



Organization of  
American States



## Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights  
in the case of  
Jorge Fernando Grande  
(Case 11.498)  
against Argentina

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**APPLICATION FILED BY THE  
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS AGAINST  
THE ARGENTINE REPUBLIC**

**CASE 11,498  
JORGE FERNANDO GRANDE**

## **I. INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) submits to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) its application in case No. 11,498, Jorge Fernando Grande, against the Argentine Republic (hereinafter “the State,” “the Argentine State” or “Argentina”) for having subjected Jorge Fernando Grande (hereinafter “the victim”) to a criminal proceeding flawed by irregularities and unwarranted delay and based on evidence that was then thrown out, and for not having afforded the victim with an adequate remedy by which to be redressed for the damages and harm caused during the criminal proceeding.

2. The Inter-American Commission requests that the Court adjudge and declare the international responsibility of the Argentine State, which failed to comply with its international obligations by violating articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Fernando Grande, by having denied him his rights to due process and to effective judicial protection.

3. This case has been processed in accordance with the terms of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and is submitted to the Inter-American Court pursuant to the transitory provision contained in Article 79(2) and other relevant provisions of the Court’s Rules of Procedure. Attached as an appendix to this application is a copy of Report No. 109/09,<sup>1</sup> which the Commission adopted on November 10, 2009.

## **II. PURPOSE OF THE APPLICATION**

4. The purpose of the present application is to petition the Court to adjudge and declare that the Argentinean state is responsible for the violations of the rights set in articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Jorge Fernando Grande, because it did not afford him access to his right to due process and to an effective remedy.

5. In consideration of the above, the Inter-American Commission is asking the Court to order that the State:

- That it takes the measures necessary to ensure that Fernando Grande receives adequate and prompt reparation, including full satisfaction, for the human rights violations established in the present report.

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<sup>1</sup> IACHR, Merits Report No. 109/09, Case 11,498, Jorge Fernando Grande, November 10, 2009. Appendix 1.

- That it investigate and, if appropriate adopt the necessary measures against anyone who might bear criminal and administrative blame for the violations of due process and judicial protection, to the detriment of Jorge Fernando Grande.

### **III. REPRESENTATION**

6. In accordance with the provisions of article 24 of the Rules of Court, the Commission has appointed Commissioner Luz Patricia Mejía and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorneys Karla I. Quintana Osuna, and María Claudia Pulido, specialists with the IACHR's Executive Secretariat, have been appointed to serve as legal advisers.

### **IV. JURISDICTION OF THE COURT**

7. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases submitted to it regarding interpretation and application of the provisions of this Convention, provided that the states parties to the case recognize or have recognized its jurisdiction.

8. The Court is competent to take cognizance of the present case. The application that the IACHR is submitting is based on events that happened subsequent to the State's acceptance of the contentious jurisdiction of the Inter-American Court, which was on September 5, 1984. The Commission is presenting findings of fact and of law related to the criminal proceedings that occurred subsequent to that date, and to the contentious-administrative remedy filed thereafter. It is important to note that at the time Argentina accepted the contentious jurisdiction of the Court in 1984, Mr. Grande had already been subjected to prosecution in a criminal case instituted in 1980 but on which there had been no procedural activity. This issue is also relevant as it part of the background to the case being submitted to the Court.

### **V. PROCESSING BY THE INTER-AMERICAN COMMISSION**

9. On November 2, 1994, the Inter-American Commission received a petition filed by Jorge Fernando Grande, dated October 31, 1994. The IACHR proceeded to process the petition, which it classified as No. 960/03. It forwarded the pertinent parts of the complaint to the State on April 22, 2004, and gave it two months in which to submit its observations.

10. The Commission acknowledged receipt of the petition on November 10, 1994. By note of June 15, 1995, the Commission initiated the processing of the matter by transmitting the pertinent parts of the denunciation to the State, with a response requested within 90 days. By a note of September 19, 1995, the State requested an extension of time in which to respond. The Commission granted an additional 45 days by note of September 21, 1995. By note of November 6, 1995, the State requested a further extension. By note of November 7, 1995, the Commission granted the State a final 45 days.

11. In a communication dated November 7, 1995, and received the following day, the petitioners informed the Commission that they had met with a number of State officials, and requested a 30 day suspension of the proceedings in order to pursue a possible friendly settlement under the terms of Article 48(f) of the American Convention. On November 10, 1995, the Commission acknowledged receipt of that communication, and transmitted the pertinent parts to

the State. The Commission indicated to both parties that it was pleased by this initiative toward a possible friendly settlement and wished to be informed of the advances and results achieved.

12. The State filed its response to the petition via a note dated December 14, 1995, expressly indicating its disposition to seek a friendly settlement of the matter at issue. This was transmitted to the petitioners on December 18, 1995, with the presentation of observations or additional information requested within 30 days.

13. On October 28, 1996, the petitioners presented a communication seeking that the State defined its position on a proposal of friendly settlement. On November 4, 1996, the Commission requested that the State provide information on the development of the friendly settlement process, and attached a copy of the foregoing communication presented by the petitioners.

14. On November 12, 1996, the State reported on a meeting held on November 11, 1996 with the petitioners, in which Mr. Grande's attorney reportedly agreed to proffer a proposal for a friendly settlement agreement within 30 days. On January 21, 1997, the State reported that this proposal had been presented and was under study. By notes of March 7 and 27, June 5, and August 1, 1997, the petitioners requested that the State promptly define its position on a possible settlement. On August 7, 1997, the Commission addressed the State to request information on the status of the friendly settlement process and to transmit a copy of the petitioners' August 1, 1997 communication.

15. By notes dated November 6, 1997, and March 4 and 12, and June 1 and 23, 1998, the petitioners informed the Commission that, because of divergent views within the Government itself, the friendly settlement process was not progressing. On July 6, 1998, the Commission indicated that this matter was among those to be discussed during meetings with the State during the month of August 1998. The petition was discussed with both parties during a visit to Argentina in August of 1998 by the Commission's Rapporteur and Executive Secretary.

16. On August 20, 1998, the petitioners expressed their desire to continue with the friendly settlement process, notwithstanding the lengthy delays and other obstacles encountered. On August 21, 1998, the State reported that it was engaged in efforts to implement the internal measures necessary to concretize a friendly settlement, and that this process had led to some delay due to the lack of internal norms in this area. This communication was transmitted to the petitioner by note of August 25, 1998, with any observations requested within 30 days. The petitioners responded with a brief communication of September 9, 1998. The petitioners' communications of August 20 and September 9 were transmitted to the state on September 25, 1998, with the receipt of all information relative to the matter requested within 60 days.

17. On November 16, 1998, Mr. Grande informed the Commission of a change in his legal representation. On November 30, 1998, the State requested an extension of time to present its observations. By notes of December 8, 1998, the Commission granted an additional two months, and informed the petitioners accordingly. On February 8, 1999, the State requested a further extension. By notes of February 18, 1999, the Commission granted another 30 days and so informed the petitioners. The State provided observations by means of a communication received on March 23, 1999, indicating that it was continuing to try to resolve the lack of internal regulation relative to the procedure of friendly settlement, and that there were in any case divergent views within the Government as to the viability of such a settlement. This was transmitted to the petitioner on April 22, 1999, with observations in response requested within 60 days.

18. By note received June 16, 2000, the petitioners presented additional information and requested that the Commission proceed to adopt a report on this matter under Article 50 of the Convention. This was transmitted to the State on July 11, 2000, with any observations in response requested within 30 days. On July 19, 2000, the petitioners reiterated their request that the Commission adopt a report. That information was transmitted to the State on August 24, 2000, with observations requested within 30 days. On August 14, 2000, the State requested an extension, and by note of August 15, 2000, was granted an additional 30 days. The petitioners submitted brief notes on September 5 and 9, 2000, which were incorporated in the case file. On October 26, 2000, the Commission addressed the State to reiterate its August 24, 2000 request for observations.

19. On December 4, 2000, the State submitted information to the effect that, given the acceptance by previous administrations of the possibility of seeking a friendly settlement, and the existence of divergent views on the feasibility of such a settlement within the current administration, the relevant areas were studying the issue with a view to adopting a unified position. This communication was transmitted to the petitioners on December 19, 2000, with any observations requested within 30 days. On September 25, 2001, the Commission received a brief communication from the petitioners reiterating their position and requesting that a report be adopted. This was transmitted to the State for its information by note of October 24, 2001. By note of December 10, 2001, the State reported that, because its competent authorities had determined that the petition presented no violation, it would no longer be possible for it to pursue a friendly settlement.

20. Finally, with respect to this issue of friendly settlement, the Commission wishes to note that the procedure contemplated under Article 48(f) of the Convention provides an excellent opportunity for the non-contentious resolution of complaints, and has served to the benefit of both parties in many cases. However, if the parties in a given matter indicate that the process is not progressing or cannot produce a settlement in conformity with the terms of Article 48(f), as is the situation with respect to the present petition, the Commission will deem the friendly settlement process concluded.

21. The Commission adopted admissibility report No. 69/05 on February 27, 2002,<sup>2</sup> in which it declared the petition admissible with respect to articles 8, 25 and 1(1) of the American Convention and, to the extent relevant, Articles XXV and XXVI of the American Declaration. The report was forwarded to the parties by a communication dated April 2, 2002. In that communication, the Commission informed the parties that they had two months to present their observations on the merits. Also, pursuant to Article 38(4) of the Rules of Procedure, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement in keeping with Article 48(1)(f) of the American Convention.

22. In communications received by the Commission on May 13, 2002 and May 28, 2002, the petitioner and the State, respectively, expressed their intention not to institute a friendly settlement process in the case.

23. The petitioner submitted his observations on the merits of the case by a note dated May 29, 2002. The Commission forwarded those observations to the State in a communication dated September 3, 2002, and repeated its request for information.

24. The State submitted its observations on the merits by a communication that the Commission received on November 7, 2002. That brief was forwarded to the petitioner on

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<sup>2</sup> IACHR, Admissibility Report No. 03/02, Case 11,498, Jorge Fernando Grande, February 27, 2002, Appendix 2.

February 6, 2003. In that communication the Commission asked the petitioner to submit his observations on the State's response within one month, along with any new or additional information he might have.

25. As it had when it notified the parties of the admissibility report, in a letter dated June 28, 2004 the Commission reminded both parties of its offer to facilitate a friendly settlement before the merits phase came to a conclusion. In a communication the Commission received on August 3, 2004, the petitioner stated that he had no intention of entering into a friendly settlement proceeding. His reply was forwarded to the State on November 22, 2004.

26. On December 20, 2007 the Commission received a communication of the petitioner with additional information related to the case.

27. On September 21, 2008, the Commission asked the parties to send the most relevant documents from the criminal case, particularly the order instituting legal proceedings and the ruling ordering a definitive dismissal. It also requested information on the various motions presented during the case.

28. On October 9, 2008, the Commission received a note from the petitioner requesting an extension for purposes of submitting the requested documentation. On October 14, 2008, the Commission granted the petitioner a one-month extension to supply the requested information. By note of October 21, 2008, a clarification was made to the previous note because it contained an error in syntax.

29. On November 21, 2008, the Commission received from the petitioner additional documents related to the case, which were forwarded to the State on December 8, 2008. As of the date of this report, the State has not yet supplied the documents requested of it.

30. During its 137th regular session, the Commission approved Merits Report No. 109/09 on November 10, 2009. Prepared pursuant to Article 50 of the Convention, the Report concluded the following:

1. Based on the considerations of fact and of law set forth above, the Commission concludes that as of September 5, 1984 [...] the Argentine State is responsible for the violations of the rights set in articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Jorge Fernando Grande, because it did not afford him access to his right to due process and to an effective remedy.
2. The Commission also concludes that the Argentine State violated the right to protection against arbitrary arrest, set forth in Article XXV of the American Declaration, to the detriment of Jorge Fernando Grande.

31. In that Report, the Commission made the following recommendations to the Argentine State:

1. That it takes the measures necessary to ensure that Fernando Grande receives adequate and prompt reparation, including full satisfaction, for the human rights violations established in the present report.
2. That it investigate and, if appropriate adopt the necessary measures against anyone who might bear criminal and administrative blame for the violations of the right to due process and of the right to protection against arbitrary arrest, to the detriment of Jorge Fernando Grande.

32. The State was notified of the Report on December 4, 2009, and was given two months in which to report the measures undertaken to implement the recommendations contained therein, in keeping with the provisions of Article 43(3) of the Commission's Rules of Procedure.

33. On that same day and in keeping with Article 43(3) of its Rules of Procedure then in force, the Commission informed the petitioners that the Merits Report had been adopted and forwarded to the State; they were asked to state their position as to whether the case should eventually be submitted to the Inter-American Court.

34. By a communication dated January 3, 2009, the petitioners expressed their intention to have the case submitted to the Inter-American Court of Human Rights.

35. By note of January 18, 2010, the State asked the Commission to grant it an extension on the time period specified in Report 109/09 in order to comply with the recommendations made therein. In its communication Argentina expressly stated that it would waive preliminary objections alleging the Commission's failure to comply with the time period stipulated in Article 51 of the American Convention for the duration of the time that the Commission's extension was in effect. On February 15, 2010, the Commission granted the State an extension of an additional two months.

36. By note of April 16, 2010, the State submitted a report on the status of compliance with the recommendations made in Report 109/09. That information was forwarded to the petitioners by a communication dated April 26, 2010.

37. After considering the information supplied by the parties concerning implementation of the recommendations contained in the report on the merits, and in the absence of any substantive progress toward effective compliance with those recommendations, the Commission decided to refer the present case to the Inter-American Court.

## **VI. MERITS**

### **A. PRELIMINARY OBSERVATIONS**

38. As previously noted (*supra* para. 8), the present application is based on the events that transpired subsequent to the Argentine State's acceptance of the Court's contentious jurisdiction. However, the IACHR believes that the events that transpired since the start of the criminal case need to be recounted, as they are relevant to the background and evolution of the case now being submitted to the Court.

### **B. Facts established**

39. From the documents in the case file and the information supplied by the parties<sup>3</sup>, the following facts have been established:

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<sup>3</sup> The Commission observes that in the present case, the State and the petitioner were asked to submit the record of the criminal proceedings. However, the State did not supply the Commission with any evidence of that kind, while the petitioner supplied only a few documents related to the judicial proceedings. In a communication received at the Executive Secretariat on November 21, 2008, Mr. Grande's representative supplied four documents, namely: i) the Federal Judge's order of August 12, 1980, in which Mr. Grande's arrest was changed to preventive detention; ii) the certification of preventive detention issued by the Ministry of Justice on November 14, 1980; iii) the ruling of January 24, 1989, ordering definitive dismissal of the case against Mr. Grande, and iv) a March 19, 1989 certification issued by the National Register of Criminal Statistics.

40. On July 28, 1980, the Banking Division of the Argentine Federal Police learned confidentially from Jorge Fernando Grande that the Murillo Credit Union, where he worked as Chief of Lending, was making loans without the necessary collateral. The same date, the police searched the premises of the credit union, and took away files and other documents.<sup>4</sup>

41. On July 29, 1980, "Dr. Eduardo Francisco Marquardt, the presiding judge in Federal Court No. 1, was notified."<sup>5</sup> That same day, "even though the judge presiding over the investigation had already been notified, [other] documents were removed from various sites [...]."<sup>6</sup>

42. Jorge Fernando Grande was arrested on July 29, 1980, by the Banking Division of the Federal Police on the premises of the *Banco de la Nación*, to which he had allegedly been summoned to continue collaborating in the investigation.<sup>7</sup>

43. On August 12, 1980, Federal Criminal and Correctional Court No. 1, which was hearing case No. C144/8, decided whether there was probable cause in the case against Reynaldo Luis Defranco Fantin, owner of the Credit Union, Jorge Fernando Grande, Loan Manager; Carlos Aris Baratta, Interim Chair of the Management Board; José María Blanco, statutory examiner; Luis Alberto Naput, member of the Management Board; and Elida Nilda Mayol, member of the Management Board.<sup>8</sup> The Federal Judge found that the irregularities discerned from the documents confiscated by the Federal Police should be deemed to be economic subversion.<sup>9</sup>

44. The facts that the Federal Judge [Pedro C. Narvaiz] reviewed in the August 12, 1980 probable cause decision amounted to, by his analysis, fraudulent handling of the files for loans awarded by the Credit Union, "inasmuch as the constant withdrawals of funds were being carried out in separate phony loan operations, which were being constantly renewed; the interest earned was being credited to new phony loan files." In that order the Federal Judge decided that Reynaldo Luis Defranco Fantin be taken into pre-trial detention since, *prima facie*, he was the author of the offense criminalized in Article 6 of Law 20,840 (National Security); he also ordered that the defendant's assets be attached. The judge also ordered that Jorge Fernando Grande, to be held in pre-trial detention<sup>10</sup> and that his assets be attached, because he was also responsible for the offense criminalized in Article 7 of Law 20,840. Carlos Aris Baratta, José María Blanco, Jorge Luis Alberto Naput and Elida Nilda Mayol were also ordered taken into custody pending trial for the offense criminalized in Article 8 of Law 20,840 and their assets were ordered attached.<sup>11</sup>

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<sup>4</sup> Preventive detention order dated August 12, 1980, issued by the National Federal Criminal and Correctional Court No. 1. Annex 3. Copy of the ruling of Chamber II of the Federal Criminal and Correctional Appellate Court, dated May 24, 1988. Annex 4.

<sup>5</sup> Ruling delivered by Chamber II of the Federal Criminal and Correctional Appellate Court, dated May 24, 1988. Annex 4.

<sup>6</sup> *Ibid.*

<sup>7</sup> Brief from the Office of the Director General of Legal Affairs of the Ministry of Foreign Affairs, dated July 29, 1997. Annex 1.

<sup>8</sup> Preventive detention order dated August 12, 1980, issued by National Federal Criminal and Correctional Court No. 1. Annex 3.

<sup>9</sup> *Ibid.*

<sup>10</sup> Ruling of April 14, 1992, delivered by the Federal Judge in the case of Grande, Jorge F. v. the State (Ministry of Education and Justice) on Payment. Annex 5.

<sup>11</sup> Preventive detention order dated August 12, 1980, issued by National Federal Criminal and Correctional Court No. 1.

45. Mr. Grande was incarcerated from July 29 to August 12, 1980, when he was released on his recognizance.<sup>12</sup>

46. On August 15, 1983, the federal prosecutor indicted Fernando Grande for the offense criminalized in Article 8 of Law 20,840, with the aggravating circumstance provided for in Article 6(b) inasmuch as the offense with which he was charged led to the financial institution's dissolution.<sup>13</sup> On September 2, 1986, the petitioner entered his plea.<sup>14</sup>

47. On May 24, 1988, Chamber II of the Federal Criminal and Correctional Appellate Court declared the searches of the Murillo Credit Union and all acts resulting therefrom to be null and void, inasmuch as the searches were conducted without a court order.<sup>15</sup> That decision was based on the analysis that Chamber II did in response to the preliminary objection alleging prosecutorial inaction.<sup>16</sup> The preliminary objection was entered by the defense counsel for defendant Reynaldo Luis Defranco. There, the attorney argued that the evidence used as the basis for the indictment was unlawfully obtained, as it was the product of unlawful searches. Although the Chamber dismissed the objection claiming prosecutorial inaction, it stated that such measures can be declared null and void *ex officio*, at any stage in the proceedings, when omissions, violations or defects that compromise *ordre public* are discovered. The Federal Criminal and Correctional Appellate Court wrote that:

[O]n July 28, 1980 [...] the Argentine Federal Police [...] appeared at the credit union [...] and, with the permission of the Chief of Lending [...] and Administrative Manager [...], confiscated documentation [...] [One day later...], even though the judge had already be advised [...], documents were confiscated from a number of sites [...]. These measures were in blatant violation of the guarantee of the inviolability of domicile, protected under Article 18 of the National Constitution.<sup>17</sup>

48. Based on the foregoing, the Court added that it could "hardly [...] close its eyes and remain oblivious [...], especially when it has been reliably established that the allegations [made by the defense] are true. It would therefore be pointless for the court to prolong prosecution of the case up to the final ruling, waiting to say something that can already be said." The Appellate Court took its decision in the understanding that "declaring the afore-mentioned searches null and void puts the case on the proper track, to the advantage of the defendants, and throws out those elements that involve irregularities, all in order to set right the course of the proceedings."<sup>18</sup>

49. Based on the Appellate Court's decision declaring the searches null and void, on January 24, 1989 the Federal Judge ordered definitive dismissal of the charges against Reynaldo Luis Defranco Fantin, Jorge Luis Antonio Naput, Jorge Fernando Grande and José María Blanco, in connection with the events for which they were being prosecuted. The Court added that "the proceedings conducted against the accused d[id] not harm their good name and honor." The

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<sup>12</sup> Ibid.

<sup>13</sup> Brief from the Office of the Director General of Legal Affairs of the Ministry of Foreign Affairs, dated July 29, 1997. Annex 1. Writ of April 6, 1993, from the National Appellate Court in the Administrative Law Jurisdiction in the case of Grande, Jorge F. v/ the State (Ministry of Education and Justice) on Payment. Annex 6.

<sup>14</sup> Brief from the Office of the Director General of Legal Affairs of the Ministry of Foreign Affairs, dated July 29, 1997. Annex 1.

<sup>15</sup> Ruling of Chamber II of the Federal Criminal and Correctional Appellate Court, dated May 24, 1988. Annex 4.

<sup>16</sup> This situation is provided for in Article 443 of the Code of Criminal Procedure.

<sup>17</sup> Ruling of Chamber II of the Federal Criminal and Correctional Appellate Court, dated May 24, 1988. Annex 4.

<sup>18</sup> Ibid.

Federal Judge also dismissed the case because the statute of limitations on the criminal case had expired. In his decision, the Federal Judge also considered that "inasmuch as more than eight years have passed since the case was opened, no new evidence could be anticipated."<sup>19</sup>

50. Mr. Grande filed suit against the State seeking damages. In his suit he asked to be compensated for the pecuniary and non-pecuniary damages and expenses, inasmuch as he had been the victim of judicial error. In effect, he asserted that his arrest was "on the basis of an unlawful procedure, committed in blatant violation of the guarantee of inviolability of domicile [...] thereby infringing due process and the right of defense." He argued that a nine-year criminal case was mounted on such unlawful premise; finally the case was dismissed "once the irregularity was acknowledged."<sup>20</sup>

51. On April 14, 1992, the judge of first instance of the Federal Administrative Law Court issued a ruling in which he decided to order compensation for Jorge Fernando Grande based on the fact that "unlawful conduct on the part of the State has been proved in the case."<sup>21</sup> That ruling was appealed by both the petitioner and the State.<sup>22</sup>

52. On April 6, 1993, Chamber II of the National Appellate Court in the Administrative Law Jurisdiction revoked the decision of the court of first instance based on the following considerations:

[R]esponsibility on the part of the State, in the person of the Judge, need only be acknowledged when the judicial error is obvious, manifest and indisputable [...] Taking that juridical approach, it is obvious that the existence of an error of such nature cannot be inferred from the criminal proceeding to which Mr. Grande was subjected. [...] The decision [that declared the searches null and void] represented a shift of position vis-a-vis the decision that the very same tribunal, with different members, had taken on June 30, 1986 [and whose decision can be challenged].

[Furthermore, Mr. Grande] did not exhaust all legal remedies to obtain immediate redress for any harm that his indictment might have caused him.

53. The petitioner filed an extraordinary appeal with the Supreme Court challenging the April 6, 1993 decision as arbitrary.

54. On April 12, 1994, the Supreme Court declared his extraordinary appeal inadmissible<sup>23</sup> whereupon Mr. Grande filed a complaint, again with the Supreme Court, asking that it grant "the extraordinary appeal, nullify the [April 6, 1993] decision and order that the proceedings be referred to the next chamber to be seated, so that it might issue a new ruling that conforms to the law."<sup>24</sup>

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<sup>19</sup> Order of definitive dismissal, dated January 24, 1989. Annex 8.

<sup>20</sup> Complaint filed by Fernando Grande, undated. Annex 9.

<sup>21</sup> April 14, 1992 ruling delivered by the judge of first instance of the Federal Administrative Law Court. Annex 5.

<sup>22</sup> April 14, 1992 ruling delivered by the judge of first instance of the Federal Administrative Law Court. Annex 5. April 6, 1993 ruling of the National Appellate Court in the Federal Administrative Law Jurisdiction. Annex 6.

<sup>23</sup> Supreme Court ruling of April 12, 1994. Annex 10.

<sup>24</sup> Complaint that Fernando Grande filed with the Supreme Court, undated. Annex 9.

## VII. THE LAW

### 1. PRELIMINARY CONSIDERATIONS

55. The case law of the organs for the protection of human rights holds that when a claim stems from an event that predates the respondent state's acceptance of an organ's jurisdiction, that organ is still able to exercise jurisdiction with respect to those facts that occurred subsequent to acceptance of the organ's jurisdiction, provided those subsequent events constitute human rights violations.

56. In application of the principle of non-retroactivity, the European Court has had regard to facts that occurred prior to the date of acceptance of the Court's contentious jurisdiction to the extent that those facts have a causal nexus to the subsequent events that are the basis for the application.<sup>25</sup> For example, when considering the duration of proceedings when a civil suit or a criminal charge was brought prior to the date of acceptance of its contentious jurisdiction, the European Court has regarded the events that transpired prior to that date as background information.<sup>26</sup> In the *Humen v. Poland* case, the Court held that "in order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on [the date of acceptance of the Court's contentious jurisdiction]."<sup>27</sup>

57. In *Veeber v. Estonia*,<sup>28</sup> the European Court of Human Rights held that a search and seizure of documents by law enforcement authorities were instantaneous acts carried out and consummated prior to the date on which the State recognized the European Court's jurisdiction. However, the European Court did exercise jurisdiction over related events that occurred subsequent to the State's acceptance of the Court's jurisdiction, and found that the State was responsible for failing to provide the victim with effective access to a court to file for damages for the breach of his personal rights caused by the search and seizure of his documents.

58. The Commission considers that in the criminal case brought against him, Mr. Grande was not given a hearing within a reasonable period of time (*infra*). Although the Inter-American Court is precluded from exercising jurisdiction over events that transpired in the initial period of that case, it can and should take into account that by the date on which the State accepted the Court's contentious jurisdiction, it had already subjected Mr. Grande to an irregular criminal prosecution that had gone on for four and a half years, and had not moved the case forward with the due diligence and impetus necessary for a finding of his rights and obligations. With the passage of time, it becomes all the more imperative for the State to take the necessary steps to determine the guilt or innocence of a person accused of a crime. As long as the case is in progress, the effects on the accused' personal and professional life are considerable; the longer the case drags on, the worse the effects on the accused.

59. In the *cas d'espèce*, the case against Mr. Grande dragged on for a further four years after the date on which the Argentine State accepted the Court's contentious jurisdiction. Moreover, the victim had to wait until 1994 to learn that the action he brought in the contentious administrative jurisdiction had been denied. Consequently, the crux of the case now being

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<sup>25</sup> *Hokkanen v. Finland*, 23 September 1994, § 53, Series A no. 299-A; and *Broniowski*, cited above, § 74

<sup>26</sup> *Foti and Others v. Italy*, 10 December 1982, § 53, Series A no. 56; *Yağcı and Sargin*, cited above, § 40; and *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999.

<sup>27</sup> "However, in order to assess the reasonableness of the length of time in question, the Court will have regard to the stage reached in the proceedings on 1 May 1993 (see, among other authorities, the *Podbielski v. Poland* judgment of 30 October 1998, *Reports* 1998-VIII, p. 3395, § 31)." *Humen v. Poland* [GC], no. 26614/95, §§ 58-59, 15 October 1999, para. 59.

<sup>28</sup> Case of *Veeber v. Estonia* (No. 1), Application no. 37571/97, Judgment of November 7, 2002.

submitted to the Court is that from 1980 to 1994, Mr. Grande was the victim of a system of justice that failed to provide him with effective judicial protection and guarantees.

**2. RIGHT TO A FAIR TRIAL AND RIGHT TO JUDICIAL PROTECTION, ESTABLISHED IN ARTICLES 8 AND 25 OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) THEREOF**

60. Article 8 of the American Convention provides that:

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

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. [...]

61. Article 25(1) of the American Convention reads as follows:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

62. The Commission recalls that a basic principle of international human rights law is that a State bears international responsibility for the actions or omissions of any branch of its government or public authority or agency. Article 1(1) of the American Convention is of fundamental importance in this regard.<sup>29</sup> Articles 8 and 25 of the Convention embody the scope of that principle of attribution of responsibility for the actions of a State authority, which in this case are the organs of the domestic judicial system.<sup>30</sup>

63. The articles cited above recognize due process of law as a set of requirements that domestic courts must observe. Thus, the Commission will examine whether judicial guarantees were properly observed in the criminal proceeding and the administrative proceeding and whether Mr. Grande had access to an effective remedy during the course of those proceedings.

64. The Inter-American Court has held that “in order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may face the need to examine the related domestic proceedings.”<sup>31</sup> Following that reasoning, the Commission will examine both the criminal proceedings and the administrative litigation proceedings for the relevant aspects of this case, in order to arrive at an informed judgment as to whether the provisions of the Convention and the Declaration that pertain to due process of law and judicial protection have been violated.

**Regarding the criminal proceedings**

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<sup>29</sup> I/A Court H.R., *Case of the “Mapiripán Massacre”*, paragraph 108.

<sup>30</sup> I/A Court H.R., *Case of the “Street Children” Villagrán Morales et al.* Judgment of November 19, 1999. Series C No. 63, paragraph 220.

<sup>31</sup> I/A Court H.R., *Case of Palamara Iribarne*, paragraph 121; *Case of the “Mapiripán Massacre”*, paragraph 198; *Case of the Moiwana Community*, paragraph 143; and *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005, Series C No. 120, paragraph 57.

## Reasonable time

65. Article 8(1) of the Convention provides that one of the elements of due process is that everyone is entitled to a hearing within a reasonable period of time, by a competent, independent and impartial court. Here, the right to a court hearing implies that the matter will be settled within a reasonable period of time.<sup>32</sup> A protracted delay may, in itself, become a violation of judicial guarantees.<sup>33</sup>

66. The reasonableness of the time period must be analyzed with regard to the total duration of the criminal process. In criminal matters, this period of time starts with the first procedural act against a specific person regarded as the party likely responsible for a certain crime; it ends when the definitive judgment not subject to appeal is delivered.<sup>34</sup>

67. In the instant case, the first procedural act against Mr. Jorge Fernando Grande was his arrest on July 29 1980. The criminal case against Mr. Grande ended on January 24, 1989, the date on which Federal Criminal and Correctional Court No. 1 definitively dismissed the charges against him. The definitive dismissal, was based on the fact that the searches conducted at the credit union where the petitioner worked and the confiscation of documents had been declared null and void by the Federal Appellate Court on May 24, 1988, which found that such measures were done without a court order.

68. As stated repeatedly throughout this application, the IACHR is not asking the Court to rule on events that occurred prior to Argentina's acceptance of the Court's contentious jurisdiction; instead, it is asking the Court to have regard to the fact by the date of that acceptance, the case against Mr. Grande, which was flawed with irregularities and bogged down by a lack of prosecutorial impetus, had already been in progress for four years.

69. The IACHR observes that under the law at the time the events occurred, a Court could order definitive, irrevocable dismissal of charges against a defendant.<sup>35</sup> In the instant case, the Federal Judge ordered definitive dismissal of the case against Mr. Grande. In this regard the Federal judge sustained:

[O]nce the measure is declared illegal, the various materials collected shall have no value as evidence [...]. Inasmuch as more than eight years have passed since the case was opened, the possibility that new evidence could be obtained that would alter the

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<sup>32</sup> I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of September 25, 2003. Series C No. 101, paragraph 209; *Case of Bulacio*, Judgment of September 18, 2003. Series C No. 100, paragraph 114; and *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, paragraphs 142 to 145.

<sup>33</sup> I/A Court H.R., *Case of García Asto and Ramírez Rojas*, paragraph 166; *Case of Gómez Palomino*, paragraph 85; *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, paragraph 160.

<sup>34</sup> I/A Court H.R., *Case of López Álvarez*, paragraph 129; *Case of Acosta Calderón*, paragraph 104; and *Case of Tibi*, paragraph 168.

<sup>35</sup> Code of Criminal Procedure, Title XXII: Dismissal :

Article 434: Dismissal shall be final:

When evidence shows that the crime was not committed

When the deed proved is not a crime

When the accused are, beyond a doubt, free of any criminal blame.

Article 436. Definitive dismissal is irrevocable and, in the first two hypotheticals set forth in Article 434, closes the trial absolutely; in the case of the third hypothetical it closes the case with respect to whom dismissal is ordered.

situation as it now stands seems remote [...]. It is hardly likely that new evidence will surface that could be damning for the defendant.<sup>36</sup>

70. The decision ordering that the charges against Mr. Grande be dismissed definitively is irrevocable and closes the case once and for all. Therefore, Jorge Fernando Grande was implicated in a criminal case prosecuted against from July 29, 1980 to January 24, 1989, in other words, eight and a half years. During that time he was under criminal investigation and his assets were attached; in the case he lodged with the Inter-American Commission he presented information regarding the effect this had on his mental health and the problems he had finding a job.<sup>37</sup>

#### **Factors considered to determine what constitutes a reasonable period**

71. The Commission is reminded that the Inter-American Court has found that a prolonged delay may, in itself, constitute a violation of judicial guarantees. It is for the State to explain and prove why it has needed more time than would be reasonable, in principle, to deliver a final judgment in a specific case.<sup>38</sup>

72. In order to examine whether the criminal case against Mr. Jorge Fernando Grande was prosecuted within a reasonable period of time as prescribed in Article 8(1) of the Convention, the Commission will take into consideration, in light of the particular circumstances of the case, the three factors that it has weighed in its jurisprudence, which are: a) the complexity of the matter; b) the conduct of the court authorities, and c) the procedural activity of the interested party.<sup>39</sup> The Commission will also consider the situation of the defendant and the degree to which his basic rights were affected.

#### **a. The complexity of the matter**

73. The case file reveals that the criminal case involved multiple defendants. Indeed, the preventive detention order of August 12, 1980 named six persons, among them the petitioner<sup>40</sup>. The January 24, 1989 decision dismissed the charges against four of the defendants, one of whom was Mr. Grande.<sup>41</sup>

74. On the other hand, the State argued that the matters under investigation were particularly complex, since the crime of economic subversion is not an everyday offense. As the State put it, "investigation of the crimes involved requires analysis and processing of highly complex data of the kind that financial transactions involve, as well material evidence of the criminal guilt of certain persons."<sup>42</sup> The petitioner, for his part, alleged that "determining that a search is illegal

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<sup>36</sup> Federal Criminal and Correctional Court No. 1. Judgment of January 24, 1989 (Federal Judge Udan Edgardo Fegoli)

<sup>37</sup> Expert report of Dr. Raúl Horacio Tagliabue, September 9, 199[?].

<sup>38</sup> I/A Court H.R.. *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paragraph 142.

<sup>39</sup> IACHR, Merits Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11,506), December 27, 2002, paragraph 76. See also I/A Court H.R., *Case of López Álvarez*, paragraph 132; *Case of García Asto and Ramírez Rojas*, paragraph 166; and *Case of Acosta Calderón*, paragraph 105; UN Doc. CCPR/C/GC/32 of August 23, 2007, Human Rights Committee, General Comment No. 32, paragraph 35.

<sup>40</sup> Reynaldo Luis Defranco Fantin, Carlos Aris Baratta, Jorge Luis Antonio Naput, José María Blanco, Elida Nilda Mayol and Jorge Fernando Grande.

<sup>41</sup> The case file contains no information as to when in the proceedings the charges against defendants Carlos Aris Baratta and Elida Nilda Mayol were dismissed.

<sup>42</sup> The State's brief on the merits, received November 7, 2002.

and in violation of the laws in force and the basic rights of due process” is not so complex that it should have taken more than eight years to decide.

75. While it is true that there were at least six persons charged in the case in the domestic courts, the case was not extremely complex, especially when one realizes that, as the records show, the only evidence the authorities had was the evidence gathered in July 1980. Furthermore, in bringing the criminal case to a close, the Argentine court authorities never analyzed or decided the merits of the case; instead, they declared the measures taken early in the investigation to be null and void. In other words, the Court authorities only analyzed the evidence in the case file, evidence that had been on record since the very start of the investigation. Moreover, the State failed to show how the alleged complexity of the case had resulted in a delay of over eight years in deciding the case.

**b. Conduct of the judicial authorities**

76. The Commission observes that the State opened the investigation on July 28 1980 with the searches that the Argentine Federal Police’s Banking Division conducted. The following day, the Judge presiding over Federal Court No. 1 was notified. Almost eight years later, on May 24, 1988, the Federal Appellate Court declared the searches null and void and ordered that the case be set right to the advantage of the accused, all in response to a preliminary objection that the attorneys representing one of the defendants filed to challenge the legality of the searches conducted by the Argentine Federal Police. Five months after the searches were declared null and void, leaving any evidence thereby obtained with no evidentiary effect,<sup>43</sup> the Federal Court decided to definitively dismiss the charges against the defendants, given the amount of time that had passed and the improbability that any new evidence against them would come to light.

77. According to the facts established in the May 1988 ruling of the Federal Appellate Court, the searches conducted in July 1980 were done without a court order, in blatant violation of the guarantee of the inviolability of domicile, “even though the judge overseeing the investigation was already notified.”<sup>44</sup> In other words, in August 1980, when the Judge of Federal Criminal and Correctional Court No. 1 was deciding the legal fate of the suspects, he was working with the same set of facts and the same applicable laws that the Federal Appellate Court had eight years later. However, as previously shown, the federal criminal judge did not determine whether the evidence before him had been lawfully obtained.

78. The Commission observes that although Federal Criminal and Correctional Judge No. 1 had jurisdictional authority over the investigative procedures, he did not address the issue of the legality of the searches even though he had the formal records of those searches before him, as evident by the preventive detention order he issued in August 1980.<sup>45</sup>

79. Furthermore, in May 1988, the Federal Appellate Court examined the evidence upon which the criminal case was based and arrived at a conclusion that resulted in the definitive dismissal of the case against the petitioner. That Chamber therefore found that the confiscation of the documents that served as the basis of the criminal case was “in blatant violation of the guarantee of the inviolability of domicile” and that the Court could not “remain oblivious” to that fact.

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<sup>43</sup> In a ruling dated January 24, 1989.

<sup>44</sup> Ruling of the Federal Appellate Court dated of May 24, 1988.

<sup>45</sup> Preventive detention order, dated August 12, 1980, issued by National Federal Criminal and Correctional Court No. 1, Annex 3.

80. Moreover, the Commission must underscore the fact that while the Federal Appellate Court's decision to dismiss the charges was a means to set the process right, that decision was eight years in coming and was based on the very same evidence.

81. The European Court of Human Rights has held that when evidence is obtained unlawfully, it has to be analyzed within the trial as a whole. In other words, in order to determine whether or not to exclude such evidence, a court has to consider how the evidence was obtained, the role it has played in the trial and whether it was the only evidence offered.<sup>46</sup> In the instant case, the State, speaking through the Federal Judge who ordered the definitive dismissal, held that "inasmuch as more than eight years have passed since the case was opened, the possibility that new evidence could be obtained that would alter the [...] situation seems remote." In other words, at the domestic level, the State itself acknowledged that the entire case had been built on unlawfully obtained evidence, a fact that had been ignored for over eight years by the judges presiding over the criminal case.

82. The Commission also considers the fact that for the more than eight years that the case lasted, the examining judge had the authority and the obligation<sup>47</sup> to declare *ex officio* any procedure null and void when "at any stage in the proceedings, omissions, violations or defects that compromise *ordre public*" are discovered.<sup>48</sup> In the instant case, that took eight years to happen.

83. The Commission must also point out that from the information in the case file, the State does not appear to have conducted any significant procedural activity on this case from August 12, 1980, the date of the order that decided the suspects' legal fate, up to the time of the indictment of August 1983. The next action the State took subsequent to the indictment was on May 24, 1988, when the Federal Appellate Court declared the searches to be null and void and, on that basis, the Federal Court ordered that the charges against the defendants be dropped in January 1989. In other words, it took three years for the prosecution to produce the indictment and it was eight years before a judge examined the evidence that had been on record since the start of the case.

84. While the analysis done to determine whether the time period is reasonable is done on a case-by-case basis, a review of the case law of the inter-American and European systems indicates that there are differences in the evaluation, depending on the nature of the proceeding. Here, the Inter-American Court has held that in order to determine the reasonableness of the time period, "regard must be had to how the legal situation of the person involved in the proceeding has been impaired by its duration, considering, among other things, the subject-matter of the dispute."<sup>49</sup> Similarly, the European Court has held that the authorities responsible for conducting the case must take the circumstances of the accused into account and conduct the case with special diligence.<sup>50</sup>

85. While the judicial authorities must consider the position of the alleged victims in a criminal case, they must also consider the position of the accused. Specifically, the Inter-American Court has held that "where the lapse of time has a relevant impact on the individual's legal

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<sup>46</sup> ECHR 12505/86 Germany (Dec) October 11, 1988, 58 DR 106.

<sup>47</sup> Art. 1047 of the Civil Code. Absolute nullification can and should be declared by the judge, whether or not the party so requests, when it is self evident. (Emphasis added by the IACHR), Annex 7.

<sup>48</sup> Ruling of Chamber II of the National Appellate Court in the Federal Criminal and Correctional Jurisdiction, dated May 24, 1988, Annex 4.

<sup>49</sup> I/A Court H.R., *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 115, and I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 155.

<sup>50</sup> ECHR, *Nibbio v. Italy*, February 26, 1992, Series A, No. 228-A.

situation, the proceeding will need to be conducted more diligently in order that the case may be resolved in a brief period of time.”<sup>51</sup>

86. The Commission considers that it is the State that must move a criminal case forward while respecting the necessary guarantees of due process, as much to safeguard the rights of the accused as to protect the interests of society as a whole. The facts in the instant case show that the State did not fulfill that obligation with respect to Mr. Grande; on the contrary, it failed to take meaningful procedural measures to decide his legal situation once and for all.

**c. Mr. Grande’s procedural activity**

3. The State argued that Mr. Grande was the impetus behind the investigation and that he had consented to the search conducted by the Federal Police by not objecting to it and by volunteering to hand over all the materials requested of him. It also argued that throughout the processing of the case, the petitioner had himself acknowledged that “he ha[d] never challenged his indictment; instead, he was dropped from the case and the charges against him were dismissed because of a motion for nullification filed by the attorneys for one of the other defendants.” The petitioner, for his part, alleged that he had done what was required of him in terms of procedural activity and that prosecution of a case is the responsibility of the Public Prosecutor’s Office and the courts, with which Mr. Grande claimed to have cooperated at all times. It was not until later than he learned that the Police had acted without a court order.

4. The documentary evidence in the case file shows that Mr. Grande did not appeal the Court order for his preventive detention or make a case for nullification. The record also shows that on September 2, 1986, Mr. Grande answered the indictment within the prescribed time period.

5. The Commission observes that the fact that the decision to order dismissal of the charges against Mr. Grande was the result of an objection entered by the defense counsel for another defendant in the case is not ground for qualifying Mr. Grande’s conduct as passive. In criminal cases, it is State which is responsible for moving the case forward, irrespective of any procedural activity on the part of the accused; in other words, in a criminal case the accused is not responsible for proving his or her innocence. On the contrary, it is the State that has the obligation to prove guilt or innocence within a reasonable period of time. According to the jurisprudence of the European Court of Human Rights accused persons are not required to actively cooperate with the judicial authorities.<sup>52</sup>

6. The foregoing notwithstanding, in the instant case the alleged victim did answer the indictment, in exercise of his right of defense. In any case, the IACHR observes that an accused person may opt not to take any procedural activity as a means of defense, and the State will still have the obligation to prosecute the case within a reasonable time.

7. The recent case law of the Inter-American Court mentions an additional factor that should be taken into account when examining the reasonableness of the time. According to the

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<sup>51</sup> I/A Court H.R., *Case of Kawas Fernández vs. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 115, and I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 155.

<sup>52</sup> “[A]ccused persons [are not required] actively to co-operate with the judicial authorities. [...] Even if the applicant may be considered on that account to be responsible for some of the delays, this cannot justify the length of the periods in between individual hearings and certainly not the total duration of the proceedings” Eur. Court Hum. Rights. *Case of Calleja v. Malta* (Application no. 75274/01) Judgment Strasbourg, 7 April 2005 final 07/07/2005, paragraph 132; *Portington v. Greece*, judgment of 23 September 1998, Reports, 1998-VI, p. 2632, § 29, and *Zana v. Turkey*, judgment of 25 November 1997, Reports 1997-VII, p. 2552, § 79.

Court “it [is] pertinent to clarify that, in this analysis of reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account”<sup>53</sup>, bearing in mind, *inter alia*, the subject of the dispute. In the instant case, the petitioner argued that the lengthy duration of the criminal case affected him both morally and physically, given his uncertainty as to the outcome of the case.

8. The Commission notes that in the January 24, 1989 ruling in which Federal Criminal and Correctional Court No. 1 dismissed the charges against the accused, it added a notation to the effect that “the proceedings conducted against the accused d[id] not harm their good name and honor,” in keeping with Article 437 of the Code of Criminal Procedure.<sup>54</sup> The Inter-American Court has also held that a judicial proceeding does not, in itself, constitute unlawful harm to the honor or dignity of the individual in general.<sup>55</sup>

9. The Commission concurs with the Inter-American Court on the fact that, by their very nature, judicial, administrative or other proceedings can mean inconveniences for those who are the subject of the proceedings.<sup>56</sup> These inconveniences must be tolerated as the price of belonging to society and enjoying the rule of law. However, the Commission believes that when the judicial proceeding extends beyond a reasonable period, with no significant activity on the State’s part, the duration of the proceeding becomes prejudicial to the accused because it inflicts unlawful harm upon the accused. In the instant case, the Commission observes that Mr. Grande not only suffered the inconvenience of being named as a defendant in a criminal case, but was also seriously affected by the excessive duration of the case. The information in the case record shows that Mr. Grande’s employment prospects were particularly affected by the protracted duration of the criminal case. In the damages suit that the victim brought in the civil courts, he states that “many firms would not hire me because of my job situation;”<sup>57</sup> two firms had certified that despite his technical qualifications and moral probity, the fact that he was a defendant in a criminal case was an insurmountable obstacle that precluded his hiring.

10. Based on the above considerations, the Commission considers that in the case *sub examine* the right to have a criminal case conducted within a reasonable period of time was violated.

### **Concerning the administrative law proceeding**

11. It has also been shown that once the criminal court established that the evidence had been unlawfully obtained and therefore proceeded to dismissal, Mr. Grande filed suit in the administrative law jurisdiction, seeking damages from the State to compensate him for the procedural violations committed during the criminal case. In this connection, he argued, *inter alia*, that:

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<sup>53</sup> I/A Court H.R., *Case of Kawas-Fernandez*, paragraph 115, and I/A Court H.R., *Case of Valle Jaramillo v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 155.

<sup>54</sup> Code of Criminal Procedure, Title XXII: Dismissal:

Article 437:

In cases of definitive dismissal, a statement must be made to the effect that the institution of proceedings does not harm the accused’ good name and honor.

<sup>55</sup> I/A Court H.R., *Case of Valle Jaramillo v. Colombia*. Merits, Reparations. And Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 176.

<sup>56</sup> *Idem*

<sup>57</sup> Damages suit against the National State, dated April 14, 1992, Annex 12.

1) Searches conducted violated a constitutional provision; 2) A criminal case prosecuted for almost nine years was mounted on that illegitimate grounds; 3) That process resulted in my arrest and my prosecution for such a protracted period; 4) In the end, the charges against me were dismissed after the irregularity was recognized.<sup>58</sup>

12. The Court of first instance in the administrative law jurisdiction ruled in Mr. Grande's favor, holding that the "State had acted unlawfully." That ruling was reversed by the National Appellate Court of the Administrative Law Jurisdiction, which held, *inter alia*, that there had been no judicial error in the case. The victim filed an extraordinary appeal, which was declared inadmissible, whereupon he filed a complaint, which was also denied.

13. The IACHR observes that the main arguments used during the administrative law proceeding were: (i) whether there had been a judicial error during the criminal case when assessing the evidence, based on Article 112 of the Civil Code, even though such article is more all-encompassing and refers to any act or omission on the part of public officials in the performance of their functions,<sup>59</sup> and (ii) Mr. Grande's alleged procedural inactivity.

14. In the case *sub examine*, there was a violation of due process, to the detriment of Mr. Grande, as the criminal case in which he was accused lasted for more than eight years, in blatant violation of rights protected by the Convention and the American Declaration. Furthermore, the appeal that Mr. Grande filed in the administrative law forum was rejected, without taking account of the fact that the criminal court had already declared the evidence illegal and without considering the amount of time taken to reach a decision on a case. Quite the contrary, the administrative authorities gave particularly heavy weight to Mr. Grande's alleged passivity. As already stated in this report, the fact that the authorities used criteria of that kind suggests that the accused has the obligation to move a criminal case forward and prove his or her innocence, which is a standard that is inconsistent with the provisions of the American Convention and Inter-American case law.

15. The Commission notes that although the State, through the Federal Appellate Court, acknowledged that because of the manner in which the evidence was obtained, Mr. Grande's right to due process had been violated, the State did nothing to remedy the violation, either through reparations or an administrative disciplinary investigation to determine whether any police officers or judges should be sanctioned. In other words, even though a serious injustice had been done in relation to the right to due process, the State did not offer a suitable measure to redress the injustice.

16. Based on the facts established in the present chapter, the Commission finds that as of September 5, 1984, the date on which the American Convention's obligations became binding upon the Argentine State, the latter violated the rights recognized in articles 8 and 25(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Grande.

## VIII. REPARATIONS AND COSTS

87. The *jurisprudence constante* of the Inter-American Court is that "it is a principle of international law that any violation of an international obligation that has caused damage creates a new obligation, which is to adequately redress the wrong done."<sup>60</sup> Given the facts alleged in the

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<sup>58</sup> Suit seeking damages and injuries, p. 4. Emphasis added

<sup>59</sup> Any actions and omissions of public officials committed in the exercise of their functions that are at variance with the legal obligations incumbent upon them are covered by the provisions of this chapter.

<sup>60</sup> I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, para. 230; I/A

present application, and in application of that jurisprudence, the Commission is submitting to the Court its claims as to the reparations and costs that the Paraguayan State must pay as a consequence of its responsibility for the human rights violations committed against Jorge Fernando Grande.

88. Pursuant to the Rules of Court, which give the individual autonomous standing in its proceedings, in these submissions the Commission will confine itself to elaborating upon the general standards that the Court should apply in the matter of reparations and costs in the instant case. The Inter-American Commission understands that it is up to the victims and their representatives to spell out precisely what their claims are, pursuant to Article 63 of the American Convention and Article 25 and other relevant provisions of the Rules of Procedure of the Inter-American Court. Should the injured party not exercise this right, the IACHR asks the Court to grant it an opportunity in the proceedings to quantify the relevant claims.

**A. Obligation to make reparations**

89. Article 63(1) of the American Convention provides that:

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

90. As this Court has previously held,

Article 63(1) of the American Convention reflects a customary rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. When a wrongful act occurs that is imputable to a State, the latter incurs international responsibility for violation of an international rule, and thus incurs a duty to make reparation and putting an end to the consequences of the violation.<sup>61</sup>

91. Reparations are crucial to ensuring that justice is done in an individual case and are the means by which the Court's judgments are carried beyond the realm of moral condemnation. Reparations are the measures that will cause the effect of the violations committed to disappear. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which is to restore the situation as it was prior to the violation.

92. Where full restitution is not possible, as is true in the instant case, it is up to the Inter-American Court to order a series of measures that will not only ensure that the violated rights are respected but also redress the consequences that the violations caused and ensure payment of indemnification as compensation for the damage caused in that case.<sup>62</sup>

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Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 85; I/A Court H.R., *Case of De la Cruz Flores.* Judgment of November 18, 2004. Series C No. 115, para. 138.

<sup>61</sup> I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 86; I/A Court H.R., *Case of the Plan de Sánchez Massacre.* Judgment of November 19, 2004. Series C No. 116, para. 52; I/A Court H.R., *Case of De la Cruz Flores.* Judgment of November 18, 2004. Series C No. 115, para. 139.

<sup>62</sup> I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre.* Judgment of November 19, 2004. Series C No. 116, para. 53; I/A Court H.R., *Case of De la Cruz Flores.* Judgment of November 18, 2004. Series C No. 115, para. 140.

93. The obligation to make reparations is regulated in all its aspects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State by invoking the provisions of its own domestic laws; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws.<sup>63</sup> "Whenever a violation goes unpunished or a wrong unredressed, the law is in crisis, not just as a means for settling a certain litigation, but as a method for settling any litigation; in other words, as a tool to ensure peace with justice."<sup>64</sup>

94. In the present case, the Commission has demonstrated that the State's international responsibility was engaged by its violation of articles 8 and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Fernando Grande. For 8 years, the victim was subjected to a criminal case flawed by irregularities and unwarranted delay, based on evidence that was ultimately declared null and void. On the other hand, the State failed to provide the victim with an adequate recourse to seek redress for the damages and injuries he sustained while he was a defendant in the criminal case.

95. Accordingly, the Commission is asking the Court to order the State to adopt the measures necessary so that Jorge Fernando Grande may receive prompt and adequate reparation that constitutes full satisfaction for the human rights violations committed against him.

96. The Commission submits that the consequences of the victim's lack of access to judicial protection and to judicial guarantees that violated his rights under the American Convention must be redressed through payment of an indemnity as compensation for damages sustained where deemed appropriate.<sup>65</sup> In general terms, the primary purpose of indemnity in such cases is to redress the real damages, both pecuniary and non-pecuniary, that the injured parties have sustained.<sup>66</sup> When calculating the damages and injuries sustained, the reparations are to be "proportionate to the gravity of the violations and the resulting damage."<sup>67</sup> Furthermore, reparations serve another no less important purpose, which is to prevent and avoid future violations.

97. Therefore, without prejudice to the claims that the victim submits at the appropriate stage in the proceedings, the IACHR is requesting that, in exercise of its broad authorities in this regard, the Court order payment of compensation in equitable relief for the pecuniary and non-pecuniary damages caused.

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<sup>63</sup> I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, para. 231; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, para. 53.

<sup>64</sup> SERGIO GARCÍA RAMÍREZ, *LAS REPARACIONES EN EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS*, paper presented at the seminar titled "The inter-American system for the protection of human rights on the threshold of the XXI century," San José, Costa Rica, November 1999.

<sup>65</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, paragraph 189; *Case of the 19 Tradesmen*, *supra*, paragraph 221; *Case of Molina Theissen*. *Reparations* (Art. 63(1) of the American Convention on Human Rights) Judgment of July 3, 2004, Series C No. 108, paragraph 42.

<sup>66</sup> I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 70; *Case of Hilaire, Constantine and Benjamin et al.* *supra*, para. 204; and *Case of the "White Van" (Paniagua Morales et al.)*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 25, 2001. Series C No. 76, para. 80.

<sup>67</sup> United Nations, Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, E/CN.4/Sub.2/1996/17, para. 7. See also, I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, *supra*, para. 205; *Case of Cantoral Benavides*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of December 3, 2001, Series C No. 88, para. 42, and *Case of Cesti Hurtado*. *Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of May 31, 2001, Series C No. 78, para. 36.

98. Finally, the IACHR is asking the Court to order the State to take the appropriate investigative measures to establish any criminal and administrative blame incurred by virtue of the violations of the rights to due process and to judicial protection, to the detriment of Jorge Fernando Grande.

#### **B. The *titulaire* of the right to receive reparations**

99. Article 63(1) of the American Convention requires reparation of the consequences of a breach of a right or freedom and that fair compensation be paid to the injured party. The persons entitled to that compensation are, as a rule, those directly harmed by the facts of the violation in question<sup>68</sup>. In the instant case, the *titulaire* of the right to receive reparations is Jorge Fernando Grande.

#### **C. Costs and expenses**

100. The jurisprudence *constante* of the Court is that costs and expenses should be understood to be included within the concept of reparation established in Article 63(1) of the American Convention because the measures taken by the victim or victims, their heirs or their representatives to have access to international justice imply disbursements and commitments of a financial nature that must be compensated.<sup>69</sup> The Court has also held that the costs also include the various necessary and reasonable expenses that the victim or victims incur to have access to the oversight bodies established by the American Convention. The fees of those who provide legal assistance are included among the expenses.

101. In the *cas d'espèce*, the Inter-American Commission is requesting that once it has heard from the representatives of the injured party, the Court order the Argentine State to pay the costs and expenses that they have duly proven, taking into consideration the special characteristics of the present case.

### **IX. CONCLUSION**

102. The Commission concludes that the Argentine State violated, to the detriment of Jorge Fernando Grande, the rights to judicial guarantees and to judicial protection recognized, respectively, in articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof.

### **X. PETITUM**

103. Based on the arguments of fact and of law set forth herein, the Inter-American Commission on Human Rights is petitioning the Court to adjudge and declare that the Argentine State is responsible for violation of the right to judicial guarantees and the right to judicial protection, recognized in articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Fernando Grande.

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<sup>68</sup> I/A Court H.R., *Case of Villagrán Morales (Case of the "Street Children")*, *Reparations*, Judgment of May 26, 2001, paragraphs 107 and 108.

<sup>69</sup> I/A Court H.R., *Case of Carpio Nicolle et al. Case*, Judgment of November 22, 2004. Series C No. 117, para. 143; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 115; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 177.

104. In consideration of the above, the Inter-American Commission is asking the Court to order that the State:

- That it takes the measures necessary to ensure that Fernando Grande receives adequate and prompt reparation, including full satisfaction, for the human rights violations established in the present report.
- That it investigate and, if appropriate adopt the necessary measures against anyone who might bear criminal and administrative blame for the violations of due process and judicial protection to the detriment of Jorge Fernando Grande.

## **XI. SUPPORTING EVIDENCE**

### **A. DOCUMENTARY EVIDENCE**

105. The following is a list of the documentary evidence currently available:

**APPENDIX 1:** IACHR, Merits Report No.109/09, Case 11,498, Jorge Fernando Grande, November 10, 2009.

**APPENDIX 2:** IACHR, Admissibility Report No. 03/02, Case 11,498, Jorge Fernando Grande, February 27, 2002.

**APPENDIX 3:** Record of the processing of the case with the IACHR

**Annex 1.** The parties' briefs

- The State's brief of November 27, 2001.
- Brief from the General Bureau of Legal Affairs of the Ministry of Foreign Affairs, dated July 29, 1997.
- The State's brief on the merits, received November 7, 2002.
- The petitioner's brief of November 21, 2008.

**Annex 2.** Expert report prepared by traumatology physician Dr. Raúl H. Tagliabije, dated September 9, 199[?].

**Annex 3.** Preventive detention order dated August 12, 1980, issued by National Federal Criminal and Correctional Court No. 1.

**Annex 4.** Ruling of Chamber II of the Federal Criminal and Correctional Appellate Court, dated May 24, 1988.

**Annex 5.** April 14, 1992 ruling issued by the Federal Judge in the case of Grande, Jorge F. v/Nat. State (Min. Education and Justice) on/Payment."

**Annex 6.** April 6, 1993 decision of the National Appellate Court in the Administrative Law Jurisdiction in the case of Grande, Jorge F. v/ Nat. State (Min. Education and Justice) on/Payment."

**Annex 7.** Relevant articles of the Code of Criminal Procedure and the Civil Code.

**Annex 8.** Order of definitive dismissal dated January 24, 1989.

**Annex 9.** Complaint brought by Fernando Grande, no date.

**Annex 10.** April 12, 1994 decision of the Supreme Court.

**Annex 11.** Federal Criminal and Correctional Court No. 1. Judgment of January 24, 1989 (Federal

Judge Udan Edgargo Fegoli)

**Annex 12.** Suit for damages filed against the National State on April 14, 1992.

**Annex 13:** Power of attorney.

**Annex 14:** *Curriculum vitae* of expert Natalia Sergi.

106. The Commission is requesting that the Court order Argentina to send certified copies of all documents related to the proceedings conducted in the domestic courts in connection with the events of this case, and an authenticated copy of all applicable laws and regulations.

**B. Expert testimony**

107. The Inter-American Commission is offering the expert opinion of Natalia Sergi, who will testify about the duration of criminal proceedings in Argentina and the failure to make reparations to the affected persons for the violations they suffer. In the Commission's view, this case raises substantive questions about the nature of due process and what constitutes an effective recourse. The expert will provide relevant information on these issues. The Commission is offering this expert testimony given the public interest in the case.

**XII. INFORMATION ON THE REPRESENTATIVES**

108. In compliance with Article 34 of the Court's Rules of Procedure, the Inter-American Commission submits the following information:

109. Jorge Fernando Grande granted power of attorney to attorney Pedro Patiño-Mayer y Alurralde, authorizing him to represent the victim vis-à-vis the organs of the Inter-American System.

110. The representative of the victims has given his address as [REDACTED]  
[REDACTED]

Washington, D.C.  
May 4, 2010.