23 establishes that: "1. Everyone has the right to work, to the free choice of employment, to just and favourable conditions of work and to protection against unemployment. 2. Everyone, without any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remunerations assuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of his interests."

[104] Adopted and opened for signature, ratification and adhesion by the General Assembly in its Resolution 2200 A (XXI), of December 16, 1966. Entered into force on January 3, 1976. Ratified by Argentina on August 8, 1986. Article 7 states that: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just

92. The right to equitable and satisfactory working conditions that ensure the health of the worker are likewise recognized at the national and provincial levels in Argentina: in Article 14 bis of the national Constitution[105] and in Article 39(1) of the Constitution of the Province of Buenos Aires.[106]

93. From Article 45 of the OAS Charter, interpreted in light of the American Declaration and the other aforementioned instruments, can be derived the basic elements of equitable and satisfactory working conditions that ensure the health of the worker, as for example, those that seek to prevent injuries, sicknesses and death caused by work.

94. In particular, the Court observes that one of the integral parts of the right to equitable and satisfactory working conditions is that of "preventing occupational accidents and disease" as a means to guarantee the health of the worker. With regard to safety and hygiene at work, the Committee on Economic, Social and Cultural Rights in its General Comment No. 23 indicated that:

> Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable conditions of work, and is closely related to other Covenant rights, in particular, the right to the highest attainable level of physical and mental health. States parties should adopt a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment and ensuring broad participation in the formulation, implementation and review of such a policy, in particular of workers, employers and their representative organizations. While full prevention of occupational accidents and diseases might not be possible, the human and other costs of not taking action far outweigh the financial burden on States parties for taking immediate preventative steps that should be increased over time.[107]

95. The prevention of accidents at work, as part of the right to work in equitable and satisfactory working conditions that ensure the health of the worker is broadly recognized in

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and favourable conditions of work, which ensure, in particular: a) Remuneration which provides all workers, as a minimum, with; i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; b) Safe and healthy working conditions; c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

[105] Section 14bis establishes that: "Labor in its several forms shall be protected by law, which shall ensure to workers: dignified and equitable working conditions; limited working hours; paid rest and vacations; fair remuneration; minimum vital and adjustable wage; equal pay for equal work; participation in the profits of enterprises, with control of production and collaboration in the management; protection against arbitrary dismissal; stability of the civil servant; free and democratic labor union organizations recognized by the mere registration in a special record. Trade unions are hereby guaranteed: the right to enter into collective labor bargains; to resort to conciliation and arbitration; the right to strike. Union representatives shall have the guarantees necessary for carrying out their union tasks and those related to the stability of their employment. The State shall grant the benefits of social security, which shall be of an integral nature and may not be waived. In particular, the laws shall establish: compulsory social insurance, which shall be in charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with State participation, with no overlapping of contributions; adjustable retirements and pensions; full family protection; protection of homestead; family allowances and access to a worthy housing".

[106] Article 31 states that: "Work is a right and a moral duty. 1-It is particularly established; the right to work, to a just remuneration, to decent conditions of work, to well-being, to a limited workday, to weekly rest, to equal pay for equal work and to a minimum, vital and flexible salary."

[107] Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, April 27, 2016, paras. 25 and 29.

the international *corpus iuris*.[108] For example, the Convention of the International Labor Organization on the safety and health of workers (No. 155) establishes that:

> Each member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational health, occupational safety and the working environment.
>
> The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, as far as is reasonably practicable the causes of hazards in the working environment.[109]

96. The Court points out that, both General Comment No. 18[110] and General Comment No. 23 of the Committee on Economic, Social and Cultural Rights establish that the right to access to justice forms part of the right to work and to working conditions that ensure the health of the worker. In this sense, the Committee stated in General Comment No. 23 that:

> Workers affected by a preventable occupational accident or disease should have a right to a remedy, such as courts, to resolve disputes. including access to appropriate grievance mechanisms. In particular, States parties should ensure that workers suffering from an accident or disease, and where relevant, their dependents receive adequate compensation, including for costs of treatment, loss of earnings and other costs as well as access to rehabilitation services.[111]

97. The Court considers that the nature and scope of the obligations derived from the protection of the right to working conditions that ensure the health of the worker include aspects that have an immediate effect, as well as aspects that have a progressive nature.[112] The Court recalls that, with regard to the former (obligations with an immediate effect), the States should adopt effective measures to ensure access, without discrimination, to the safeguards recognized by the right to working conditions that ensure the health of the worker.[113] Among these obligations is that of placing at the disposal of the worker adequate and effective mechanisms so that the workers affected by an occupational accident or sickness can request compensation.[114] With respect to the latter (obligations of a progressive nature), their realization would mean that the States Parties have the specific and constant obligation to advance in the most prompt and effective manner possible toward the full enjoyment of

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[108] Article 11.1.f) of the Convention on the Elimination of All Forms of Discrimination against Women; Article 32(1) of the Convention on the Rights of the Child; Article 25(1) of the International Convention on the Protection of the Rights of All Migrant Workers and their Families; Article 27(1)(a) and 27(1)(b) of the Convention on the Rights of Persons with a Disability and Article 2 of the European Social Charter; Article 31(1) of the Charter of Fundamental Rights of the European Union.

[109] Article 4 of the Convention of the International Labor Organization on safety and health of workers (No. 155), adopted on June 22, 1981 at the 67th Meeting of the International Conference of Labor. Ratified by Argentina on January 13, 2014.

[110] This General Comment establishes that: "Any person or group who is a victim of the right to work should have access to effective judicial or other appropriate remedies at the national level. […] All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition." Committee on Economic, Social and Cultural Rights. General Comment No. 18 (2005) on the right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/18, February 6, 2006, para. 48.

[111] *Cf*. Committee on Economic, Social and Cultural Rights. General Comment No. 23, *supra*, paras. 25 and 29.

[112] *Cf.* Committee on Economic, Social and Cultural Rights. General Comment No. 23, *supra*, para. 50.

[113] *Cf.* Committee on Economic, Social and Cultural Rights, General Comment No. 3: *The Nature of States Parties' Obligations* (para. 1 of Article 2 of the Covenant), December 14, 1990, U.N. Doc. E/1991/23, para. 5, and Committee on Economic, Social and Cultural Rights, General Comment No. 23, *supra*, para. 25.

[114] *Cf.* Committee on Economic, Social and Cultural Rights, General Comment No. 23 (2016), *supra*, para. 29.

that right,[115] in the measure of their available resources, through legislation or other appropriate means.[116] There is also the obligation of *non-regression* with regard to the rights already achieved.[117] By virtue of the foregoing, the conventional obligations of respect and guarantee, as well as the adoption of measures of domestic law (Articles 1(1) and 2), are fundamental to achieve their effectiveness.

98. The Court notes that the present case does not concern the obligations of progressivity derived from Article 26 of the Convention, but rather it refers to the lack of judicial protection of the right to just and equitable working conditions that ensure the health of the worker due to the excessive delay of the judicial proceedings, recognized by the State.

99. On the basis of the criteria and basic elements of the right to working conditions that ensure the health of the worker and bearing in mind the facts and peculiarities of the present case, the Court concludes that this refers to the right of the worker to perform his labors in conditions that would prevent occupational accidents and disease.[118] In fulfilling those obligations of the State to guarantee this right, the States, among their other obligations, must ensure that the workers affected by a preventable occupational accident or disease have access to adequate mechanisms of reclamation, such as courts, to request reparation or compensation.

100. On the basis of the criteria established in the preceding paragraphs and the recognition by the State of its international responsibility for the violation of Articles 8 and 25 of the Convention in the sense that there was an excessive delay in the proceedings in which Mr. Spoltore requested compensation for an occupational sickness, which implied a violation of the right to a fair trial and judicial protection, the Tribunal shall now examine the harmful effect on the right to just and equitable working conditions that ensure the health of the worker in this specific case

B.3 The harmful effect on the right to equitable and satisfactory working conditions that ensure the health of the worker in the present case

101. In the present case, Mr. Splotore, after suffering two heart attacks, brought a suit against the company where he worked in order that it recognize his health problems as an occupational sickness and that it grant him compensation. The suit lasted 12 years and the State recognized that:

> The judicial proceedings in question do not exhibit a special complexity and that, generally speaking, the petitioner who, in addition, was a person with a disability, gave an expected boost to the proceedings. Therefore, it is unreasonable to think that the judicial authorities

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115 *Cf.* Committee on Economic, Social and Cultural Rights, General Comment No. 3, *supra*, para. 9 and Committee on Economic, Social and Cultural Rights General Comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, April 27, 2016, para. 50.

116 Article 26 of the Convention states: "Article 26. Progressive Development**.** The States Parties undertake to adopt measures, internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires."

117 *Cf. Case of Acevedo Buendía et al. ("Discharged and retired employees of the Office of the Comptroller") v. Peru*, *supra*, paras. 102 and 103; *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*, *supra*, para. 104 and *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs, supra,* para. 81.

118 According to the International Labor Organization (ILO): "(a) the term "occupational accident" covers an occurrence arising out of, or in the course of, work that results in fatal or non-fatal injury: (b) the term "occupational disease" covers any disease contracted as a result of any exposure to risk factors arising from work activity." *Cf.* International Labor Organization (ILO). Protocol to the Convention on the safety and health of workers, adopted February 9, 2005, Article 1. Ratified by Argentina on January 13, 2014.

would have taken twelve years to clarify whether the law was favorable to his claim against his employer for occupational sickness.

The State thus recognized the violation of the guarantee of a reasonable period established in Article 8(1) of the American Convention and, therefore, of the right to judicial protection set forth in Article 25 of the Convention, in relation to Article 1(1) thereof.

102. The Court reiterates that access to justice is one of the components of the right to working conditions that ensure the health of the worker (*supra* para. 96). This Court has pointed out that labor rights[119] and the right to social security[120] include the obligation to have effective mechanisms of reclamation for a violation so as to ensure the right to access to justice and to effective judicial protection, both in the public as well as the private sphere in labor relations. This is also applicable to the right to equitable and satisfactory working conditions that ensure the health of the worker. Therefore, taking into account the recognition of international responsibility by the State due to the excessive delay in the labor judicial proceedings and given that Mr. Spoltore was not guaranteed access to justice when he sought compensation for occupation sickness, the Court concludes that the State is responsible for the violation of Article 26 of the Convention, in relation to Articles 8, 25 and 1(1) thereof, to the detriment of Victorio Spoltore.

IX-2
RIGHT TO APPEAL THE JUDGMENT

A. Arguments of the parties and of the Commission

103. The ***representatives*** claimed that one of the guarantees that should be ensured in judicial labor proceedings for occupational sickness is that of appealing the judgment to a judge or higher court. The law, however, only provides for a single instance. They, therefore argued that the State had violated Article 8(2)(h) of the Convention, in relation to Articles 1(1) and 2 thereof. They added that, since "Mr. Splotore did not enjoy effective remedies to assert his labor rights, his right to judicial protection was breached." The ***State*** indicated that the guarantees of Article 8(2) are applicable to proceedings that involve sanctions, which is not the situation in the present case. It indicated that "the arguments of the representatives that refer to the possible violation of this right are beyond the scope that the Court has interpreted to be given to the guarantee included in that right." It pointed out that "compensation does not have a sanctioning nature" and thus the guarantee of Article 8(2)(h) is not applicable in the present case, according to the scope given it by the Court. The ***Commission*** did not offer any arguments on the matter.

B. Considerations of the Court

104. The Court, in its constant jurisprudence, has referred to the scope and content of Article 8(2)(h) of the Convention, as well as to the standards that must be observed to ensure the right to appeal a judgment before a judge or higher court. The Tribunal has understood that the right consists of a minimum and primordial guarantee that "must be respected as part of due process of law, so that an unfavorable judgment might be reviewed by a judge or different

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[119] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 149; *Case of the Discharged Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 193 and *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*, *supra*, para. 221.

[120] *Cf. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 194 and *Case of the Association of Dismissed and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 175.

court of higher standing […]."[121] Bearing in mind that judicial guarantees seek to ensure that no one involved in a proceeding is subject to arbitrary decisions, the Court has interpreted that the right to appeal a judgment cannot be effective unless it is guaranteed in respect of all those who are convicted,[122] since a conviction is a manifestation of the exercise of the punitive power of the State.[123] The Court has considered the right to appeal a judgment as one of the minimum guarantees of every person who is submitted to an investigation and a criminal proceeding.[124] In addition, in the *Case of Vélez Loor v. Panama*, the Court applied Article 8(2) with respect to the review of an administrative sanction of custody, holding that "Article 8(2)(h) embodies a specific type of remedy that must be offered to every individual in custody, as a guarantee of the individual's right to defense."[125]

105. The proceedings initiated by Mr. Spoltore had the aim of requesting compensation. It was not a criminal proceeding against an alleged victim, nor an administrative proceeding that might imply a loss of freedom. Nor was it an administrative proceeding that had a sanctioning nature, in which the guarantees included in Article 8(2) could be applicable, according to its nature and scope.[126] This Tribunal, therefore, considers that the right set forth in Article 8(2)(h) is not applicable to the proceedings for compensation for occupational sickness. Consequently, the State did not violate Article 8(2)(h) of the American Convention, in relation to Articles 1(1) and 2 thereof.

X
REPARATIONS

106. Pursuant to the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to provide adequate reparation, and that this provision reflects a customary norm that is one of the fundamental principles of contemporary international law of State responsibility.[127] In addition, this Tribunal has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damages accredited, as well as

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[121] *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107, para. 158 and *Case of Girón et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 15, 2019. Series C No. 390, para. 113.

[122] *Cf. Case of Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 23, 2012. Series C No. 255, paras. 92 and 93 and *Case of Girón et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 113.

[123] *Cf. Case of Baena Ricardo et al. v. Panama. Merits, Reparations and Costs.* Judgment of February 2, 2001. Series C No. 72, para. 107 and *Case of Girón et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 113.

[124] *Cf. Case of Zegarra Marín v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 15, 2017. Series C No. 331, para. 171 and *Case of Girón et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 113.

[125] *Cr. Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 178. *See also, Case of Maldonado Ordoñez v. Guatemala. Preliminary Objection, Merits, Reparations and Cost*s. Judgment of May 3, 2016. Series C No. 311, para. 74.

[126] *Cf. Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*, *supra*, para. 75.

[127] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 12, 2020. Series C No. 402, para. 244.

the measures requested to repair the respective damages. The Court must, thus, observe the coexistence of these factors in order to rule appropriately and in accordance with the law.[128]

107. Therefore, and in accordance with its considerations on the merits and the violations of the Convention declared in the present Judgment, the Court shall proceed to examine the claims presented by the Commission and the representatives of the victim, as well as the State's arguments, in the light of the criteria established in its case law as regards the nature and scope of the obligation to repair in order to establish the measures designed to repair the harm caused.[129]

A. Injured party

108. This Tribunal considers that, in the terms of Article 63(1) of the Convention, the injured party is the person declared the victim of any right recognized in that instrument. Therefore, the Court considers Victorio Spoltore to be the "injured party," who, in his capacity as victim of the violations declared in Chapter IX, will be the beneficiary of the reparations ordered by the Court.

B. Measures of satisfaction

109. The ***representatives*** requested that the State be ordered, as a measure of satisfaction, to publish the operative paragraphs of this Judgment in the newspaper of widest circulation in the country. The ***State*** acknowledged that this request was appropriate.

110. The Court orders, as it has done in other cases,[130] that the State publish a single time, within six months of the date of the notification of the present Judgment, in an appropriate and legible font, the official summary of this Judgment of the Court, in a newspaper of wide national circulation. The State must immediately inform the Court as soon as it has implemented the publication ordered, independently of the period of one year to present its first report as ordered in Operative Point 10 of this Judgment.

C. Compensation

111. The ***Commission*** requested that the Court order Argentina to "fully repair the violations of human rights […] against Victorio Spoltore, both in pecuniary as well as in non-pecuniary damages, including a fair compensation," which "in view of his death, should be awarded to his heirs, his wife Rosalinda Campitelli, his son Alejandro Nicolás Spoltore and his daughter Liliana Estela Spoltore."

112. The ***representatives*** provided a copy of the statement of heirs of Mr. Spoltore in the proceedings before the Commission. It stated that "due to the death of Victorio Spoltore, his heirs are his children Alejandro Nicolás and Liliana Stela Spoltore and his wife Rosalinda Campitelli."[131]

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[128] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 244.

[129] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, *supra*, paras. 25 and 26 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 225.

[130] *Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs.* Judgment of December 3, 2001. Series C No. 88, para. 79 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 231.

[131] Statement declaring the heirs of Victorio Spoltore, issued by the Civil and Commercial Court of First Instance on October 21, 2016 (evidence file, folios 622 and 623).

113. The ***State*** indicated that its recognition of responsibility had a reparatory nature. It stated that "it sees an important risk in a proliferation of cases such as the present, in which, in the event of a rejection of a request of a patrimonial nature against private persons in domestic courts, an economic reparation against the State could be attained at an international instance."

C.1 Pecuniary damages

114. This Tribunal has expressed in its case law that pecuniary damages presume the loss of or the detriment to the income of the victim, the expenses incurred as a result of the facts and the monetary consequences that have a causal nexus with the facts of the case.[132]

115. The ***representatives*** requested that account be taken of "the original amount claimed by Victorio Spoltore in the record of the proceedings for compensation, or the current equivalent." They indicated that, due to the impossibility of obtaining a copy of the file, they reserved the possibility of "presenting their opinion on the amount of the damages during the final arguments." When the State made available the file, the representatives indicated that the amount requested in the suit for occupational sickness was 143,000 Australes, which was now the equivalent of USD $299,978.64. The ***State*** argued that "the representatives of the victim confuse the proceedings of a suit for occupational sickness with the present international proceedings. What is now being discussed […] is not the correctness of the judgment that rejected the complaint against his employer, but rather the delay [of this process]."

116. The Court recalls that the parties must clearly specify the proof of the harm suffered, as well as the specific connection to the pecuniary claim with the facts of the case and the alleged violations.[133] Although the criterion of equity has been used in this Tribunal's case-law to quantify the pecuniary damages, the utilization of this criterion does not mean that the Court can act discretionally in establishing the amount of compensation.[134] In the present case, the arguments of the representatives on pecuniary damages refer to facts that are not part of the factual framework. In addition, the Court notes that the representatives did not offer evidence that would prove the alleged harm. Therefore, it is not appropriate to order the payment of a compensation for pecuniary damages.

C.2 Non-pecuniary damages

117. This Tribunal has developed in its case law the concept of non-pecuniary damages and has established that it may include both the suffering and the distress caused to the direct victim and to his next of kin as well as the impairment of values that are highly significant to them as well as other sufferings in the living conditions of the victim and his family that cannot be assessed in financial terms.[135]

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132 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 256.

133 *Cf. Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs*, *supra*, para. 291 and *Case of Quispialaya Vilcapoma v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2015. Series C No. 308, para. 303.

134 *Cf. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs*. Judgment of September 10, 1993. Series C No. 15, para. 87 and *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 22, 2013. Series C No. 265, para. 214.

135 *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. 84 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*, *supra*, para. 261.

118. The ***representatives*** requested that the State be ordered to pay Victorio Spoltore, as non-pecuniary damages, the sum of USD $65,000 dollars.

119. The ***State*** indicated that the representatives made their request of non-pecuniary damages "without even demonstrating in their presentation of evidence anything that would show the existence of some illness, distress or impairment of values that could seriously be connected to the delay in the determination of a claim by the judiciary." It alleged that "given the reparatory nature of the recognition of responsibility, any compensation for non-pecuniary damages must be rejected.

120. In light of the circumstances of the present case and the violations found, the Court considers it relevant to establish, in equity, the sum of USD $30.000 (thirty thousand dollars of the United States of America) as non-pecuniary damages for Victorio Spoltore. The payment of this compensation shall be made directly to his heirs: 50% of the amount awarded to his wife Rosalinda Campitelli and the remainder to be divided on equal parts to his children Alejandro Nicolas and Liliana Stela Spoltore.

D. Other requested measures

121. The ***Commission*** requested that the Court order Argentina "to adopt the necessary measures to ensure that the violations established in its Report are not repeated. In particular, that the State be ordered to adopt the administrative or other measures necessary to ensure that judicial proceedings involving labor matters, including those that entail a claim for compensation, are resolved promptly and within a reasonable time in line with the standards described in its Report [on the Merits]." The ***representatives*** requested that: i) a remembrance plaque be made and placed in the Central Hall of the San Isidro Judicial Department on the acts and the human rights violations found in this case; ii) "those responsible for the acts and the human rights violations in the present case be sanctioned"; iii) "all legislative, budgetary, financial administrative measures and of any other nature that are necessary to guarantee that all proceedings involving labor matters in the Province of Buenos Aires take place within a reasonable time, including a full review of the judgments of first instance through an ordinary appeal or remedy, and especially the claims for occupational sickness that involve persons with a disability" be adopted; iv) "obligatory training courses be held for all judges, staff and employees of instances dealing with labor matters in the Province of Buenos Aires on the guarantees of due process of law and the right to judicial protection in matters involving labor, in particular, the guarantee of a reasonable period and the right to obtain a full review of the judgments of first instance through an ordinary appeal or remedy, especially the claims for occupational sickness by persons with a disability"; v) complete medical and psychological treatment be given to Rosalinda Campitelli, Liliana Spoltore and Alejandro Spoltore, and vi) non-pecuniary damages in the amount of USD $15.000 be awarded to Rosalinda Campitelli, as well as USD $10.000 for each of his children Liliana Spoltore and Alejandro Spoltore.

122. In the first place, the Court notes that Rosalinda Campitelli, Liliana Spoltore and Alejandro Spoltore are not victims in the present case (*supra* para. 52) and, therefore, it is inappropriate to order reparations for them. Secondly, the Court recalls that the State recognized the relevance of improving the service of the administration of justice in labor matters. The Court, however, notes that in the present case sufficient information has not been provided to order measures of this nature and those requested by the Commission and the representatives as guarantees of non-repetition are not sufficiently specific. The Court considers that the issuance of this Judgment and the reparations ordered in this Chapter are sufficient and adequate to remedy the violations suffered by the victim. Therefore, it is not necessary to order the additional measures requested by the Commission and by the representatives, notwithstanding that the State decides to adopt and award them internally

E. Costs and expenses

123. The ***representatives*** requested, in equity, the sum of USD $6.000, but asked for the possibility of "increasing that sum in the event of additional expenses that they might incur" at the stage of final arguments. Later, in their written final arguments, they requested USD $15.000 "an amount that differs from the previous request due to the payments of affidavits not covered by the Fund for Victims, three in total, and the expert opinion presented in the case, to which should be added the expenses incurred for the hearing in Costa Rica that were not covered by the Fund for Victims." The ***State*** underlined that "the request of the representatives is formulated in general terms, without any justification on the type of expenditures that they have incurred." It also emphasized that any additional request to the amount asked in the brief with arguments and requests should be considered time-barred.

124. The Court notes that the representatives did not duly and reasonably account for the total amount of their expenses. The Court establishes, what it deems reasonable, the payment of the total amount of USD $10.000 (ten thousand United States of America dollars) for costs and expenses. This amount will be delivered to the Yopoi Collective of Human Rights. In the supervisory stage of compliance of this Judgment, the Court shall order that the State reimburse the family members of the victim or their representatives the reasonable expenses that they incurred at that procedural stage.[136]

F. Reimbursement of expenses to the Victims' Legal Defense Fund

125. In the present case, by note of November 25, 2019, the President of the Court found appropriate the request presented by the family members of the alleged victim, through their representatives, to accede to the Legal Defense Fund. By Order of the President of December 16, 2019, the necessary economic assistance was granted to cover the costs of the appearance of Liliana Spoltore and a representative at the public hearing and for the presentation of a statement before a public notary.

126. On April 7, 2020, the report on the expenditures, in accordance with Article 5 of the Rules of Procedure on the functioning of the Victims' Fund, was transmitted to the State. The State, thus, had the opportunity to present its observations on the expenditures made in the present case, which reached the total sum of USD $4,340.58.

127. The State indicated that it had no observations on the matter.

128. Due to the violations declared in the present Judgment, the Court ordered the State to reimburse the Victims' Fund the sum of USD $4.340.58 (four thousand three hundred forty United States of America dollars and fifty-eight cents) for the expenses incurred. This amount must be reimbursed within six months of notification of the present Judgment.

G. Method of complying with the payments ordered

129. The State shall pay compensation for the non-pecuniary damages and the reimbursement of the costs and expenses established in the present Judgment directly to the persons indicated herein, within one year of notification of this Judgment, although full payment may be made at an earlier date, in accordance with the following paragraphs.

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136 *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations and Costs.* Judgment of September 1, 2010. Series C No. 217, para. 29 and *Case of Azul Rojas Marín et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 12, 2020. Series C No. 402, para. 276.

130. If the beneficiaries have died or should die before they receive the respective compensation, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

131. The State must comply with its obligation by payment in United States dollars or, if that is not possible, in the equivalent amount in Argentine currency, using the highest and most beneficial exchange rate for the beneficiaries that is permitted by the domestic order in force at the moment of payment. During the compliance stage of the Judgment, the Court may prudently adjust the equivalence of these numbers in the Argentine currency in order to avoid that changes in the exchange rate substantially affect the buying power of those amounts.

132. If, for reasons that can be attributed to the beneficiaries of the compensation, it is not possible for them to receive it within the indicated time frame, the State shall deposit these amounts in their favor in an account or certificate of deposit in a solvent Argentine financial institution, in United States dollars and in the most favorable financial conditions permitted by Argentine banking law and practice. If, after 10 years, the compensation has not been claimed, the amounts shall be returned to the State with the accrued interest.

133. The amounts assigned in this Judgment as compensation must be given fully, as established in this Judgment, without deductions for eventual taxes.

134. In the event that the State incur arrears, including the reimbursement of the expenses of the Victims' Legal Defense Fund, it shall pay interest on the amount owed, corresponding to bank interest on arrears in Argentina.

XI
OPERATIVE PARAGRAPHS

135. Therefore,

THE COURT

DECLARES,

By three votes in favor, including that of the President of the Court, and three votes against, to:[137]

1. Reject the preliminary objection on the alleged failure to exhaust domestic remedies, in accordance with paragraphs 21 to 35 of this Judgment.

2. Accept the partial recognition of international responsibility made by the State, in the terms of paragraphs 39 to 46 of this Judgment.

Judges Eduardo Vio Grossi, Humberto Antonio Sierra Porto and Ricardo Pérez Manrique dissent.

DECLARES,

[137] Article 23 of the Court's Statute, entitled "Quorum," in its clauses 2 and 3, indicates that "Decisions of the Court shall be taken by a majority vote of the judges present," and that "In the event of a tie, the President shall cast the deciding vote." Article 16 of the Rules of Procedure of the Court, entitled "Decisions and voting," establishes in its clauses 3 and 4 that "The decisions of the Court shall be adopted by a majority of the Judges present at the time of the voting" and that "In case of a tie, the Presidency shall have the casting vote."

By three votes in favor, including that of the President of the Court, and three votes against, that:

3. The State is responsible for the violation of the human rights recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the obligation to respect and guarantee those rights, enshrined in Article 1(1) thereof, for the violation of a reasonable period in the judicial proceedings, to the detriment of Victorio Spoltore, in the terms of paragraphs 41 and 45 of the present Judgment.

4. The State is responsible for the violation of the right to equitable and satisfactory working conditions that ensure the health of the worker, recognized in Article 26 of the American Convention on Human Rights, in relation to access to justice, recognized in Articles 8(1) and 25(1), as well as the obligation to respect and ensure those rights, enshrined in Article 1(1) thereof, to the detriment of Victorio Spoltore, in the terms of paragraphs 82 to 102 of the present Judgment.

5. The State is not responsible for the violation of the right recognized in Article 8(2)(h) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof, in the terms of paragraphs 104 and 105 of the present Judgment.

Judges Eduardo Vio Grossi, Humberto Antonio Sierra Porto and Ricardo Pérez Manrique dissent.

AND ESTABLISHES

By three votes in favor, including that of the President of the Court, and three votes against, that:

6. This Judgment is, *per se*, a form of reparation.

7. The State shall issue the publications indicated in paragraph 110 of the present Judgment.

8. The State shall pay the amounts established in paragraphs 120 and 124 of the present Judgment as compensation for non-pecuniary damages and for the reimbursement of costs and expenses, in the terms of paragraphs 129 to 134 of the present Judgment.

9. The State shall reimburse to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amounts expended during the proceedings of the present case, in the terms of paragraphs 128 and 134 of the present Judgment.

Judges Eduardo Vio Grossi, Humberto Antonio Sierra Porto and Ricardo Pérez Manrique dissent.

By four votes in favor and three votes against, that:

10. The State, within one year of notification of the present Judgment, shall inform the Court on the measures adopted to comply with it, notwithstanding that established in paragraph 110 of the present Judgment.

Judges Humberto Antonio Sierra Porto and Ricardo Pérez Manrique dissent.

By five votes in favor and one vote against, that:

11. The Court shall monitor full compliance of the present Judgment in exercise of its authority and under its obligations under the American Convention on Human Rights, and will consider this case closed when that State has complied fully with all of its provisions.

Judge Humberto Antonio Sierra Porto dissents.

Judges L. Patricio Pazmiño Freire and Eduardo Ferrer Mac-Gregor Poisot informed the Court of their individual concurring opinions. Judges Eduardo Vio Grossi, Humberto Antonio Sierra Porto and Ricardo Pérez Manrique informed the Court of their individual dissenting opinions.

Done at San José, Costa Rica, in a virtual meeting on June 9, 2020, in the Spanish language.

I/A Court HR. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 9, 2020. Judgment adopted in San José, Costa Rica in a virtual meeting.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF
JUDGE L. PATRICIO PAZMIÑO FREIRE

CASE OF SPOLTORE V. ARGENTINA

JUDGMENT OF JUNE 9, 2020
(Preliminary Objection, Merits, Reparations and Costs)

1. The Judgment in the *Case of Spoltore v. Argentina* develops and strengthens the standards on the rights to access to justice and to economic, social, cultural and environmental rights. The Judgment specifically establishes that the judicial remedies that seek to protect economic, social, cultural and environmental rights must be resolved within a reasonable period. If they are not, including situations, as in the Spoltore case, where there is no controversy on the grounds of the decision on judicial proceedings, the failure to comply within a reasonable period is a violation of Article 26 of the American Convention.

2. This development is especially relevant in cases where private individuals bring suits against private companies. As in the case of Mr. Spoltore, individuals must recur to justice and sue a business (a legal entity) in order to ensure their rights. In cases that involve economic, social, cultural and environmental rights, including labor controversies, the States must ensure that those proceedings comply with judicial guarantees and that they are in accord with the right to a fair trial.

3. The Court has incorporated into its juridical reflections the "Guiding Principles on Business and Human Rights," endorsed by the United Nations Council on Human Rights,[1] that remind the States that they "must protect against human rights abuse committed in their territory and/or their jurisdiction by third parties, including business enterprises," and that includes the obligation to provide mechanisms of access to justice.[2] These principles also establish that "business enterprises should respect human rights."[3]

4. Thus, there exists a broad and diffuse current of analysis that gives rise to substantiating the recognition of the obligations and the subsequent responsibilities in human rights of legal entities, both national and international. While this would be a highly important step for the protection of the human rights of everyone, this recognition does not imply a reduction, abandonment or a substitute of State responsibility, but rather it is a complement that reinforces the States' obligation to act, since it does not exempt them from responsibility.

5. In societies with models of economic, social, cultural and institutional democratic development with dissimilar and profound differences, with the presence and participation of companies and corporations intensely intervening in the service, productive, extractive and

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[1] *Cf. Case of Pueblos Kaliña and Lokono v. Suriname. Merits, Reparations and Costs.* Judgment of November 25, 2015. Series C No. 309, para. 224 and *The Environment and Human Rights (State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)* Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 155. *See also,* UN, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. Report of the Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises, John Ruggie. Presented at the 17th Session of the Council of Human Rights of the United Nations, A/HRC/17/31, March 21, 2011. Available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_SP.pdf, and http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx. The Council of Human Rights endorsed these principles and formed a committee to promote their implementation. *Cf*. Council of Human Rights, Resolution 17/4, UN Doc. A/HRC/17/4, July 6, 2011. Available at: http://daccess-ddsny.un.org/doc/RESOLUTION/GEN/G11/144/74/PDF/G1114474.pdf?OpenElement.

[2] *Cf.* Guiding Principles on Business and Human Rights, *supra*, Principle 1.

[3] *Cf.* Guiding Principles on Business and Human Rights, *supra*, Principle 11.

financial fields, the acts or omissions in which they eventually incur that have an impact on human rights can cause important difficulties for individuals, peoples or communities that attempt to assert their rights. It is in this context that the States must take the necessary measures to lessen those difficulties so that they are not insurmountable obstacles and thus they ensure true access to justice. Compliance of the States' obligations in cases that involve legal entities of private law, national as well as transnational corporations, with respect to the guarantee, protection and access to justice for economic, social, cultural and environmental rights and, in general, for all human rights of individuals, peoples and communities, is a responsibility of unavoidable State action that must have a transgenerational, intersectional and global focus.

L. Patricio Pazmiño Freire
Judge

Pablo Saavedra Alessandri
Secretary

REASONED OPINION OF JUDGE

EDUARDO FERRER MAC-GREGOR POISOT

CASE OF SPOLTORE V. ARGENTINA

JUDGMENT OF JUNE 9, 2020
(Preliminary Objection, Merits, Reparations and Costs)

I. INTRODUCTION

1. The arguments that States invoke in filing a preliminary objection for "failure to exhaust domestic remedies" have been made since the first contentious case decided by the Inter-American Court of Human Rights (hereinafter "the I/A Court" or "the Inter-American Tribunal"). In the Judgment on preliminary objections in the *Case of Velásquez Rodríguez v. Honduras* (1987), the I/A Court dealt with the matter for the first time and established that the State has the burden of proof to indicate the remedy or remedies that must be exhausted and that they are effective.[1]

2. In the *Case of Spoltore v. Argentina,*[2] the State explicitly recognized its international responsibility for the facts contained in the Report on the Merits of the Inter-American Commission on Human Rights regarding the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, concerning the excessive length of the judicial proceedings in which Mr. Spoltore requested compensation for occupational sickness. This partial recognition of responsibility by the State was made subsidiarily, in the event that the preliminary objection for failure to exhaust domestic remedies was rejected. According to the State, the appropriate remedy that Mr. Spoltore should have exhausted was the suit for damages set forth in the Civil Code.

3. The I/A Court, in the Judgment, rejected the preliminary objection filed by the State, reiterating its constant jurisprudence "that the State has the burden of proof to show the availability, adequacy and practical effectiveness of the remedy that it alleges should have been exhausted."[3]

4. On this point, the Inter-American Tribunal considered that "Argentina recognized that suits for damages have not been utilized in cases of judicial delays in labor proceedings"[4] and, therefore, the I/A Court deemed "that it was an excessive burden for the alleged victim to be required to exhaust a remedy that had not been utilized in practice for the purposes that the State alleges that it had"[5].

5. This opinion is issued to explain why I believe that the decision to reject the preliminary objection for the failure to exhaust domestic remedies was proper given the jurisprudence of the Inter-American Tribunal. I shall indicate the specific reasons why the State did not prove

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[1] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 88.

[2] *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404.

[3] *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 35.

[4] *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 35.

[5] *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 35.

that the suit for damages was an appropriate and effective remedy that, at the moment of the events, could remedy the specific situation of a violation of a victim's rights, which led him to resort to the inter-American system for the protection of human rights

6. With respect to the merits, the I/A Court decided, *inter alia*, that Mr. Spoltore's right to "equitable and satisfactory working conditions," in relation to access to justice, was violated. Specifically, the I/A Court took into account, in finding the violation, the arguments of the representatives of the victim and the State's recognition of international responsibility. Therefore, in the second section, I will discuss the right to "equitable and satisfactory working conditions," as well as its impact on the present case, both from a proper understanding of the international responsibility recognized by the State and of the right to access to justice.

II. THE PRELIMINARY OBJECTION OF FAILURE TO EXHAUST DOMESTIC REMEDIES

7. Throughout its constant jurisprudence, the I/A Court has maintained that the preliminary objection of the failure to exhaust domestic remedies "is conceived in the interest of the State since it seeks to excuse it from answering to an international body for acts that have been imputed to it before having the possibility to rectify them by its own means."[6]

8. The Inter-American Tribunal has established a series of guidelines relating to this objection. It has indicated that: i) the objection must be presented at the proper procedural moment, that is, during the Commission's admissibility proceedings;[7] ii) it is not the task of the I/A Court, nor that of the Inter-American Commission, to identify *ex officio* the pending domestic remedies to be exhausted and it is not incumbent on the international bodies to correct the lack of specificity of the State's arguments;[8] and iii) it is not sufficient to indicate the remedies at the proper procedural moment before the Inter-American Commission, but rather the State must indicate why those remedies are adequate and effective,[9] which is related to the burden of proof to be complied with by the State (see *infra*, paras. 9, 10, 12 and 16).

9. Beginning with its first case (*Velásquez Rodríguez v. Honduras*), the Inter-American Tribunal asserted that "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective."[10] Thus, the State that

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[6] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 60 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, para. 25.

[7] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, paras. 88 and 89 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375, para. 26.

[8] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 23 and *Case of Gómez Virula et al. v. Guatemala*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 393, para. 17.

[9] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 88 and *Case of Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No. 299, para. 46.

[10] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 88.

claims the failure to exhaust domestic remedies has two obligations: 1) identify *ex officio* the domestic remedies remaining to be exhausted,[11] and 2) demonstrate their effectiveness.[12]

10. The I/A Court has already indicated that, in order to comply with the required burden of proof, it is not sufficient that the State indicate some generic characteristics of the remedies. What is necessary is a detailed explanation on how the remedy to be exhausted functions and the manner in which each remedy would be effective to protect or ensure the rights of the victim of the case, to repair or, if applicable or timely, to cease the presumed violations of the rights.[13] In addition to the above, it must be accompanied by the relevant records[14] so that the I/A Court can be assured that the remedy mentioned by the State is, in practice, adequate and effective at the time of the acts to resolve the alleged violation at the domestic level (see *infra*, para. 17).[15]

11. In the present case, the State informed that neither the motion to vacate nor the appeal for reversal were the appropriate remedies to resolve the situation that affected the victim,[16] that is, the "irregular exercise of the judicial activity."[17] The State also recognized that Mr. Spoltore had asked that an administrative disciplinary investigation be opened by the Inspector General of the Supreme Court of Justice of the Province of Buenos Aires to examine the conduct of the Labor Court in order to question the delay of the decision,[18] although it was doubted that it would have the effect to repair the delay that affected the victim.[19]

12. The State identified, before the Inter-American Commission at the proper procedural moment, a suit for damages as a domestic remedy that was pending exhaustion to remedy the violation of the unjustified delay on the part of the judicial authorities of Buenos Aires.[20] For that reason, the controversy concerning the exhaustion in this case refers to whether

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[11] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 23 and *Case of Gómez Virula et al. v. Guatemala*. *Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 393, para. 17.

[12] *Mutatis mutandis*, *Case of Galindo Cárdenas et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 2, 2015. Series C No. 301, para. 42; *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016, paras. 25 and 26 and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329. Series C No. 315, para. 38.

[13] *Cf*. *Case of Galindo Cárdenas et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 2, 2015. Series C No. 301, para. 42.

[14] The I/A Court has already stated that "84. The Court recalls that the accused State has the burden of proof, therefore, when it alleges (the failure to exhaust domestic remedies), it must indicate the remedies to be exhausted and provide evidence of their effectiveness." (emphasis added). *Cf. Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2017. Series C No. 344, para. 33. Similarly: *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Preliminary Objections.* Judgment of February 1, 2000. Series C No. 66, para. 53.

[15] *Cf. Mutatis mutandis: Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 8, 2019. Series C No. 384, para. 41 and footnote 22. Similarly: *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 30, 2016. Series C No. 329, para. 37.

[16] *Cf*. *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 17.

[17] *Cf*. *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 18.

[18] *Cf*. *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 17.

[19] *Cf*. *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 17.

[20] *Cf*. *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 33.

Argentina had duly demonstrated a) the availability and b) the effectiveness of that remedy at the time of the events.

13. Therefore, the State considered a) the appropriateness of a civil suit for damages established in the Civil Code[21] for this type of case in accordance with the "doctrine" and b) the effectiveness of a suit for damages in similar cases.

14. The I/A Court has affirmed that the State that presents the objection must specify the domestic remedies that have not been exhausted and show that those remedies are "effective"[22] and "available."[23]

15. The I/A Court has also stated that "a number of remedies exist in the legal system of every country but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted."[24] That they are adequate means that the function of those remedies, within the domestic legal system, is capable of addressing the infringement of a legal right."[25] In addition, the Inter-American Tribunal has also stated that in order for a remedy to be effective it must be truly appropriate.[26] Thus, the State must prove that the remedy that has allegedly not been exhausted is "adequate" to repair the specific right that has been infringed.

16. The rules for a suit under the Civil Code in force at the time of the events referred to the acts and omissions of public officials in general and not specifically to judicial officials.

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[21] The Civil Code governs such action as follows: "Article 1.112. The acts and omissions of public officials in the exercise of their duties, for not complying except in an irregular manner, with the legal obligations imposed upon them, are included in the provisions of this Code." *Cf*. Civil Code of the Republic of Argentina of September 25, 1869, Article 1112.

[22] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 43; *Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 6, 2008. Series C No. 184, para. 30; *Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 16, 2017. Series C No. 333, para. 76 and *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 15, 2018. Series C No. 353, para. 49.

[23] *Cf. Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 194, para. 37; *Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 27, 2014. Series C No. 281, para. 24 and *Case of Gutiérrez Hernández et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 24, 2017. Series C No. 339, paras. 22 and 25.

[24] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 64 and *Case of Brewer Carías v. Venezuela. Preliminary Objections.* Judgment of May 26, 2014. Series C No. 278, para. 86.

[25] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 64 and *Case of Caballero Delgado and Santana v. Colombia. Preliminary Objections.* Judgment of January 21, 1994. Series C No. 17, para. 63. Similarly: *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344, para. 33.

[26] The I/A Court maintained in its Advisory Opinion OC-9/87 that in order that a remedy have validity "it must be truly effective in establishing whether there has been a violation of human rights and in providing redress." *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. 24 and *Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 340, para. 188.

Although the State mentioned three judicial decisions[27] that would demonstrate the availability of a suit for damages for acts or omissions, it did not provide copies of those decisions.[28]

17. On this question, among the elements that it examined in the recent *Perrone and Preckel* case (2019), the I/A Court indicated, in rejecting the preliminary objection on the failure to exhaust a civil suit for damages invoked by Argentina, that "the State had not proved the appropriateness of the recourse for this type of case" that was examined at that time and that the State submitted only one judicial decision to the Inter-American Tribunal.[29]

18. In that case (*Perrone and Preckel*), the State referred to the existence of a precedent that the I/A Court did not deem sufficient to prove the adequacy of that recourse. In the Spoltore case, although the State, at the public hearing, was asked to provide the precedents to which they had alluded, it did not do so and it also indicated that they didn't refer to labor matters.

19. The information supplied by the State in the present case demonstrates that, then as now, a civil suit for damages has not been used in cases of judicial delays in labor proceedings.

20. Neither is it possible to exhaust a recourse that is simply based on a theory (that the State doesn't even specify) that in practice has not shown its effectiveness in labor matters in even one concrete case. Thus, as in the *Perrone and Preckel* case, "the State did not prove the adequacy of that recourse in this type of case."[30]

21. I also agree with the arguments of the Inter-American Commission and the representatives of the victim that the precedents alluded to by the State (and not provided to the I/A Court, despite being requested) are not applicable to this case and moreover do not refer to labor matters. In its final written arguments, the Inter-American Commission stated that "it coincides with those presented by the representatives in the sense that the precedents mentioned by the State are not analogous to the present case and do not demonstrate that a civil action for damages is effective to obtain compensation for the unjustified delay in the administration of justice in labor proceedings for occupational illness. In effect, two of the precedents referred to by the State refer to delays in criminal proceedings, in which measures of coercion were imposed, and the third concerned the delay in the return of an automobile."

22. With respect to the foregoing, it is important to emphasize what is contained in the *amicus curiae* brief of the civil society organizations Foro Medio Ambiental de San Nicolás, Generaciones Futuras and Cuenca del Río Paraná. In their brief, submitted under the terms of Article 44 of the Rules of Procedure of the Inter-American Tribunal, they argue that the presumed civil action for damages was a "materially impossible" possibility since an examination of the jurisprudence of Argentina does not show "a single case of conviction of the State for a violation of a reasonable period in a judicial proceeding."[31] In addition, the

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[27] Paragraph 35 of the Judgment expresses that "The State referred to two decisions of the Supreme Court of Justice of the Nation and a decision of the Judge of the Contentious-Administrative of the First Instance No. 1 of the Judicial Department of La Plata that heard suits for damages due to judicial delays in non-labor proceedings."

[28] *Cf*. *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 35.

[29] *Cf. Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 8, 2019. Series C No. 384, para. 41 and footnote 22.

[30] *Cf. Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 8, 2019. Series C No. 384, para. 41.

[31] *Amicus curiae* brief presented on February 20, 2020 by Fabián Andrés Maggi, Lucas Landivar and Juan Ignacio Pereyra Quetes, in their own name and in representation of the Foro Medio Ambiental de San Nicolas, Generaciones Futuras and Cuenca del Río Paraná associations (merits file, folio 545).

same *amicus curiae* asserts that this hypothetical action of reparation presented by the State "remained absolutely and definitively discarded" after the reform of the Civil Code of 2014.[32]

23. It is important to bear in mind that, in light of the European jurisprudence, the I/A Court has already mentioned that "*the existence of domestic remedies must be sufficiently certain, not only in theory but also in practice,* in which the contrary case would not comply with the required accessibility and effectiveness." (emphasis added)

24. Continuing this reasoning, the I/A Court decided in the *Spoltore v. Argentina* case to reject the preliminary objection raised by the State, taking into account, among others, that the State did not demonstrate the availability of a civil action for damages to request reparations for a delay in the judicial proceedings and, therefore, its effectiveness to resolve the delays derived from judicial action.[33]

25. In addition, as mentioned (*supra*, para. 13), neither the motion to vacate nor the appeal for reversal were remedies that could resolve the infringed legal situation. Therefore, it was not necessary that the victim in the case exhaust a remedy that was not proved before the Inter-American Commission –nor before the I/A Court– that could be an appropriate and effective channel to rectify the concrete violation that was presented in this case.

26. This is corroborated with what was decided at the proper time by the Inter-American Commission, when it indicated that:

> 32. […] there does not exist in the Province of Buenos Aires a regulatory law that specifically establishes the possibility of an action for material damages for cases of procedural delay. Nevertheless, Article 166, paragraph 4 of the Constitution of the Province of Buenos Aires establishes the duty […] to create a system of complaints for the delay in the justice system and in Article 15 […] there is mention of the duty of the judiciary to process cases in a reasonable period, […] be it an action for damages or otherwise to repair civilly the damage caused by delay in the processing of a judicial proceedings.
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> 33. Secondly, and as the State itself maintains, there does not exist in the Jurisprudence of the Supreme Court of Argentina cases in which, in the processing of an action for damages, there has been a ruling regarding the concept of the responsibility of the State for the procedural delay of a case.
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> 34. Thirdly, although within Argentine doctrine various authors have attempted to invoke the responsibility of the judiciary for an unreasonable duration, this possibility is still only in the sphere of theoretical discussion and has not been materialized in practice.[34]

27. Similarly, following the procedures established by the domestic legislation, Mr. Spoltore exhausted the remedies that the law provided for a proceeding in the only instance for labor matters, which, as mentioned, was not designed to repair the delay in a judicial decision. It should be kept in mind that beyond the theoretical possibility based on the Argentine doctrine on the appropriateness of a civil action for damages on account of judicial delays, what is

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[32] *Ibid*, (merits file, folios 545 y 546). The *amicus curiae* brief states that "With the reform ordered by Law 26.994, the former Article 1112 became Article 1766, which ordered the opposite: "'*The acts and omissions of public officials in exercising their duties, for not complying, except irregularly, their legal obligations are governed by the norms and principles of the national or local administrative law, whichever applies.*" Although before the reform there were numerous practical difficulties in bringing a judicial suit against the State, after the reform the minimal possibility that existed was absolutely and definitively discarded. The provision of the new Civil and Commercial Code creates a notorious impossibility to access the jurisdiction to reclaim State responsibilities, basically that impossibility is manifestly demonstrated in the 24 provincial jurisdictions of our country" (merits file, folio 546).

[33] Similarly, in the *Flor Freire v. Ecuador* case, the Court indicated that: "When arguing the failure to exhaust domestic remedies, the State must not only specify at the proper moment the domestic remedies that have not been exhausted, but must also prove that those remedies were available, and were appropriate and effective. The State did not provide this evidence." (emphasis added). *Cf. Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016, Series C No. 315, para. 26.

[34] *Cf.* Brief of Observations of the Inter-American Commission on Human Rights to the Preliminary Objection of September 19, 2019, which refers to what was expressly stated in Report No. 65/08, Petition 460-00, Admissibility, Victorio Spoltore, Argentina, July 25, 2008 (merits file, folios 300 and 301).

certain is that in this case it was not proved that, at the time of the events, in practice there existed a single case in the labor field that would corroborate it, which is important for evaluating compliance with the requirement to exhaust domestic remedies, that in any case should be examined in light of the *pro persona* principle in the interest of access to inter-American justice.

28. In light of the above and having examined these considerations, I believe that we do not have the necessary elements to consider whether a civil suit for damages, other than existing in the domestic legislation of Argentina, was appropriate and effective for delays caused by the actions of judicial officials in labor matters. Given the lack of evidence on the part of the State, the only possible response was to reject the preliminary objection, in accordance with the constant jurisprudence of the inter-American Tribunal.

III. THE RIGHT TO EQUITABLE AND SATISFACTORY WORKING CONDITIONS

29. As I have stated on other occasions,[35] the right to work has formed a basic link in the jurisprudential chain developed by the I/A Court, beginning in 2017 with the *Case of Lagos del Campo v. Peru,*[36] which deals with economic, social, cultural and environmental rights (hereinafter "the ESCE"). The present case falls within this panorama as the decision identified that a part of the right to work is the right "to equitable and satisfactory" working conditions.[37] Since the *Lagos del Campo v. Peru* case, the jurisprudence of the Inter-American Tribunal has been identifying the different forms in which the right to work is projected, for example, as "the right of employers and employees to freely associate for the defense and protection of their interests."[38]

30. With respect to equitable and satisfactory working conditions "as a part of the right to work,"[39] the Judgment considers that, in accordance with the Charter of the Organization of American States (hereinafter "Charter of the OAS"), in its Article 45(b) there is a reference with a sufficient degree of specificity to the right […] to derive its existence and implicit recognition from the OAS Charter.[40] As has been done in other cases,[41] the Judgment uses

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[35] In the *San Miguel Sosa et al.* case, I wrote that "the *Case of San Miguel Sosa et al. v. Venezuela*, complemented the rapidly developed vision of the Inter-American Tribunal on social rights and their direct enforcement by this judicial instance. The triad of labor cases (*Lagos del Campo, Dismissed Employees of Petroperú et al,* and now *San Miguel Sosa et al.)* permitted defining a series of standards that must be taken into account when exercising control of conventionality domestically on the domestic level and contribute to the existing jurisprudential dialogue between the international inter-American jurisdiction and the national jurisdiction of the States Party to the American Convention. *Cf. Concurring and Partially Dissenting Opinion in the Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348, para. 27.

[36] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 340, paras. 153 and 154.

[37] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 9, 2020. Series C No. 404, para. 83.

[38] The Inter-American Tribunal concluded that "the State is responsible for the violation of Articles 16(1) and 26 in relation to Articles 1(1), 13 and 8 of the American Convention, to the detriment of Mr. Lagos del Campo." *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 340, paras. 158, 163 and Operative Paragraph 6.

[39] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 83.

[40] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 84.

[41] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2017. Series C No. 340; *Advisory Opinion OC-23/17* of November 15, 2017. *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights*

the American Declaration of the Rights and Duties of Man, the *international corpus iuris* and the Constitution of Argentina to define the content, in an unlimited manner, of what are "equitable and satisfactory" working conditions."[42]

31. It is particularly relevant to underline the fundamental role played by the General Comments of the Committee of Economic, Social and Cultural Rights since 2017 in the *Lagos del Campo* case in giving content to the rights that can be identified through Article 26 of the Pact of San José.[43]

32. Although the Judgment indicated that, in view of the particular circumstances of the case, the Inter-American Tribunal did not consider it necessary "to open a discussion on the point that was the reason for recognizing responsibility;"[44] that is, the excessive length of the proceedings for compensation for an occupational sickness (violation of the guarantees to a fair trial and to judicial protection in the broadest sense; access to justice), the above does not mean that the violation will not be considered when studying the arguments of the alleged victim that were made autonomously in the brief with requests, arguments and evidence, therefore I believe it relevant to offer some thoughts on the scope of what was decided in Chapter IX of the Judgment.[45]

33. It is necessary to reiterate that in this case there was no examination as part of the right to equitable and satisfactory working conditions nor the harm caused to the health of Mr. Spoltore nor the working conditions" in the company where he worked; so it is not appropriate "to decide whether other possible elements of the right to equitable and satisfactory working conditions are also protected by Article 26."[46]

34. As expressed in the Judgment, and in harmony with the decision of the Inter-American Commission, the analysis made in the decision is not to question whether the decision of the Labor Court No. 3 of the Judicial Department of San Isidro of the Province of Buenos Aires (hereinafter "Labor Court") is in accordance with the American Convention; that is, a violation of Article 26 of the Pact of San José regarding the equitable and satisfactory working conditions that ensure the health of the worker is not oriented to "establish whether or not Mr. Spoltore

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to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights). Series A No. 23; *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344; *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348; *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359; *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375; *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 394; *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 22, 2019. Series C No. 395, and *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs*. Judgment of February 6, 2020. Series C No. 400.

[42] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, paras. 84 to 87.

[43] The General Comments, however, have played a fundamental role even before the jurisprudence of the I/A Court referred to the direct justiciability of social rights; for example, references may be found in the *"Juvenile Reeducation Institute" v. Paraguay" (2004), Xákmok Kásek Indigenous Community v. Paraguay (2010) or I.V. v. Bolivia (2016).*

[44] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 45.

[45] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 103.

[46] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, paras. 77 and 84.

is entitled to the compensation that he sought nor to question the result of the labor proceedings."[47]

35. As previously mentioned, while it was not considered opportune to provide a detailed examination in the Judgment with respect to the recognition of international responsibility regarding Articles 8 and 25 of the Pact of San José, it is true that, given the implications between access to justice and the content of Article 26 of the American Convention, it is appropriate to make some comments to better understand the matter.

36. It is, therefore, essential to establish, in the first place, the nexus between the delay of a proceeding –reasonable period– and its impact on judicial protection and then to establish how a broad understanding of the concurrence of a reasonable period and judicial protection entails a lack of access to justice, as an integral element of protection of any facet of the right to work (such as equitable and satisfactory working conditions), regardless of the result of any decision.

37. As to the first aspect, the jurisprudence of the Inter-American Tribunal has stated that it is clear that "a remedy is not 'truly effective' if it is not decided within a time frame that enables the violation being claimed to be corrected in time."[48] In addition, the Tribunal has indicated that "the concept of a reasonable period of time contemplated in Article 8 of the American Convention is closely linked to the notion of an effective, simple and prompt remedy envisaged in Article 25."[49]

38. To assess the *effectiveness of the remedy* also implies analyzing respect to the principle of the "reasonable period" and when it is demonstrated that *Articles 8 and 25 are violated* when domestic remedies exceed a *"reasonable period."*[50] Therefore, a prolonged delay creates, as a consequence, in addition to the violation of a reasonable period "an evident denial of justice"[51] and a denial to access to justice is related to the effectiveness of the remedies since it is not possible to assert that an existing remedy within the State's legal order, which does not resolve the litigation on an unjustified delay in the proceedings, can be considered an effective remedy.[52]

39. What the Inter-American Tribunal must determine was how the delay of nine years by the Labor Court to resolve the complaint of Mr. Spoltore and the delay of three years for the

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[47] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 77.

[48] *Cf. Case of the "Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 2, 2004. Series C No. 112, para. 245.

[49] *Cf. Case of Baldeón García v. Perú. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 155; *Case of Luna López v. Honduras. Merits, Reparations and Costs*. Judgment of October 10, 2013. Series C No. 269, para. 188 and *Case of Argüelles et al. v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2014. Series C No. 288, para. 188.

[50] *Mutatis mutandis Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, para. 65 and *Case of Barrios family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, para. 285.

[51] *Cf. Case of Barrios family v. Venezuela. Merits, Reparations and Costs*. Judgment of November 24, 2011. Series C No. 237, para. 278 and C*ase of Fornerón and daughter v. Argentina. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 242, para. 109.

[52] *Cf. Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits.* Judgment of May 6, 2008. Series C No. 179, paras. 87 and 88; *Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 30, 2008. Series C No. 187, paras. 115 and 116 and *Case of Fornerón and daughter v. Argentina. Merits, Reparations and Costs.* Judgment of April 27, 2012. Series C No. 242, paras. 109 and 110. See also *Case of the Indigenous Communities of Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs.* Judgment of February 6, 2020. Series C No. 400, para. 301.

Supreme Court of Justice of the Province of Buenos Aires (hereinafter "SCJBA") to decide to reject the motion to vacate and the appeal for reversal –which together sought compensation for Mr. Spoltore for an alleged occupational sickness- had an impact as much on judicial guarantees and judicial protection as if it had some repercussion on a specific aspect of the equitable and satisfactory working conditions, as could be "the access to justice," to seek compensation.

40. As to judicial remedies in the area of social rights, General Comment No. 9 of the ESCR Committee states that the remedies -judicial and administrative- must be, among others, *prompt* and effective.[53] Similarly, the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* express that any victim of a violation of the ESCR "should have access to an effective judicial or other appropriate remedies."[54] Similarly, the *Principles and Guidelines for the implementation of Economic, Social and Cultural Rights of the African Charter of Human and Peoples' Rights,* following the lead of General Comment No. 9, states that "the effective remedies can be either judicial or administrative but must be accessible, affordable and timely."[55]

41. As stated in the Judgment, both the right to work and the specific content of equitable and satisfactory working conditions contemplate that the person who is the victim of a breach of those rights should have "access to adequate judicial remedies" or of any other nature on the national level.[56]

42. With respect to the importance of an effective judicial remedy in the case of violations of the right to work,[57] in the case of the African System of Human and Peoples' Rights the *Pretoria Declaration on Economic, Social and Cultural Rights in* Africa calls for "equitable and

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[53] "9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State Party will have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective." In addition, the General Comment states that the International Covenant on Economic, Social and Cultural Rights "contains no direct counterpart to Article 2(3) of the International Covenant on Civil and Political Rights which obligates States parties to *inter alia* 'develop the possibilities of judicial remedy.'" "Nevertheless, a State party seeking to justify its failure to provide any domestic remedies for violations of economic, social and cultural rights would need to show either that such remedies are not 'appropriate means' within the terms of Article 2(10) of the International Covenant on Economic, Social and Cultural Rights or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies." *Cf. UN, ESCR Committee, General Comment No. 9 on the domestic application of the Covenant,* 19th Session (1998), paras. 3 and 9.

[54] "*Access to remedies*. 22. Any person or group who is a victim of a violation of an economic, social or cultural right should have access to an effective judicial or other appropriate remedies at both national and international levels." *Cf. Maastricht Guidelines on Violations of Economic, Social and Cultural Rights,* adopted January 22-26, 1997, Guideline 22.

[55] "22. Effective remedies can be either administrative or judicial but must be accessible, affordable and timely. Administrative tribunals and the courts should recognize the justiciability of economic, social and cultural rights, and grant appropriate remedies in the event of violations of these rights by State or non-state actors." African Commission on Human and Peoples' Rights, *Principles and Guidelines for the implementation of Economic, Social and Cultural Rights of the African Charter of Human and Peoples' Rights,* October 27, 2011, Nairobi, Principle 22.

[56] UN, ESCR Committee, General Comment No. 23 (2016) on the right to equitable and satisfactory working conditions (Article 7 of the International Covenant of Economic, Social and Cultural Rights, E/C.12/GC/23, April 27, 2016, para. 29 and General Comment No. 18, *The Right to Work, Article 6 of the International Covenant on Economic, Social and Cultural Rights,* E/C.12/GC/18, February 6, 2006, para. 48).

[57] Unlike other international instruments that contain differentiated provisions on the "rights to work" and "their conditions" – as the International Covenant on Economic, Social and Cultural Rights (Arts. 6, 7, and 8), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Arts. 6 and 7) or the European Social Charter (Arts. 1, 2 and 3)- the African Charter of Human and Peoples' Rights, in its Article 15, states that "Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."

satisfactory conditions of work, including effective and accessible remedies for work place-related injuries, hazards and accidents."[58]

43. For its part, the European Court of Human Rights, while it has not pronounced on "the right to work," it has heard some cases on violations of a reasonable period with respect to labor proceedings, where it has been emphatic in stating that it is for the contracting States to organize their judicial systems so that their courts can guarantee to everyone "the right to obtain a final decision on the controversies relating to their civil rights and obligations within a reasonable period" and that this has a special relevance in those cases where there are labor disputes that are especially important to the worker and, therefore, they should be resolved at an accelerated rate.[59]

44. It is important to note that the rationale (referring to social rights) is not being applied here for the first time as the I/A Court has declared a breach of Article 26 in the context of the rights contemplated in Articles 8 and 25. For example, in the *Dismissed Employees of Petroperú et al*.[60] and *San Miguel Sosa et al. cases,*[61] the Court indicated that "the right to

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[58] "6. The right to work in article 15 of the Charter entails among other things the following: […] Equitable and satisfactory conditions of work, including effective and accessible remedies for work place-related injuries, hazards and accidents […]." *Cf. Pretoria Declaration on Economic, Social and Cultural Rights in Africa,* adopted September 7, 2004, Pretoria, Point No. 6.

[59] ECHR, *Cf. Case of Delgado v. France* of November 14, 2000, para, 50. In this case, the violation was an excessive period to resolve a labor proceeding to settle a possibly unjustified dismissal. See also: *Case of Obermeier v. Austria* of June 28, 1990, Series A No. 179, para. 72; *Case of Buchholz v. Germany* of May 6, 1981, Series A No. 42, paras. 50 and 52 and *Ruotolo v. Italy* of February 27, 1992, Series A No.230-D, para. 17.

[60] The case declared a breach of "the right to work" because 85 employees of Petroperú, 25 employees of Enapu, 39 employees of Minedu and 15 employees of the Ministry of Economy and Finances (MEF) "did not enjoy an effective judicial remedy" (para. 193). Although the relationship between Article 26 and Articles 8 and 25 of the American Convention is not stated in Operative Paragraph No. 7 of the Judgment, nor in paragraph 193, reading paragraphs 162, 172, 181 and 193 together it is clear that they are related to the aforementioned paragraphs. From a reading of those paragraphs and the reasons for declaring a breach of the rights stipulated in Articles 8 and 25, the analyses made for the group of Petroperú employees and for the group of employees of the MEF are of special importance. For example, with respect to the employees of Petroperú, the I/A Court stated that the last remedy presented by the employees "lacked a proper rationale" as it had not "analyzed the arguments presented by the plaintiffs regarding the constitutional rights that might have been affected, nor the impact that their breach could have had on the discharged employees" (para. 170). In the case of the MEF employees, the Court stated that "the Constitutional Court did not analyze the alleged violations to the right to work (para. 176); "not analyzing whether in the proceedings regarding the dismissal of the plaintiffs the constitutional and conventional rights were breached, the Constitutional Court separated the substantial right from the procedural right, thus preventing an analysis of the principal object of the controversy (para. 178). It is very important to note that the breach of Article 26, in the context of the rights contemplated in Articles 8 and 25, did not occur because the courts that resolved the respective remedies of the employees should have recognized the "right to work," but rather it occurred because it did not take into account one of the guarantees contemplated in Article 8 of the Pact of San José –the rationale-. What was taken into account was that "the obligations of the State to conduct the proceedings in strict accordance with the guarantee of judicial protection consists of an obligation that is a matter of means or conduct and that it is not complied with for the sole fact that the proceedings did not produce a satisfactory result, or did not arrive at the conclusion hoped for by the alleged victim"; however, it is so when the content of the right that is presumed to protect is not complied with when, during the proceedings, the judicial guarantees are not observed. This is what occurred in the case of the dismissed workers. *Cf. Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344, paras. 162, 170, 172, 176, 178, 181 and 193 and Operative Paragraph No. 7.

[61] In this case, the I/A Court expressed that the State had not ensured the rights "to access to justice and to effective judicial protection" with regard to their arbitrary dismissal since "the reasons" or "grounds" provided by the domestic courts were insufficient to decide the legal situation, such as an arbitrary dismissal, that was allegedly infringed (paras. 196 and 221). The I/A Court indicated that the courts that had heard the appeal of amparo presented by the victims declared some of the evidence illegal (telephone intercepts), which was the only means of direct proof, without taking into account the public interest in the matter; in addition, "they did not investigate the reasons for the dismissal, settling for generalities without specific support" (para. 195). In this case, like that of the *Dismissed Employees of Petroperú et al.* case, the I/A Court declared a breach of the right to work contemplated in Article 26 of the Convention, in the context of the rights contemplated in Articles 8 and 25, not because at the domestic level the remedies presented should recognize the right to work of the victims, but rather because there were not "sufficient

work includes the obligation of the State to ensure the rights to access to justice and to effective judicial protection, both in the public and the private spheres of labor relations."[62]

45. As an example of the importance of judicial guarantees in processing a case, the ESCR Committee, in deciding the *I.D.G. v. Spain case,* concluded that there was a "lack of effective access to the courts to protect the right to adequate housing." The Committee arrived at that conclusion since "there existed an irregularity in the notice" and indicated that the irregularity "could not imply a violation of the right to housing if it did not have significant consequences on the right of defense of the author on the effective enjoyment of her house"; for example, "that the person have another appropriate procedural mechanism to defend her right and her interests."[63] In this case, a judicial guarantee -such as adequate notice- was the catalyst that affected the content of the right to decent housing.

46. The advisory jurisdiction of the I/A Court has held that there are certain rights[64] that, together with other rights, such as the ESCR, are converted into a "guarantee," that is, they acquire an instrumental character -such as access to justice- in the measure that "permits the satisfaction of other rights" as a means of the materialization of the content of the right in question, such as the content of the right to work.[65] Such an interpretation has even been applied to concrete contentious cases.[66]

47. In the case of Mr. Spoltore, the proceedings before the Labor Court had a special importance since there was no other labor court, so the excessive delay of nine years to resolve the case had significant consequences since, above all, the compensation of a person with a disability depended on a prompt resolution. While the motion to vacate and the appeal for reversal were available, once again there was an unreasonable period (three years) for the Supreme Court of the Province of Buenos Aires to adopt a decision, which were unjustified delays recognized by the State in accepting its international responsibility.

48. Under these circumstances, the right to access to justice does not mean that the potential decision has to be favorable, but rather that the remedy has adequate guarantees of due process of law, regardless of the result. On the domestic level, at both the ordinary and the appellate level, the guarantees were not oriented to make real, if it had proceeded in this manner, the compensation that was claimed by Mr. Spoltore.

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grounds in the judicial decisions" with regard to the arguments presented, specifically the possible commission of a discriminatory act or a political reprisal in the context and with the elements of evidence (para. 193). *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of February 8, 2018. Series C No. 348, paras. 193, 195, 196 and 221.

62 *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of February 8, 2018. Series C No. 348, para. 221 and *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344, para. 193.

63 *Cf. ESCR Committee, I.D.G. v. Spain*, Communication 2/2014, E/C.12/55/D/2/2014, October 13, 2015, para. 13.4.

64 Such as political participation, access to information or judicial guarantees and protection.

65 *Mutatis mutandi, The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and personal integrity – interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights).* Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 211.

66 *Cf. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349, para. 160. Prior to the jurisprudence on the direct justiciability of the ESCR see: *Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C No. 246, para. 294 and *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 30, 2016. Series C No. 329, paras. 156 and 163.

49. Therefore, not only can an analysis of a breach of the ESCR in decisions that do not recognize, for example, compensation for an alleged occupational sickness be understood; but also that the protection of the right exists when the remedy designed for the protection of the right is not processed with adequate guarantees, because then neither the material content nor the instrumental means that would allow an integral vision of the violation could be disassociated and the harm caused is not due to mere procedural issues, as access to justice is sometimes conceived.

IV. CONCLUSION

50. This opinion has shown that, in accordance with the constant jurisprudence of the Inter-American Tribune –since the first contentious case to the present day– "the State claiming non-exhaustion has the obligation to prove that domestic remedies remain to be exhausted and that they are effective."[67]

51. In light of the inter-American jurisprudence, in the present case a civil suit for damages was not an adequate and effective channel that Mr. Spoltore had to exhaust in order to recur to the inter-American system. This is because, on the one hand, the State did not demonstrate –neglecting even to provide the decisions that it said were analogous- that the suit for damages was an adequate mechanism to rectify the situation that was alleged to be breached at the time of the events in the present case.

52. It should not pass unremarked that the State argued the appropriateness of the aforementioned action for the delayed labor proceedings under the most accepted "theory" at the local level (a general affirmation without any specification). It is important to point out that it is not sufficient that a remedy exists in theory -no matter how valuable it might be- but rather its appropriateness and effectiveness, at the time of the events, must have been demonstrated in concrete cases of infringed legal situations. This is particularly important to adequately understand the rule of the exhaustion of local remedies in light of the *pro persona* principle

53. In the present case, the State itself recognized that there were not any precedents in which a suit for damages was appropriate for delayed proceedings in labor matters. This affirmation is consistent with that of the representatives of the victim and that of the Commission. One of the *amicus curiae* briefs even sustained that in this matter there has not been "a single case of conviction of the State for the violation of a reasonable period in a judicial proceeding."[68] The I/A Court has been clear in its constant jurisprudence that "the accused State has the procedural burden"[69] and, therefore, "the State claiming non-exhaustion has the obligation to indicate the domestic remedies that remain to be exhausted and to provide proof that they are effective."[70] (emphasis added).

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[67] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 88 and *Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 35.

[68] A*micus curiae brief* presented on February 20, 2020, by Fabián Andrés Maggi, Lucas Landivar and Juan Ignacio Pereyra Quetes, on their own behalf and in representation of Foro Medio Ambiental de San Nicolas, Generaciones Futuras and Cuenca del Río Paraná (merits file, folio 545).

[69] *Cf. Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344, para. 33 and *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Preliminary Objections.* Judgment of February 1, 2000. Series C No. 66, para. 53.

[70] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 88, *Case of Fairén Garbi and Solís Corrales. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 2, para. 87, *Case of Godínez Cruz. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 3, para. 90, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Preliminary Objections.* Judgment of February

54. If the preliminary objection filed by the State had been accepted, it would have contravened the jurisprudence of the Inter-American Tribunal, which has held that the remedies must not only be available, but they must also be *effective and appropriate* to repair the violation. Therefore, as stated in the Judgment, it would be "an excessive burden for the alleged victim to be required to exhaust a remedy that had not been utilized in practice for the purpose that the State alleged that it had." This would go against the right to access to inter-American justice of the victim and would be to the detriment of the *pro persona* principle. Therefore, in the present case, it was proper to reject the preliminary objection filed by the State.

55. With respect to the merits of the case, taking into account the argument of the representatives of the victim, the I/A Court developed the right to "equitable and satisfactory working conditions" contained in Article 26, in the context of the rights contemplated in Articles 8 (to a fair trial) and 25 (judicial protection) of the American Convention. The State recognized that these latter rights were violated when it stated that "the position of the new authorities in charge of the Secretariat of Human Rights is that the judicial proceedings in question were not particularly complex and that, generally speaking, the petitioner, who in addition was a person with a disability, gave an expected boost to the proceedings." Therefore, it is unreasonable that the judicial authorities had taken 12 years to determine whether the law was favorable to him in his claim against his employer for occupational sickness.[71]

56. What the decision makes manifest is one of the many facets that the protection of the right to work can adopt is its aspect of equitable and satisfactory working conditions, that in this case becomes a concrete part of that right, such as is *access to justice*. In the framework of this facet of the right to work, the Judgment explains how the delay in the labor proceedings had an impact on the victim, as much on his right to access to justice as on the finality that such proceedings seek, that is, compensation for possible occupational sickness. We should bear in mind that Mr. Spoltore had a disability (recognized by the State) and therefore it was necessary that, pursuant to the standards expressed by this Inter-American Tribunal and since Argentina is a State party to the Pact of San José, the labor proceedings be processed with exceptional diligence.[72]

1, 2000. Series C No. 66, para. 53, *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2017. Series C No. 344, para. 33*, Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, paras. 25 and 26 and *Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 8, 2019. Series C No. 384, para. 33.

[71] *Cf. Case of Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 36. At the public hearing on the case, the State maintained that "with exclusive attention to the special nature of this case, Argentina agrees that it should recognize the responsibility of the State for the violation of the guarantee of a reasonable period enshrined in Article 8(1) of the American Convention on Human Rights and, consequently, of the right to judicial protection set forth in Article 25 of the Convention, in relation to Article 1(1) thereof."

[72] As this Judgment states, in cases that involve harm to an individual in a situation of vulnerability, as in the cases of a person with a disability, the Inter-American Court has been clear in pointing out that the judicial authorities should act with great diligence. In these cases, it is imperative that the authorities in charge give priority to following and resolving the proceedings in order to avoid delays in processing the cases so as to ensure their prompt resolution and execution. *Cf*. *Spoltore v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Series C No. 404, para. 45.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Secretary

DISSENTING OPINION OF JUDGE
EDUARDO VIO GROSSI

CASE OF SPOLTORE V. ARGENTINA

JUDGMENT OF JUNE 9, 2020
(*Preliminary Objection, Merits, Reparations and Costs*)

1. I issue this dissenting opinion[1] in relation to the Judgment in the above-mentioned case[2] because I disagree, in principle, with Operative Paragraph No. 1,[3] regarding compliance of the requirement of the prior exhaustion of domestic remedies, for the reasons that I have already explained in other individual opinions,[4] which are repeated as relevant.

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[1] *Article 66(2) of the American Convention on Human Rights: "If the judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.*

Article 24(3) of the Statute of the Inter-American Court of Human Rights: "The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate."

Article 32(1)(a) of the Rules of Procedure of the Inter-American Court of Human Rights: "The Court shall make public: its judgments, orders, opinions and other decisions, including separate opinions, dissenting or concurring, whenever they fulfill the requirements set forth in Article 65(2) of these Rules."

Article 65(2) of the Rules: "Any Judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the Presidency so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment."

[2] Hereinafter "the Judgment."

[3] *"Reject the preliminary objection on the alleged failure to exhaust domestic remedies, in accordance with paragraphs 21 to 35 of this Judgment.*

[4] *Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Carranza Alarcón v. Ecuador. Judgment of February 3, 2020 (Preliminary Objections, Merits, Reparations and Costs; Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of López et al. v. Argentina. Judgment of November 25, 2019 (Preliminary Objections, Merits, Reparations and Costs); Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Gómez Virula et al. v. Guatemala. Judgment of November 21, 2019 (Preliminary Objection, Merits, Reparations and Costs); Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of the Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Judgment of November 21, 2019 (Preliminary Objections, Merits, Reparations and Costs); Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Díaz Loreto et al. v. Venezuela, Judgment of November 19, 2019 (Preliminary Objections, Merits, Reparations and Costs); Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Terrones Silva et al. v. Peru. Judgment of September 26, 2018 (Preliminary Objections, Merits, Reparations and Costs); Individual Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Amrhein et al. v. Costa Rica.* Judgment of April 25, 2018 (*Preliminary Objections, Merits, Reparations and Costs); Individual Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Yarce et al. v. Colombia. Judgment of November 22, 2016 (Preliminary Objection, Merits, Reparations and Costs); Concurring Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Herrera Espinoza et al. v. Ecuador. Judgment of September 1, 2016 (Preliminary Objections, Merits, Reparations and Costs); Concurring Opinion of Judge Eduardo Vio Grossi. Inter-American Court of Human Rights, Case of Velásquez Paiz et al. v. Guatemala. Judgment of November 19, 2015 (Preliminary Objections, Merits, Reparations and Costs); Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Homan Rights. Case of Peasant Community of Santa Bárbara v. Peru. Judgment of September 1, 2015 (Preliminary Objections, Merits, Reparations and Costs); Individual Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Wong Ho Wing v. Peru. Judgment of June 30, 2015 (Preliminary Objection, Merits, Reparations and Costs*); *Individual Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Cruz Sánchez et al. v. Peru. Judgment of April 17, 2015 (Preliminary Objections, Merits, Reparations and Costs);*

2. Notwithstanding the foregoing, this opinion refers to only some of the aspects relating to the present case, which are addressed in those opinions.

3. The first observation concerns something obvious, but that, for that reason, is often forgotten, that is, that domestic remedies must be previously exhausted or prior to resorting to an international jurisdiction for a violation of an obligation that is also international. This characteristic is, for now, essential and appropriate for the rule of the exhaustion of domestic remedies. This is what has distinguished it ever since its origins[5] and without which it would not be the same. But, at the same time, this trait is inferred from the standards that currently govern the institution in the context of the Inter-American System of Human Rights,[6] which means that domestic remedies must be exhausted prior to lodging, before the Inter-American Commission on Human Rights,[7] a complaint of an alleged violation.[8] Article 46[9] of the American Convention on Human Rights[10] makes this particularly obvious since it states that in order that "*the petition lodged*"[11] be admitted the domestic remedies must be pursued and exhausted, as well as by Articles 28(h)[12] and 29(c)[13] of the Rules of the Commission, which

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Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Liakat Ali Alibux v. Suriname. Judgment of January 30, 2014 (Preliminary Objections, Merits, Reparations and Costs), and Individual Dissenting Opinion of Judge *Eduardo Vio Grossi, Inter-American Court of Human Rights. Case of Díaz Peña v. Venezuela. Judgment of June 26, 2012 (Preliminary Objection, Merits, Reparations and Costs).*

5 Interhandel case, (Preliminary Objections) ICJ, Reports, 1959, p.27: *"The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law" and "Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it within the framework of its own domestic legal system."*

6 Hereinafter, "IASHR."

7 Hereinafter, "the Commission."

8 Article 44 of the American Convention on Human Rights: *"Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."*

9 *1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:*

a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

b) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

c) that the subject of the petition or communication is not pending before another international proceeding for settlement, and

d) that, in the case of Article 44, the petition contains the name, nationality, profession, domicile and signature of the person or persons or of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1.a. and 1.b. of this article shall not be applied when:

a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, and

c) there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies."

10 Hereinafter, "the Convention."

11 Hereinafter, "the petition."

12 "Requirements for the consideration of petitions. Petitions addressed to the Commission shall contain the following information: … any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in these Rules of Procedure."

13 "If the petition does not meet the requirements of these Rules of Procedure, it may request that the petitioner or his or her representative complete them in accordance with Article 26(2) of these Rules."

provide for a mechanism of initial supervision, by its Secretariat, of compliance of that requirement by the petition.

4. In the file of the case, there is no record that the petition had complied with the requirement of the prior exhaustion of domestic remedies. On the contrary, the petition itself contains nothing on the matter, that is, there is no reference to that requirement nor to the exceptions thereof; there is only a claim that there was an excessive delay in the labor proceedings

5. Neither does the Judgment indicate whether the petition complies with the requirement, but it does directly enter into determining the availability, adequacy and practical effectiveness of a suit for damages in labor proceedings in the present case. Nor does it make any mention whether the Executive Secretariat of the Commission carried out, in accordance with the Rules, the initial supervision of compliance with the requirement of the prior exhaustion of domestic remedies.

6. It is obvious that the State cannot not be made to comply with this requirement. It would be absurd, impossible and unfair to make it do so. Absurd, because it would imply that it should collaborate in the lodging of a complaint against itself. Impossible, because it would be unaware of what occurred and of the claims of the petitioner. And unfair, because it would alter the logic of the burden of proof.

7. The second point is that, in the Inter-American System of Human Rights,[14] the obligation to previously exhaust domestic remedies is, according to the above-cited norms, on the petitioner. However, since the rule of the prior exhaustion of domestic remedies is conceived in the interest of the State,[15] the Judgment omits any consideration of its compliance or of the impossibility to do so by the petitioner, thus appearing to take it for granted that the responsibility of that obligation belongs to the State, which, clearly, is improper and illogical.

8. The third reflection concerns the response of the State, which, according to the Rules,[16] must be on the content of the "*lodged*" petition. The law suit is, thus, restricted to the information included therein and it is on this controversy that the decision on the admissibility of the petition should be based and not on what occurs later. In deciding on whether at the moment in which the admissibility of the petition is resolved the requirement of the exhaustion of domestic remedies has been met and not or whether that occurred at the moment that the latter was lodged, twists the meaning of the requirement of the prior exhaustion of domestic remedies since it would allow that eventually the same case could be heard simultaneously by the national jurisdiction and the international jurisdiction, thus violating the reinforcing and complementary nature of the latter with respect to the former,[17] in addition to affecting the State's right of defense.

9. On the other hand, it must be recalled that only "when the petitioner claims the impossibility of proving compliance with the requirement (of the prior exhaustion of domestic remedies) it shall be up to the State to demonstrate that the domestic remedies have not been exhausted, unless that is clearly evident from the record." So that, *a contrario sensu*, in

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[14] Hereinafter, "el SIDH."

[15] Para. 22 of the Judgment.

[16] Article 30(2) and 30(3) of the Rules of Procedure of the Commission: "For this purpose, it shall transmit the pertinent parts of the petition to the State in question. The request to the State for information shall not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition." And "The State shall submit its response within two months counted from the date the request is transmitted. The Executive Secretariat shall evaluate requests for extensions of this period that are duly founded. However, it shall not grant extensions that exceed three months from the date of the first request for information sent to the State.

[17] Para. 2 of the Preamble to the Convention.

the event that the petitioner does not invoke any of the exceptions to compliance of the requirement of the prior exhaustion of domestic remedies, set forth in Article 46 of the Convention, the State, as is logical and just, is not obligated to indicate the non-exhausted remedies.

10. Notwithstanding the above, the Judgment states that "the State has burden of proof to show the availability, adequacy and practical effectiveness of the remedy that it alleges should have been exhausted,"[18] without taking into consideration the aforementioned norm.

11. On the other hand, in its answer to the allegations in the petition, the State expressly noted that the petitioner had not exhausted domestic remedies and to demonstrate it, and considering what the Court has held with regard to the burden of proof on the availability, adequacy and practical effectiveness of the non-exhausted remedies, the State referred to the suit for damages caused by the delay in the labor proceedings. It didn't do so since the petitioner would have alleged to have complied with the requirement of previously exhausting domestic remedies or that it was impossible to do so, but rather to simply demonstrate that he didn't exhaust them.

12. The Judgment presents, however, a curious ground to reject the objection to the prior exhaustion of domestic remedies presented by the State, that is, that "Argentina recognized that suits for damages have not been utilized in cases of excessive judicial delays in labor proceedings," for that reason the Court "considers that it was an excessive burden for the alleged victim to be required to exhaust a remedy that had not been utilized in practice for the purposes that the State claims that it had."[19] It could, therefore, be concluded that, according to the Judgment, a remedy would exist solely if it had been utilized so that, on the one hand, being included in the normative would not be sufficient or what is the same, it would not be enough that the law or other norm include it and, on the other, that, consequently, the first time that, once included in the corresponding normative, it was used, it would not be, however, as such. A curious position, to say the least.

13. The fourth consideration is related to two affirmations in the Judgment regarding "the rule of the prior exhaustion of domestic remedies is conceived in the interest of the State since it seeks to excuse it from having to respond to an international organ for acts that have been imputed to it, before having the opportunity to rectify them by its own means." This is true. That rule benefits the State. But it also and fundamentally benefits the alleged victim of the violation of a human right, bearing in mind that, in recurring first to the allegedly offender State, it opens the possibility that, sooner rather than later, the State, especially if it is a democracy, must "ensure to the injured party the enjoyment of his right or freedom that was violated" and must order 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,"[20] that is to say, that he would achieve the same that, after an international proceeding and a decision, the Court could order the State, but obviously much earlier.

14. And that possibility may be found in the core or central pillar of the IASHR, the purpose of which is to provide "protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states,"[21] and, therefore, cannot substitute nor replace the latter. Keep in mind that, in accordance with the Convention, what justifies this inter-American protection are the attributes of the human personality, which are the foundation of human rights, which therefore explains that the rights are not subject solely

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18 Para. 35 of the Judgment.

19 *Ibid*.

20 Article 63(1) of the Convention.

21 Para. 2 of the Preamble to the Convention.

to the sovereign will of each State nor, therefore, solely enshrined only in their respective domestic legislation, but also and mainly by the international normative.

15. Based on the above, such international protection cannot have the aim of freeing the petitioner from the obligation of complying with the requirement of the prior exhaustion of domestic remedies so that it might operate, since to proceed in that manner would be to strip Article 46 of the Convention of all meaning and would deprive it, consequently, of the possibility of being applied, thus affecting the very cement of the entire international juridical structure of human rights and the essential procedural balance between the parties, including leaving the State defenseless.

16. It is precisely what happens when, as in the record of the case, the admissibility of a petition is resolved, not whether it, at the moment that it is lodged before the Commission, complied with the requirement of the prior exhaustion of domestic remedies or of providing information on the steps taken to that end or on the impossibility of exhausting those remedies, but rather on the basis of whether the State had demonstrated the availability, adequacy and effectiveness of the remedies that were not exhausted, as if that obligation existed for the State under every circumstance and thus also in the present case.

17. Obviously, among the considerations found in the other individual opinions, it is appropriate to point out that which, in agreement with the position in this opinion, evaluates the role that in the area of human rights is played by procedural norms, which are as essential as substantive norms, since respecting them allows the latter to be truly effective and they even confer legitimacy to the decision. Thus, in such an assumption, form is tightly linked to substance. Procedural norms, which are thought in great measure to be mere formalities and, therefore, susceptible of being considered less important than substantive norms, condition their applicability. They, therefore, should not be underestimated since, to do so would encourage the whole of international society and even national societies to act in the same manner, which would have disastrous consequences on the effective oversight of the International Law of Human Rights.

18. In view of all of the above, I voted against Operative Paragraph No. 1 of the Judgment, which rejected the State's preliminary objection regarding the failure to exhaust domestic remedies.[22]

19. In addition, I believe that, in order to be coherent and consequential, I should have also voted against all of the other Operative Paragraphs, since, on the one hand, I believe that, the objection having been accepted, I should not vote on them and, on the other, that, in spite of this position, I should respect Article 16(1) of the Rules of Procedure, which does not permit me to abstain.[23] Nonetheless, I believe that I should place on the record that I am also especially opposed to Operative Paragraph No. 4 of the Judgment,[24] regarding the application of Article 26 of the Convention, for the reasons explained in other individual opinions.[25] It should thus be understood that the votes against Operative Paragraphs Nos. 2,

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22 *Supra*, Note N°2.

23 *"The Presidency shall present, point by point, the matters to be voted on. Each Judge shall vote either in the affirmative or in the negative; there shall be no abstentions."*

24 "*The State is* responsible *for the violation of the right to equitable and satisfactory working conditions that ensure the health of the worker, recognized in Article 26 of the American Convention on Human Rights, in relation to access to justice, recognized in Articles 8(1) and 25(1), as well as the obligation to respect and ensure those rights, enshrined in Article 1(1) thereof, to the detriment of Victorio Spoltore, in the terms of paragraphs 82 to 102 of the present Judgment."*

25 *Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, Judgment of February 6, 2020, (Merits, Reparations and Costs); Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Hernández v. Argentina, Judgment of November 22, 2019, (Preliminary Objection, Merits,*

3, 5 and 6 to 9 do not truly imply any assertion on their content and that the votes in favor of Operative Paragraphs Nos. 10 and 11 are because they exclusively concern procedural aspects of later stages of the Judgment that certainly should be respected.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

Reparations and Costs; Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Muelle Flores v. Peru, Judgment of March 6, 2019 (Preliminary Objections, Merits, Reparations and Costs); Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of San Miguel Sosa et al. v. Venezuela, Judgment of February 8, 2018 (Merits, Reparations and Costs); Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Lagos del Campo v. Peru, Judgment of August 31, 2017, (Preliminary Objections, Merits, Reparations and Costs); and Individual Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of the Dismissed Employees of Petroperú et al. v. Peru, Judgment of November 23, 2017 (Preliminary Objections, Merits, Reparations and Costs).

DISSENTING OPINION OF JUDGE
HUMBERTO ANTONIO SIERRA PORTO

CASE OF SPOLTORE V. ARGENTINA

JUDGMENT OF JUNE 9, 2020
(Preliminary Objection, Merits, Reparations and Costs)

1. While reiterating my respect for the decisions of the Inter-American Court of Human Rights (hereinafter also "the Court" or "the Tribunal"), I am presenting this partially dissenting opinion. In the opinion, I shall explain my disagreement with the majority's position to reject the preliminary objection presented by the State in the present case.

2. In the *Case of Spoltore v. Argentina,* the violation of the American Convention recognized by the State was due to the excessive length of a judicial proceeding on a labor matter between two private persons. It should be repeated, as has been well explained in paragraphs 1 and 77 of the Judgment, that the controversy refers exclusively to the violation of the guarantee of a reasonable period in the proceedings and not to the merits of the complaint filed by Mr. Spoltore to the labor court.

3. That being said, it is common knowledge that the mere occurrence of a violation of the Convention is not sufficient to enable the inter-American system to hear the case. Following the principle of subsidiarity that governs the contentious jurisdiction of the Court, it is first necessary, among other requisites, to provide the State the opportunity to resolve the situation in its own courts. Article 46 of the Convention requires this opportunity by stating that "a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." While this norm provides for certain exceptions, they are not present in the case at hand.

4. Therefore, in the present case, once a reasonable period was exceeded in the proceedings initiated by Mr. Spoltore against a private company, he would have had to exhaust a remedy that was capable of granting him reparations for the violation of the American Convention, which would be the aforementioned excessive length of the judicial proceedings. The exhaustion of a remedy of this nature would have allowed the State to resolve the controversy in its own tribunals. However, the arguments of the representatives and of the Commission with regard to the requirement of the prior exhaustion of domestic remedies refer to those presented by the victim in the context of the labor proceedings that denied his claims.

5. Specifically, Mr. Spoltore presented two remedies (the special appeal for reversal and the motion to vacate) and requested that a disciplinary action be initiated. As can be seen in paragraphs 31 and 32 of the Court's Judgment, none of these channels is appropriate to protect the infringed legal situation.

6. The State claimed that the appropriate remedy in such a situation was a suit for damages, which was not denied by the representatives in the proceedings before the Commission. The State recognized that such a suit had never been used for cases of procedural delays in labor matters, as happened in the Spoltore case. Therefore, the controversy in this case is based on whether such a suit was truly available.

7. The Court considered, as the representatives and the Commission claimed, that the State did not demonstrate that the remedy alleged as available was adequate and effective because it did not provide a copy of the proceedings in which a similar suit had been used to obtain reparations for the excessive length of a judicial proceedings and, in any case, it was not a

labor matter. Nonetheless, the rules for a suit for damages in the Civil Code is sufficiently broad to also apply to cases of judicial delays in labor matters.

8. A suit for damages governed by the Civil Code then in force established that such a suit would be for "the acts and omissions of public officials in the exercise of their functions, for not complying, except in an irregular manner, with their legal obligations and that are included in the provisions of this Code." In addition, the State referred to two decisions of the Supreme Court of Justice of the Nation and a decision of the Judge of the Contentious-Administrative Court No. 1 of the Judicial Department of La Plata where suits for damages for judicial delays had been processed.

9. These elements are more than sufficient to presume that a suit for damages was available at the time of the events. If such a suit were available, Mr. Spoltore would have had to exhaust it in order to access the inter-American system. Mr. Spoltore did not exhaust that suit or any other that was appropriate to respond to the excessive length of a proceeding in labor matters.

10. The failure to exhaust a suit for damages in the present case implies that, when there was a violation of the American Convention, the State was not provided the opportunity to resolve it domestically. Therefore, I dissent from the majority opinion that rejected the preliminary objection presented in a timely fashion by the State.

11. Finally, I take the opportunity to mention that I do not share the majority opinion expressed in Operative Paragraph 4, which declares a violation of Article 26 of the Convention since it stems from a technically defective of analysis of the ESCR. The arguments that lead me to dissent from that position have been widely covered in my partially dissenting opinions in the following cases: *Lagos del Campo v. Peru,*[1] *Dismissed Employees of Petroperú et al. v. Peru,*[2] *San Miguel Sosa et al. v. Venezuela,*[3] *Cuscul Pivaral et al. v. Guatemala,*[4] *Muelle Flores v. Peru*[5] *and Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru,*[6] *Hernández v. Argentina,* as well as my concurring opinions in the cases *Gonzales Lluy et al. v. Ecuador,*[7] *Poblete Vilches et al. v. Chile,*[8] *and Rodríguez Revolorio et al. v. Guatemala,*[9] to which I refer with regard to the present case.

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[1] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2017. Series C No. 340. Partially dissenting opinion of Judge Antonio Humberto Sierra Porto.

[2] *Cf. Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344. Partially dissenting opinion of Judge Antonio Humberto Sierra Porto.

[3] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of February 8, 2018. Series C No. 348. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[4] *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[5] *Cf. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[6] *Cf. Case of the Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2019. Series C No. 394. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[7] *Cf. Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 1, 2015. Series C No. 298. Concurring opinion of Judge Humberto Antonio Sierra Porto.

[8] *Cf. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra *Porto.*

[9] *Cf. Case of Rodríguez Revolorio et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 14, 2019. Series C No. 387. Concurring opinion of Judge Humberto Antonio Sierra Porto.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Secretary

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DISSENTING OPINION OF
JUDGE RICARDO PÉREZ MANRIQUE

CASE OF SPOLTORE V. ARGENTINA

JUDGMENT OF JUNE 9, 2020
(Preliminary Objection, Merits, Reparations and Costs)

INTRODUCTION

1. I dissent in the *Case of Spoltore v. Argentina* (hereinafter "Spoltore case") because I believe that the Inter-American Court of Human Rights (hereinafter the "Court" or the "Inter-American Tribunal") should have accepted the preliminary objection of the exhaustion of domestic remedies. With regard to the consideration of the issues of substance, I also believe that it is important to emphasize that the factual framework in this case did not permit an examination of the alleged violations of the right to equitable and satisfactory working conditions.

2. My analysis shall follow the following order: i) the preliminary objection of the failure to exhaust domestic remedies, and ii) the principle of congruity.

I. THE PRELIMINARY OBJECTION OF THE FAILURE TO EXHAUST DOMESTIC REMEDIES

3. The Court has stated that the inter-American system of human rights has a national level in which each State must ensure the rights and freedoms set forth in the American Convention on Human Rights (hereinafter the "Convention") and must investigate, judge and punish any infractions. If a specific case is not resolved at the domestic or national stage, the Convention provides an international level in which the principal organs are the Inter-American Commission on Human Rights (hereinafter the "Commission") and the Court. The Court has also indicated that when an issue has been resolved at the domestic level, in accordance with the terms of the Convention, it is not necessary to present it to the Inter-American Tribunal for its approval or confirmation. The foregoing is based on the principle of complementarity, that transversely comprises the inter-American system of human rights, which has as its purpose, as expressed in the Preamble to the Convention, "reinforcing or complementing the protection provided by the domestic law of the American states."[1]

4. The inter-American system of protection is, therefore, not a substitute for national jurisdictions, but rather it complements them.[2] The State is the principal guarantor of the human rights of the individual so that, if there is an act that violates those rights, it is incumbent on the State to resolve the matter at the domestic level and, if necessary, repair it before having to respond before an international instance.[3] The Court has noted that State responsibility under the Convention can only be required at the international level after the

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[1] *Cf. Case of Las Palmeras v. Colombia. Preliminary Objections.* Judgment of February 4, 2000. Series C No. 67, para. 33 and *Case of Rosadio Villavicencio v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 14, 2019. Series C No. 388, para. 166.

[2] *Cf. Case of Tarazona Arrieta et al. v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of October 15, 2014. Series C No. 286, para. 137 and *Case of Rosadio Villavicencio v. Peru, supra,* para. 166.

[3] *Cf. Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs*, para. 66 and *Case of Rosadio Villavicencio v. Peru, supra,* para. 166.

State has had the opportunity to recognize, if applicable, a violation of a right and to repair the harm by its own means.[4]

5. The above demonstrates that in the inter-American system there is a dynamic and complementary control of the treaty-based obligations of the States to respect and ensure human rights between the domestic authorities (primarily obligated) and the international instances (complementarily) so that the criteria of the decisions and the mechanisms of protection, both national and international, are coordinated and adequate.[5] Thus, the Court's jurisprudence includes cases in which domestic organs, instances or courts, in upholding their international obligations, have adopted adequate measures to redress the situation that gives rise to the case[6] because the alleged violation has already been resolved,[7] reasonable reparations have been ordered[8] or an appropriate control of conventionality has been exercised.[9] The Court has noted that State responsibility under the Convention can only be demanded at the international level after the State has had the opportunity to recognize, if applicable, a violation of a right and repair the harm by its own means.[10]

6. The principle of complementarity is effective when the prior exhaustion of domestic remedies is required and the remedies are adequate to provide reparations for a violation of the Convention.[11] In the present case, the alleged international wrong was produced by the excessive length of the judicial proceedings initiated by Mr. Spoltore against his private employer. It is after the international wrong occurs that, in recurring to the inter-American system, prior to and as a requirement of admissibility for access to the international jurisdiction, some domestic remedy must be exhausted to give the State the opportunity to repair the harm caused.[12]

7. Article 46(1) of the Convention states that in order to determine the admissibility of a petition or a communication lodged with the Commission, in accordance with Articles 44 or 45 of the Convention, it is necessary that the domestic legal remedies have been pursued and exhausted, in accordance with generally recognized principles of international law.[13]

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[4] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 143 and *Case of Rosadio Villavicencio v. Peru, supra,* para. 166.

[5] *Cf. Case of the Santo Domingo Massacre v. Colombia, supra*, para. 143 and *Case of Rosadio Villavicencio v. Peru, supra,* para. 167.

[6] *Cf. Case of Tarazona Arrieta et al. Peru, supra,* paras. 139 to 141 and *Case of Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs.* Judgment of February 4, 2019. Series C No. 373, para. 80.

[7] See, for example, *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of April 25, 2018. Series C No. 354, paras. 97 to 115 and *Case of Colindres Schonenberg v. El Salvador*, *supra,* para. 80.

[8] See, for example, *Case of the Santo Domingo Massacre v. Colombia, supra,* paras. 334 to 336 and *Case of Colindres Schonenberg v. El Salvador*, *supra,* para. 80.

[9] See, for example, *Case of Gelman v. Uruguay. Merits y Reparations.* Judgment of February 24, 2011. Series C No. 221, para. 239 and *Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of June 22, 2016. Series C No. 31, paras. 230 *et seq*.

[10] *Cf. Case of the Santo Domingo Massacre v. Colombia, supra,* para. 143 and *Case of Rosadio Villavicencio v. Peru, supra,* para. 167.

[11] *Cf. Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 6, 2009. Series C No. 200, para. 38 and *Case of Galindo Cárdenas et al. v. Peru, supra,* Judgment of October 2, 2015. Series C No. 301, para. 33.

[12] *Cf. Case of the Santo Domingo Massacre v. Colombia, supra,* para. 143 and *Case of Rosadio Villavicencio v. Peru, supra,* para. 166.

[13] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1. para. 85 and *Case of Jenkins v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 25, 2019. Series C No. 397, para. 22.

8. In the present case, after the labor proceedings initiated by the victim were concluded, he filed two judicial remedies and presented a disciplinary complaint. The remedies filed by Mr. Spoltore (appeal for reversal and motion to vacate) had as their aim the modification of the grounds of the judgment, that is, they contradicted the Labor Court's arguments to reject the suit and not the question of delay. They were not, therefore, appropriate remedies to repair the harm caused by the excessive delay of the labor proceedings. In addition, after the disciplinary complaint presented by Mr. Spoltore, the Supreme Court of Justice of Buenos Aires took note of the excessive delay in the labor proceedings and reprimanded the responsible official.[14] Mr. Spoltore, thus, obtained a positive response by the State. It was, however, not an adequate remedy to repair the harm caused.

9. The State pointed out that the adequate and effective remedy to repair the harm caused by the delay in the proceedings consisted in a suit for damages. According to the State, this suit was capable of granting reparations to Mr. Spoltore and, thus, its exhaustion would have offered the State an opportunity to repair the harm. The failure to exhaust this or another appropriate remedy would mean that entering into the merits of the Spoltore case would be contrary to the principle of complementarity.

10. I do not share the arguments of the majority with regard to the alleged adequacy of the suit for damages as there is no evidence in the case on the matter.

11. It is for these reasons that, in my opinion, the Court should have accepted the preliminary objection and should not have continued with an examination of the merits. Nonetheless, I believe it necessary to make some specific comments on the principle of congruity in the present case.

II. THE PRINCIPLE OF CONGRUITY

12. The Court, as any other jurisdictional organ, must respect the principle of congruity: its decisions must be in accord with the facts and the motions in the brief of the complaint. The Tribunal has pointed out that the factual framework of the proceedings before the Court are comprised of the facts contained in the Report on the Merits submitted to its consideration. Therefore, the parties cannot allege new facts, distinct from those found in the Report, unless they would explain, clarify or reject those that have been mentioned and submitted to the consideration of the Court.[15] With respect to the law, the representatives may allege the violation of rights not included by the Commission in its Report on the Merits or the Court may examine the violation of other rights, but both circumstances are only possible if the facts are part of the factual framework of the case.[16]

13. In its Report on the Merits, the Commission pointed out that:

> The purpose of the present report is not to establish whether or not Mr. Spoltore was entitled to the compensation he sought, nor to question the result of the labor proceedings. In the circumstances of the case at hand, such a ruling would exceed the Commission's competence. Consequently, the analysis offered [in the Report] is intended to determine whether the Argentine State, through its judicial authorities that participated in this case, provided Mr. Spoltore with an effective and grounded

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[14] *Cf*. Order of the SCJBA of April 16, 1999 (evidence file, folio 324).

[15] *Cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 153 and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, para. 45.

[16] *Cf*. *Mutatis mutandis*, *Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs.* Judgment of February 28, 2003. Series C No. 98, paras. 153 to 155 and *Case of the Massacre of Mapiripán v. Colombia*. Judgment of September 15, 2005. Series C No. 134, paras. 57 to 58.

remedy in accordance with the guarantees of the process and, particularly, with the guarantee of prompt recourse on which the petitioner centered his claims.

14. Bearing in mind what the Commission explicitly stated in its Report on the Merits and in compliance with the principle of congruity, I am of the opinion that the Court can only decide whether the guarantees in the labor proceedings initiated by Mr. Spoltore against the private company were properly complied with. Therefore, the Court was impeded from hearing the right to equitable and satisfactory working conditions, as well as any other violation outside the factual framework presented in the Report on the Merits since that would exceed the object of the case. Consequently, the Court does not have competence to decide such issues.

15. In brief, it is my understanding that the Court should not have entered into consideration of the present case because, according to the Convention, it lacks jurisdiction to enter into the merits for two reasons: a) the domestic remedies were not exhausted by the victim, and b) for having incorporated into the consideration of the merits alleged violations of rights outside the confines of the case.

Ricardo Pérez Manrique
Judge

Pablo Saavedra Alessandri
Secretary