Organization of American States

IACHR 50 years defending HUMAN RIGHTS

Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
Alicia Barbani Duarte, María Del Huerto Breccia *et. al.*
(Depositors of the *Banco de Montevideo*)
Case 12.587
against Uruguay

DELEGATES:

María Silvia Guillén, Commissioner
Santiago A. Canton, Executive Secretary

ADVISORS:

Elizabeth Abi-Mershed
Christina Cerna
Lilly Ching

March 16th, 2010
1889 F Street, N.W.
Washington, D.C., 20006

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APPLICATION FROM THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS AGAINST URUGUAY CASE Nº 12.587 ALICIA BARBANI DUARTE, MARÍA DEL HUERTO BRECCIA *ET. AL* (DEPOSITORS OF THE *BANCO DE MONTEVIDEO*)

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," "the Court" or "the Tribunal") the application lodged in case 12,587, Alicia Barbani Duarte, María del Huerto Breccia *et. al* (Depositors of the *Banco de Montevideo*), against the Republic of Uruguay (hereinafter "the State," "the Uruguayan State" or "Uruguay") for its international responsibility arising from the failure to provide a group of depositors of the *Banco de Montevideo*[1] (hereinafter "the victims" or "the injured parties") with an impartial

[1] In the processing of the case before the Commission, out of a group of over 1400 depositors of the *Banco de Montevideo,* 708 account holders were identified by name. The persons identified as account holders are: 1) Abal Gemelli, María, 2) Abal Bordachar, Mario Héctor; 3) Abascal, Martín; 4) Abella De Luca, Patricia; 5) Abella Demarco, Cristina; 6) Abella Demarco, Rafael; 7) Abisab Ache, Chemel; 8) Abisab Baranzano, Yamil; 9) Aboitiz, Aitor; 10) Abramian, Fernando; 11) Abu Arab Maisonnave, Adela; 12) Abut, Alejandro; 13) Acevedo Sotelo, Eduardo; 14) Acuña, Amalia; 15) Acher, Saúl Isaac; 16) Achtsam, Borys; 17) Adami Lansac, Leonor; 18) Adinolfi, Julio; 19) Adrien, Paulina Isabe; 20) Albanese Mercep, Rúben; 21) Alemán, Graciela; 22) Alexander Serrano, Normando: 23) Alfassa, Clara; 24) Algorta, Horacio; 25) Alonso, Roberto; 26) Alsugaray Rodrígues Carolina; 27) Álvarez Pirri, Esther; 28) Álvarez López, Néstor; 29) Amengual, Juan; 30) Álvarez Vasallo, Ana María; 31)Alves Serra, Gloria Renée; 32) Alzaradel, Rita; 33) Ambrogio Catalano, Edgardo; 34) Amo, D'Alessandro José; 35) Amonte, Pedro; 36) Amoroso, Alfonso; 37) Amparo, Inés; 38) Anspacher, Rudolf; 39) Antuna Zumarán, María; 40) Apai, Ellen; 41) Arbelbide, María Laura; 42) Ariano, Gerardo; 43) Arieta Apesteguy, María Soledad; 44) Arin San Martín, María del Rosario; 45) Arroyo, Nora; 46) Artigas, Jorge; 47) Azparren, Ana Beatriz; 48) Báez Carballido, Magali; 49) Báez Porcile, Néstor; 50) Bagatini, Sergio; 51) Bailón, Gonzalo; 52) Bakkar, Samir; 53) Balcarcel, Liliana; 54) Bara, Walter; 55) Baraza, Juan José; 56) Barbani, Alicia; 57) Baril Kogan, Verónica; 58) Barquín, Ignacio; 59) Barra Saturno, Cecilia; 60) Barreiro, Gustavo; 61) Barreiro, José; 62) Barreto Trillo, Vivián; 63) Barreto, Jorge; 64) Batista, Adolfo; 65) Bazik Lasan; 66) Susana Bazterrica, Amparo; 67) Beimeras, Leonardo; 68) Beisso, María; 69) Bellesi, Daniel; 70) Benedetti, Washington; 71) Bengochea San Martín, Ma.; 72) Bentancort Corbo Rovert; 73) Bentancour, Esteban; 74) Bentancur, Rafael; 75) Beres, María; 76) Bergamino, Raúl; 77) Bergara Avila, Amilcar; 78) Beriolo, Gabriela /Ivaldi, Pierina; 79) Berlini, Esmeralda Ana; 80) Berlini, María Teresa; 81) Bernasconi, Alejandro; 82) Bertolini, Gustavo; 83) Besio, Rodolfo; 84) Bianchi, Romero; 85) Biermann, Erna; 86) Bigoni Baccani, Lita; 87) Birger Nejerman, Lili; 88) Bluth, Silvina; 89) Bo de Suzacq, Luisa; 90) Boada, Ana; 91) Bocchi Paladino, Juan José; 92) Bocchi, Nelson/ Bocchi, Juan José Paladino; 93) Bocchi Nelson/Bocchi/Quintans,María Raquel; 94) Boggia, José; 95) Bolla, Mauro; 96) Bongoll, Lilián; 97) Bonifacino Olmedo, Alba; 98) Bonilla, Fernando; 99) Bordad, Javier; 100) Bordino, Luis; 101) Bossano Sánchez, Gerardo; 102) Botto, Nelson; 103) González, Mario; 104) Braceras, Rafael; 105) Braceras, Elina; 106) Breccia, María del Huerto; 107) Brit Torres, María Marta; 108) Broglia, Carlos; 109) Brudz, Krzysztof; 110) Brun, Adrián; 111) Brusamarello, Antonio; 112) Bulla Core, Uruguay; 113) Busek Ehrlich, Helga; 114) Caballero Lehite, Fernando; 115) Cabrera Arotcharen, Ana María/Mazzoni, Stella; 116) Cabrera Thieulent, Graciela; 117) Caligares, Teresa; 118) Calvete, Eduardo; 119) Camacho Pérez, Gabriela; 120) Camors, Luis; 121) Campoamor, Cristina; 122) Canabal Lema, Andrés; 123) Canabal, Andrea; 124) Cancela, Rúben; 125) Cancro, Adelaide; 126) Cancro, Miguel; 127) Canen, Guillermo; 128) Carbajal, María Irma; 129) Carballo, Jorge; 130) Carreño, Fortunata; 131) Casamayou Tort, Roberto; 132) Casarotti, Esteban; 133) Casavieja Colombo, Wilmer; 134) Casavieja, Luis Pablo; 135) Casella, Blanca; 136) Caspary, Hildo; 137) Castaña, Gonzalo; 138) Castellano, Gabriel; 139) Castello, Vicente Carlos; 140) Castro Etchart, Gustavo; 141) Castro Millán, Francisco; 142) Castro Millán, Ramón; 143) Caussade, Rúben; 144) Cavajani, Nicida; 145) Cavanna, José Luis; 146) Cavanna, Rodolfo; 147) Cerda, Rúben; 148) Cohen Abut, Rafael; 149) Colombo Pampín, Enrique; 150) Contín , Gianna; 151) Copello Ametrano, Jorge; 152) Coronato, Roque; 153) Corredoira, José; 154) Corredoira, Rafael; 155) Cortabarria Zavala, Raquel; 156) Cotelo, Ramón W.; 157) Crestino Aycaguer, Nelly; 158) Cristina, Juan; 159) Crocco Piñeyro, Mariana; 160) Croce, Gabriel; 161) Crosa Boix, Martín; 162) Cutri, María Cristina; 163) Cholaguidis, Elizabeth; 164) D' Andrada Berhouet, Raúl; 165) D´Amico, Aldo; 166) Da Conceiçao, Ana; 167) Da Cuña, Luis; 168) Da Luz, Pedro Paulo; 169) Da Pena Pepoli, Marcela; 170) Da Silva Da Costa, Juan Carlos; 171) Da Silva Da Costa, Luis; 172) Da Silva Gaibisso, Hugo; 173) D'Allessandro, Julio; 174) D'Allorso, Francisco; 175) De Amorín, Antonio; 176) De Crescenzo Ruiz, Fernando; 177) De la Fuente, María del Carmen; 178) De la Sovera, Nilda; 179) De la Torre, Celestino; 180) De la Vega Aguerre, Juan; 181) De León, Aída; 182) De Luca Sarmoria, Vilma; 183) De Marco Ferrari,Juan; 184) De Mosco, Juan; 185) De Vida de Petrolini, María; 186) Delfante, José; 187) Delgado, Ramón; 188) Demicheri, Alvaro; 189) Demicheri, Luis Julio; 190) Dendrinos Saquieres, Daniel; 191) Denissow, Ana; 192) Di Carlo, Beatriz; 193) Di Giore, José; 194) Di

Salvo, Crimilda; 195) Díaz Cabana,Eduardo; 196) Díaz Santana, Nilda; 197) Díaz, Carolina; 198) Díaz, Eduardo; 199) Díaz, Rafael; 200) Dogliotti Guimaraens, Elida; 201) Donner, Rúben; 202) Dotta, Lorena y/o García, Martín; 203) Dotta, Pablo; 204) Dowald, Rúben; 205) Dura, Daniel; 206) Durán, Eduardo; 207) Effa, Dietter; 208) Eilender, Diego; 209) Eminente Cohen, Fabio; 210) Erramun, Bernardo; 211) Espasandín, Pablo; 212) Espasandín, Ana Laura; 213) Espasandín, Nelson; 214) Etchart, José Antonio; 215) Etchevarne, Miguel; 216) Etchevers Mion, Jorge; 217) Everett, Oscar; 218) Fabro, María Raquel; 219) Faccio Arioni, Héctor; 220) Faccio Ortíz, Diego; 221) Faliveni, Gustavo; 222) Farcic, Antonio; 223) Farre, Rosa; 224) Favrin, Raúl; 225) Fazio, Sergio; 226) Feibelmann de Vasen, Eva; 227) Ferencich, Ricardo; 228) Fernández Baliero, Alba; 229) Fernández Fernandez, Jorge; 230) Fernández Giordano, Oscar; 231) Fernández Giordano, Guillermo; 232) Fernández Giordano, Graciela; 233) Fernández González, Daniel; 234) Fernández Rodríguez, José; 235) Fernández, Aurelio; 236) Fernández, Gustavo; 237) Fernández Longres, José; 238) Ferrando, Carlos; 239) Ferraro, Martín; 240) Ferraro, Soledad; 241) Ferreyra, Alba; 242) Figueredo, Daniel; 243) Figueroa Colosso, Luis; 244) Figueroa, Judith; 245) Fiori, Julia; 246) Fitipaldo, Edgardo; 247) Fleig/Fontana, Severino; 248) Flocken, Marta; 249) Fontana, Alejandro; 250) Formoso, María; 251) Frabaile, Carlos; 252) Franzoni, Marcelo; 253) Friedler, Talma; 254) Frins Pereira, Erna; 255) Frontini Medina, Martín; 256) Fuentes Quintans, Diego; 257) Fuentes/Quintans María Elvira; 258) Fulgueral, María Teresa; 259) Furtado Mazzino, Alejandro; 260) Gaglardini Giuffra, Federica; 261) Gaibisso, Juan Carlos; 262) Gallo Azambuya, Juan; 263) Gallotti Milani, Carlos; 264) Gambini, Verónica; 265) Ganger, Anna; 266) García Caban, Ricardo; 267) García Comesaña, Nelson; 268) García Fernández, Luis Andrés; 269) García Milia, María Delia; 270) García Nogueira, Bernabé; 271) García Pardo, Josefa; 272) García Pérez, Alba Rosa; 273) García Piñeyrua, Virginia; 274) García Santoro, Alejandro; 275) García, Carlos; 276) Gardiol, Laura; 277) Garland Bazzano, Gerardo; 278) Gavioli Piedrahita, José; 279) Gavioli, Alcides; 280) Gesto,Elbio Nelson; 281) Giambruno De Amicis, Clara; 282) Gigli Rodríguez, Ma. Iverice; 283) Gil, Marta; 284) Glaser, Marión; 285) Godin, Hugo Rodolfo; 286) Goigochea, Héctor; 287) Goldglanz, Judith; 288) Gómez, Mateo Roberto; 289) Goncalves Gonzalves, David; 290) González Rodríguez, Alfredo; 291) González Amaro, José; 292) González, Mario; 293) González, Nelson; 294) González Beade, Palmira; 295) Goyas Martínez, Rúben; 296) Gramática, Carla; 297) Granell,José Luis / Miller, Karina; 298) Grazu Díaz, Suester Iván; 299) Greco, José Pedro; 300) Greco, Oscar; 301) Grezzi, Carlos; 302) Griffin, Juan; 303) Gross Espiell, Héctor; 304) Guasque, Nely Miguel; 305) Guekdjián, Alfredo; 306) Guerra Martínez, Leticia; 307) Guerra, Martín; 308) Guillón, Miriam; 309) Guimaraens, Antonio/Griselda; 310) Guntin, Susana; 311) Gutiérrez Bussi, María; 312) Gutiérrez Galiana, Eduardo; 313) Gutiérrez, Cecilia; 314) Gutiérrez, Noé; 315) Guzzini García, José María; 316) Hachiuma Yoshida, Yoko; 317) Haiber, Úrsula; 318) Halegua Albagli, Alfredo; 319) Halegua Albagli, Susana; 320) Hamalián Sarkisián, Toros; 321) Harcevnicov, Jorge; 322) Harguindeguy, Raqúel; 323) Haschke, Erika; 324) Heijo, Celia y Menafra; 325) Hernández Larriera, Gastón; 326) Herrero Fratelli, Rodolfo; 327) Holtz Bergier, Adriana; 328) Horvath, Raúl; 329) Iglesias, Carlos; 330) Iglesias, Sergio; 331) Irigoin, Graciela; 332) Irigoyen, Aída; 333) Ivaldi, Pierina; 334) Juan, Nicolás; 335) Juchem Goncalves, Mariangela; 336) Kahyaian, Alberto; 337) Kaplun, Gabriel; 338) Karamanukian, José; 339) Karamanukian, Juan; 340) Kogan, Perla; 341) Kouyoomdjian, José; 342) Krell, Susana; 343) Krivianski, Isaac; 344) Krivianski, Natalia; 345) Kvasina, María Laura; 346) La Cava Carlos; 347) Lanata Sanguinetti, Horacio; 348) Langone Colucci Vicente; 349) Lanza, Regalia Beatriz; 350) Lapetina, Jorge; 351) Larrea, Alfredo; 352) Larriera, Juan; 353) Lasalvia Baldomir, Nelson; 354) Lasalvia Berriel, Alejandro; 355) Lavaggi, Álvaro; 356) Ledoux, Alberto; 357) Leite, Carlos; 358) Lemole Graciarena, Luis; 359) Lena, Rafael; 360) Leoncini, Fernando; 361) Leoncini, Juan; 362) Lerma Tejería, María; 363) Leroy, Yean; 364) Libonati Semino, Carmen; 365) Lichtman Leiner, Gladys; 366) Liepmann, Werner; 367) Lijtenstein, Fabiana; 368) Lingeri Olsson, Manuel; 369) Liprandi, Jorge; 370) Lisbona Vázquez, Gabriel; 371) Litlle, Gordon F.; 372) Lodi, Hélio Ángelo; 373) Lodi, Vanderlei Luis; 374) Lomiento, Luisa; 375) Longinotto, Virgina; 376) López Almeida, Walter; 377) López García, Manuel; 378) López Vanini, Diana; 379) López Varela, José Jorge; 380) López, Alejandro Rogelio; 381) López, Alvaro; 382) López, Beatriz; 383) Lorenzo Fernández, Eugenio; 384) Lorenzo Rodríguez, Fernando and/or Gonzalo; 385) Lorenzo, José Raúl; 386) Lorenzo, Nelson; 387) Lorieto de Souza, Virginia; 388) Losada Collazo, Juan; 389) Loureiro Morena, Marta; 390) Luengo, Carlos Nicolás; 391) Luzardo, Rosa; 392) Llana, Francisco; 393) Macedo, Rosa; 394) Maciel, Walmir; 395) Machín, Àlvaro; 396) Magni, José; 397) Mainardi Rial, María; 398) Maisonnave, Milka; 399) Malán Félix, Albina; 400) Malinow, Gloria; 401) Malugani Mastalli, Dolores; 402) Manaro, Beatriz; 403) Mandorla, Washington; 404) Marcos Marra, Eduardo; 405) Marcos Sperati, Natalia; 406) Marcos, Eduardo/ Sperati; 407) Marenales Escrich, Jorge; 408) Martínez Delfino, Valeria; 409) Martínez Liotti, José; 410) Martínez Rodriguez, Lorenzo; 411) Martínez Rodriguez, Mariano; 412) Martínez, Abelardo; 413) Martínez, Rúben Darío; 414) Martínez, Ana María; 415) Martínez, Enrique; 416) Martínez, Orosman; 417) Martínez, Norma; 418) Martins Romero, Joaquín; 419) Marziotte, Luisa; 420) Massobrio, Virginia; 421) Mazzoli, Marcelo; 422) Mazzuchi, Carlos; 423) Mechur Winzer, Margarita; 424) Meerhoff, Enrique; 425) Menafra Nuñez, José Luis; 426) Méndez Fernandez, Hilda; 427) Mendoza, Wilfredo Luis; 428) Mendoza, Estela; 429) Merletti, Leonardo; 430) Mezquita,Revello; 431) Michalski, Zdzislaw; 432) Michelini, Luis; 433) Miglietti, Roberto; 434) Mitnik, Gregorio; 435) Montefiori, Cristina; 436) Montoro Heguerte, Alejandro; 437) Mora, Juan; 438) Morales García, Walter; 439) Morales, Andrés; 440) Morales, Jorge; 441) Moreira Pannella, Claudia; 442) Moreira, Gonzalo; 443) Moreira, Marta; 444) Moreno Pardie, Alba; 445) Moretti, Jorge; 446) Morgade, Diego; 447) Muccia Ibarra, Gonzalo; 448) Muccia, Víctor; 449) Musto, Walter; 450) Nadjarian, Kevork; 451) Nario Alvarez, Alvaro; 452) Neubauer Margolis, Silvia; 453) Neuschul, Franklin R.; 454) Neuschul, Thomas Máximo; 455) Nípoli, Vicente; 456) Noriega, Mirtha; 457) Normey,Pedro; 458) Notaro, Angel; 459) Noveri Mari, María; 460) Nozar Cabrera, Fernando; 461) Nuñez, Micaela Modesta; 462) Olascoaga, Ana María; 463) Olivet, Gerardo; 464) Ongay, Carmen; 465) Orlander, Rosana; 466) Ortelli, Marcelo; 467) Osievich Brener, Enrique; 468) Outerelo, Claudio; 469) Oxandabarat, Gloria; 470) Pagani, Jorge; 471) Palazzi López, Federico; 472) Pallas Geirinhas, Héctor; 473) Panella Castro, Cristina; 474) Panfilo Pezzolano Emilio; 475) Pareja, Raquel; 476) Parodi, Horacio; 477) Pascaretta, Vito; 478) Pascual Knaibl, Carlos; 479) Paseyro Mouesca, Alfredo; 480) Paseyro Mouesca, Elsa; 481) Passada, Héctor; 482) Pastorino, José Ángel; 483) Pastorino, Susana; 484) Patteta, Graciela; 485) Paullier, Mercedes; 486) Pelufo Biselli, Emilio; 487) Pelufo, Carmen; 488) Pena, José Walter; 489) Penone Corbo, Rossana; 490) Pepa, Daniel; 491) Peralta Ansorena, Pablo; 492) Pereira Da Silva, Probo; 493) Pereira, Ana; 494)

hearing for their claims, either by the Advisory Commission created under Law 17,613, the "Financial System Reform Law" (*"Ley de Reforma del Sistema Financiero,* hereinafter the "LRSF" or "Law 17.613") or by the Contentious- Administrative Tribunal, concerning the transfer of their funds from the *Banco de Montevideo* (hereinafter the "BM") to the Trade and Commerce Bank (hereinafter the "TCB") without consulting them; and the failure to provide the victims with a simple and prompt recourse to examine all the issues of fact and of law concerning the dispute before it.

2. In its Report on the Merits, the Inter-American Commission established violations of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"). Therefore, the Inter-American Commission requests that the Honorable Court to adjudge the international responsibility of the Uruguayan State for failing to comply with its international obligations by its violation of Article 8(1), the right to a fair trial, and Article 25(1), the right to judicial protection, read in conjunction with Article 1(1) of the American Convention, to the detriment of the victims named in the report on the merits and in the present application.

Pereira, Cecilia; 495) Pérez Bogao, Zulma; 496) Pérez Garín, Mario Martín; 497) Pérez Rodríguez, Atahualpa; 498) Pérez Soto, Walter; 499) Pérez Zeballos, Juan; 500) Pérez Pérez, Hugo; 501) Pérez, Alejandra; 502) Pérez, Ezequiel; 503) Pérez, Javier; 504) Pérez, Silvia; 505) Pérez, Rumildo; 506) Perles, Gisela; 507) Perri, Yolanda; 508) Peter, Margarita Helena; 509) Píngaro Harsanyi, Gisele; 510) Pintos Patiño, Jorge; 511) Piñeyro Castellanos, María Inés; 512) Piñeyro Gutiérrez, Adela; 513) Piovani, Carlos; 514) Píriz Bustamante, Gladys; 515) Pita, Gustavo; 516) Pitetta, Luis; 517) Pivovar, Gastón; 518) Pivovar, Oscar; 519) Pizza, Martha; 520) Pogge Boldt, Irina; 521) Poggio Odella, Elbio; 522) Pohoski Grachoswska, Teresa; 523) Polizzi, Omar; 524) Ponzoni, José Luis; 525) Poplavski , Gabriela; 526) Prevettoni, Gabriela; 527) Puente Caamaño, Jesús; 528) Puente Vázquez, Alberto; 529) Puente, Gonzalo/Silva, Doris; 530) Pugliese, Héctor Mario; 531) Quintana Andreoli, Laura; 532) Quintans, María Elvira; 533) Quintans, Manuel; 534) Quintans, Encarnación; 535) Quintero, Anabela; 536) Rabosto, Antonio; 537) Rago, Pedro; 538) Raineri Pardo, Nilda; 539) Rama Sienra, Leandro; 540) Rama Barbé, Florencia; 541) Ramírez Carlos; 542) Ramos Echevarría, Magela; 543) Ramos, Hortensia; 544) Ramponi, Graziella; 545) Real de Azúa, María Jesús; 546) Reboa, Rosa; 547) Recalde Maillot, María Ángela; 548) Recalde,Alicia; 549) Reguitti, Telma; 550) Reimer, Gustavo; 551) Reino Berardi, Sebastián; 552) Reitman Fuchs, Bernardo; 553) Reixach, Ángela; 554) Renzone, Rogelio Alberto; 555) Resala, Alberto; 556) Rey Méndez, Wellington; 557) Rial Roverano, Gladys; 558) Rial, Jorgelina; 559) Richino, Elvira; 560) Ripoll, Stephanie; 561) Rivas, Pablo; 562) Roberts, Pablo; 563) Rocha, Cristina María; 564) Rodríguez Lois, Marta; 565) Rodríguez López, Lilián; 566) Rodríguez Martínez, Yolanda; 567) Rodríguez Noya, Claudia; 568) Rodríguez Pírez, Dorval; 569) Rodríguez, Heber; 570) Rodríguez, Claudio; 571) Rodríguez, Eduardo; 572) Rodríguez, Fernanda; 573) Rodríguez, José; 574) Rodríguez, Julio; 575) Rodríguez, Luis; 576) Rodríguez, Marcel; 577) Rodríguez, Marta; 578) Rodríguez, Susana; 579) Rodríguez, Daniel; 580) Roelsgaard, Niels Nelson; 581) Platero, Gustavo; 582) Rothschild, Elisa; 583) Roure Casas, Pablo; 584) Rovira Aparicio, Claudia; 585) Rubio Saquieres, Manuel; 586) Rubio Saquieres, Miguel Ángel; 587) Rumassa Causi, Sheila; 588) Saban Cherasi, Nesim; 589) Sacco, Mirta; 590) Saibene, Liliana; 591) Salamano, Carlos; 592) San Pedro, Alejandro; 593) Sánchez Castro, Osmundo; 594) Sánchez Labrador, Baltasar; 595) Sánchez, Baltasar; 596) Sánchez, Celeste Aída; 597) Sánchez, Isabelino Roque; 598) Sansón, María Virginia; 599) Santiesteban, Luis Fernando; 600) Santiesteban, Tristán José; 601) Sapriza, Ana María; 602) Saquieres de Souza, Adriana; 603) Saquieres Garrido, Neli; 604) Sarro, Martín y Dura Rey; 605) Sartori, Miguel; 606) Sassano, Nelson; 607) Scalone, Adrián; 608) Scapin Longo, Ángel; 609) Scivoli Tuttobene, Felipe; 610) Scotti Ponce de León, Andrés; 611) Schaich, Rodolfo; 612) Schermam, Dora; 613) Scherschener, Carlos; 614) Schettini, Lilián Elena; 615) Schiaffino Conti, Carlota; 616) Schiavo, Luis; 617) Schipani, Élida; 618) Sebastiani, Daniel; 619) Secco, Diego; 620) Seco, Valeria; 621) Sena, Jorge Humberto; 622) Seré Bonino, María; 623) Seré de Nadal, Elena; 624) Seré Márquez, Antonio; 625) Sienra, Beatriz; 626) Sienra, José Enrique; 627) Sienra, José Luis; 628) Sienra, Luis Fernando; 629) Silva, Juan; 630) Sisa, Florentina Nidia; 631) Solari, Hebert; 632) Sorensen, Gabriel; 633) Soria, Luis Alfredo; 634) Sormani, Arnaldo; 635) Sosa, Jorge; 636) Sosa, Nicolás; 637) Soto, Amelia María; 638) Spagna, Anna; 639) Steierman, Ellen; 640) Steverlynck, Stanislas; 641) Suárez, Álvaro; 642) Supervielle, Mercedes; 643) Suzacq Aradas, Enriqueta; 644) Suzacq Aradas, Ricardo; 645) Symonds Herzog, Roberto; 646) Szasz, Alejandro; 647) Szasz, Susana; 648) Tabárez Corni, Tabaré; 649) Tabárez, Nélida; 650) Talamini, Alberto; 651) Teixeira, José Daniel ; 652) Tejera Monteagudo, Julio; 653) Tejería Amonarriz, Alejandra; 654) Testoni, Víctor; 655) Tonar, Mónica; 656) Tormo, Ana María; 657) Torrado, Gabriel; 658) Torre, José Alberto; 659) Torres Ramos, Rogelio; 660) Trigo Gómez, Ángel Marcelo; 661) Triver Varela, Guzmán; 662) Triver Varela, Washington; 663) Unanua, Alejandra; 664) Unanua, Raúl; 665) Uranga, Gustavo; 666) Uriarte, Daoiz; 667) Valdez, Jorge; 668) Valdez, René; 669) Valdez, William; 670) Valiño, Ricardo (heredero de Jorge Valiño); 671) Valsecchi, Patricia; 672) Valle, Nelly; 673) Vallega, Rodrigo; 674) Van Lommel, Ana; 675) Varela, Adrian; 676) Varela, Lola; 677) Varona, Graciela; 678) Vasen Feibelmann, Mara; 679) Vaz, Rocío; 680) Vázquez, Gustavo; 681) Veiras Alabau, Raúl; 682) Veiras, Jorge; 683) Ventos Coll, Pedro; 684) Verdes, Alfredo; 685) Vergara, Ricardo; 686) Vidal Puyo, Nora; 687) Viera, Leonardo; 688) Vigo Sosa, Danilo; 689) Villa, Verónica; 690) Villalba, María Fernanda; 691) Villarreal Mascheroni, Fernando; 692) Vinnotti, Julio; 693) Viña Acuña, Juan José; 694) Vivo Piquerez, Rafael; 695) Volyvovic, Clara; 696) Vulcano, Alicia; 697) Wainstein Garfunkel, Alicia; 698) Weiss Bayardi, Mauricio; 699) West, Jorge; 700) Westphalen, Dilmar; 701) White Rattin, Douglas; 702) Yacobo, Macowinn; 703) Yelen, Fabián; 704) Zanandrea, José Luis; 705) Zanandrea, Mirta Elena; 706) Zanón, André; 707) Zanoni Bello, María Cristina; 708) Zunza Ramírez, Rodolfo.

3. The case has been processed in accordance with the American Convention and is submitted to the Court pursuant to the transitory provision contained in Article 79(2) and other relevant provisions of the Court's current Rules of Procedure. Affixed to this application is a copy of the report on the merits, No. 107/09,[2] which the Commission adopted on November 9, 2009, with the dissenting vote of Commissioner Luz Patricia Mejía Guerrero.

4. The case is being submitted to the Court because the State must provide an adequate response and reparation to the victims and a suitable and effective mechanism must be established so that the persons named as victims in the instant case and the other members of the group of more than 1400 depositors have some recourse and the opportunity to prove whether they meet the critieria that the applicable law establishes for them to qualify to receive the compensation provided for in Law 17.613; that opportunity must be afforded in accordance with the guarantees of due process and judicial protection that the American Convention upholds.

II. PURPOSE OF THE APPLICATION

5. The purpose of the present application is to petition the Court to adjudge and declare that:

a. The Uruguayan State is responsible for its failure to provide the victims with an impartial hearing for their claims by either the Advisory Commission or the Contentious- Administrative Tribunal, and thus violated the right to a fair trial set forth in Article 8(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the victims; and

b. The State failed to provide a simple and prompt recourse for an examination of all the issues of fact and of law related to the dispute before it, and thereby violated the right to judicial protection set forth in Article 25(1), read in conjunction with Article 1(1) of the American Convention, to the detriment of the victims.

6. The Inter-American Commission is therefore asking the Court to order the State to:

a. Pay compensation commensurate with the damages that the Court deems the victims named in the report on the merits and in this application to have sustained as a consequence of the violations of articles 8 and 25 of the American Convention;

b. Establish a suitable and effective mechanism by which those named as victims in the present application and the other members of the group of more than 1400 depositors may have some recourse and the opportunity to prove whether they meet the critiera that the applicable legislation establishes for them to qualify to receive the compensation provided for in Law 17.613; and

c. Compensate the victims for the costs and expenses incurred in the litigation of their case in the domestic and international jurisdictions.

III. REPRESENTATION

[2] See: IACHR, Report on the Merits No. 107/09, Case 12,587, Alicia Barbani Duarte, María del Huerto Breccia *et al* (Depositors of the *Banco de Montevideo*), November 9, 2009. Appendix 1.

7. In accordance with the provisions of Article 24 of the Court's Rules of Procedure, the Commission has appointed Commissioner María Silvia Guillén and its Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed, and specialists Christina Cerna and Lilly Ching have been appointed to serve as legal advisers.

IV. JURISDICTION OF THE COURT

8. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the states parties to the case recognize or have recognized the jurisdiction of the Tribunal. Uruguay is party to the American Convention since April 19, 1985, when it also accepted the Court's contentious jurisdiction.

9. The Court is competent to hear this case inasmuch as the application filed with the Court concerns facts that occurred subsequent to the date on which the State accepted the contentious jurisdiction of the Court.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION

10. On October 17, 2003, the Commission received a complaint sent by Alicia Barbani Duarte and María del Huerto Breccia Farro (hereinafter "the petitioners"), which it was registered as number P-997/03. On April 6, 2004, the Commission requested the petitioners to submit additional information with respect to exhaustion of domestic remedies. In response to that request the petitioners reformulated their original complaint, which they presented on December 15, 2004.

11. On December 20, 2004, the Commission transmitted the pertinent portions of the petition to the State and granted it two months in which to reply. On February 9, 2005, the State requested an extension of the time in which to present its response. On February 15, the Commission granted it an extension of 28 days.

12. On February 22, 2005, the State submitted its comments on the petition, which were forwarded to the petitioners on February 23, 2005. On March 21, 2005, the Commission received the observations of the petitioners on the response of the State and conveyed them to the latter on June 23 that same year without a request for comments.

13. On October 17, 2005, at its 123rd regular session, the Commission held a hearing on the admissibility of the complaint, which was attended by the petitioners and representatives of the Uruguayan State. On February 16, 2006, as a result of that hearing, the Commission requested additional information as regards exhaustion of domestic remedies, in particular on the status of the petitions for nullification. The State and the petitioners replied on February 24 and March 5, 2006, respectively. The State presented additional information on September 15, 2006. This information has been transmitted to the petitioners.

14. On October 27, 2006, the Commission approved Admissibility Report Nº 123/06[3], regarding the alleged violations by the State of Articles 8, 21, 24 and 25 of the American

[3] The Admissibility Report referred to the petitioners and 686 other persons as the purported victims. During the proceedings of the case, the Commission requested the petitioners to update the list of the purported victims and received in response the names of the account holders of 708 savings accounts. This list was communicated to the Uruguayan State on September 28, 2009. For the purposes of the merits report and the instant application the Commission considers that the named individuals in footnote 1 are the victims in Case 12.587. See: IACHR, Admissibility Report No. 123/06, Petition 997-03, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Depositors of the *Banco de Montevideo*), October 27, 2006. Appendix 2.

Convention in conjunction with the State's obligations under Articles 1(1) and 2. On November 2, 2006, the Commission transmitted Admissibility Report Nº 123/06 to the parties, and placed itself at their disposition for the purpose of reaching a friendly settlement of the case. In addition, the Commission, pursuant to Article 38(1) of its Rules of Procedure, requested the petitioners to present any additional information on the merits of the case within a period of two months from the date of transmission of the Report.

15. In a communication dated November 13, 2006 and then reiterated on November 27, 2006, the petitioners indicated their willingness to initiate a friendly settlement of the outstanding issues. On December 26, 2006, the Commission received the petitioners' additional observations on the merits which had been requested in the Commission's letter dated November 2, 2006.

16. On December 28, 2006, the Commission received additional observations on the merits from the State. On January 4, 2007, the Commission acknowledged receipt of the information provided by the State and transmitted the additional information to the petitioners.

17. On March 6, 2007, the Commission acknowledged receipt of the additional observations on the merits provided by the petitioners and transmitted this information to the State. On March 20, 2007, the Commission received a note from the State acknowledging receipt of the petitioners' additional observations. The State indicated that since it received the information on March 19, 2007, its sixty day period within which to present its additional observations on the merits would be considered to begin on that date.

18. On May 18, 2007, the Commission received the additional observations of the State with regard to the merits of the case. On May 22, 2007, the Commission acknowledged receipt of the additional observations and transmitted this information to the petitioners and on June 27, 2007, the Commission received the observations of the petitioners with regard to the response of the State. Included with these observations was a request from the petitioners for a hearing at the Commission's regular period of sessions in October 2007. These observations were transmitted to the State on July 2, 2007, with a request for any additional observations to be submitted within a period of one month from the date of the letter of transmission. On August 2, 2007, the Commission received the response from the State, which was transmitted to the petitioners on August 6, 2007.

19. A hearing on the merits of the case was held on October 12, 2007, during the Commission's 130º regular period of sessions in Washington D.C. On October 18, 2007 the Commission received the information that was offered by the State during the hearing which was forwarded to the petitioners on October 31, 2007.

20. On September 17, 2007, the Commission received from the petitioners the Ministry of Justice's indictment of the Peirano brothers, the accused owners and majority shareholders in the Peirano Group, which included the Banco de Montevideo and other financial and commercial entities. This document was transmitted to the State on September 28, 2007.

21. The Commission requested that the petitioners update the names of the alleged victims and on September 28, 2009 the petitioners sent a list with the names of the account holders of 708 savings accounts that they had managed to identify of more than 1,400 claimants before the Commission Article 31 ("Advisory Commission") established under Law 17.613. This document was transmitted to the State on September 28, 2009.

22. On November 9, 2009, the Inter-American Commission approved Report on the Merits No. 107/09, of the present case pursuant to Article 50 of the American Convention. It set

forth a number of conclusions and made recommendations to the Uruguayan State.[4] Said report was transmitted to the State on December 16, 2009, and a two-month time period was set for the State to inform the measures adopted to comply with the recommendations made therein.

23. That same day, the Commission transmitted the pertinent parts of the report to the representatives of the victims and requested, pursuant to Article 43(3) of its Rules of Procedure, that they present their position as to whether the case should be submitted to the Inter-American Court. By communication dated January 13, 2010, the representatives of the victims expressed their interest in having the case submitted to the Court, based on the facts set out in the original petition and throughout the process before the Commission. In addition, they offered potential witnesses and experts should a case be eventually submitted to the Court and established what they would be seeking by way of reparations.

24. For its part, on February 16, 2010, the State stated that "the Commissiojn´s preliminary report has not taken into account substantive issues on the matter" and then proceeded to make comments on the merits of each of the violations that the IACHR had established in its report. The State did not provide any information as to the measures taken to comply with the Commission's recommendations.

25. On March 12, 2010, the Inter-American Commission examined the information supplied by the parties and determined that the Uruguayan State had not complied with the recommendations made in the report approved in accordance with Article 50 of the American Convention. Therefore, in keeping with Article 51(1) of the Convention and Article 45 of its Rules of Procedure, it decided to submit the present case to the jurisdiction of the Inter-American Court of Human Rights.

VI. CONSIDERATIONS OF FACT

26. As stated in the report on the merits, the Commission has established on the basis of the evidence presented by the parties and the information otherwise available, the following facts, as set forth below in context.

27. The case originated in a complaint filed against the Republic of Uruguay, lodged by Alicia Barbani Duarte and Maria del Huerto Breccia Farro with the Commission six years ago, on October 17, 2003, on their own behalf and on behalf of "a group of depositors" of which 708 account holders were identified of the class of more than 1,400 depositors of the BM, whose claims had been rejected by an administrative governmental body, set up pursuant to Law 17.613.

a. Context in which the events occurred

28. According to a World Bank study, the Uruguayan banking sector was highly dollarized and with a large presence of non-resident depositors.[5] A study prepared by the Inter-American Development Bank (IADB) noted that over US$ 1 billion dollars poured into Uruguayan banks from Argentina toward the end of 2001. As a result, the deposit base of Uruguay's financial system skyrocketed until the massive inflow of nonresident deposits began to reverse direction in early 2002, which by year's end plunged Uruguay's banking system into its worst crisis ever.[6] The World Bank study notes that as of December 2001 total deposits in the system amounted to US$

[4] See: IACHR, Merits Report No.107/09, Case 12,587, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Depositors of the *Banco de Montvideo*), November 9, 2009. Appendix 1.
[5] See: World Bank, Policy Research Working Paper Series, Working Paper No. 3780, December 2005 ("*An analysis of the 2002 Uruguayan banking crisis,"* Luís de la Plaza, Sophie Sirtaine), p.4. Annex 1.
[6] See: Uruguay, Banking System Strengthening Sector Program, IADB document prepared by Guillermo J. Collich *et al.* (UR-0150), p. 6. Annex 2.

15.4 billion dollars (representing 83% of Uruguay's 2001 GDP), of which 90 percent were foreign currency deposits, with 47% of these deposits being held by non-residents. [7]

29. In December 2001, when the Argentine government imposed capital controls and deposit freezes on the bank accounts of Argentina's nationals ("*corralito*"), Argentines began withdrawing their deposits from Uruguay. By March 2002, 12% of the total bank deposits- mostly from non-residents- had left Uruguay.[8] Deposit withdrawals accelerated during May and June 2002. By July 2002, a cumulative 37.6% of the total deposits had been withdrawn and the Uruguayan Central Bank lost 79% of its international reserves.[9] In seven months, the uruguayan peso had depreciated by 57%. Fifty-one percent of the deposits in the hands of non-residents had left the country. By the end of 2002 the Uruguayan banking system had lost 46% of the total deposits, the level of non–resident deposits had decreased by 65% and the government controlled approximately 70% of the total deposits in the banking system due to banking interventions.[10]

b. Remedial actions taken by the Central Bank

30. In February 2002, Dante Peirano issued orders to his BM managers to automatically renew certificates of deposit (CD) in the TCB without consulting the account holders. Some CD account holders were prevented from redeeming their CDs on demand in Uruguay. Following the bank collapse in Argentina, on February 25, 2002, Resolution P./16/2002 of the Presidency of the Central Bank, called for "intensive supervision" of the Banco de Montevideo.[11] On March 4, 2002, the BM passed all the accounts of its clients from the BM to the TCB, without seeking their authorization. The irregularities in the transfer of funds from the BM to the TCB and the credits issued by the TCB to other operations and businesses of the Grupo Velox led to the criminal indictment of Jorge Peirano Basso and his brothers.[12]

31. By Resolution D/110/2002 of March 7, 2002, the Central Bank ordered the BM to cease providing credits to, or in any way to increase the risks assumed, and to cancel the credits already conceded to physical or juridical persons associated with the Velox Investment Company, Juan Peirano Basso, the TCB and Banco Velox within a period of 30 days.[13] In conformity with Resolution D/110/2002, the BM was required to inform the Superintendency of Institutions of Financial Intermediation on or before March 12, 2002 of the actions to be taken. Resolution D/199/2002 issued by the Central Bank on April 25, 2002, provided an additional set of new instructions to the BM with regard to the businesses associated with the Grupo Velox.[14] Notably, in point 7, it "granted" the TCB a non-extendable 18 month period to cancel all its obligations with the BM, for which purpose it was to present a payment chronogram that would progressively extinguish its obligations, subject to compliance with earlier provisions. Resolution D/322/2002 of June 9,

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[7] See: World Bank, Policy Research Working Paper Series, Working Paper No. 3780, December 2005 (*"An analysis of the 2002 Uruguayan banking crisis,"* Luís de la Plaza, Sophie Sirtaine), Annex 1, p. 4. For its part, the IADB study contains somewhat different figures and states that by December 2001 deposits totaled US$ 17.007 billion and that foreign-currency deposits totalled US$15.037 billion (Uruguay, Banking System Strengtheningh Sector Program, IADB document prepared by Guillermo J. Collich *et al.* (UR-0150), Annex 2, p. 6).

[8] See: World Bank, Policy Research Working Paper Series, Working Paper No. 3780, December 2005 (*"An analysis of the 2002 Uruguayan banking crisis,"* Luís de la Plaza, Sophie Sirtaine), Annex 1, p. 8.

[9] *Id.,* p. 9.

[10] *Id.,* p. 14.

[11] See: Resolution P/16/2002 of the Office of the President of the Central Bank, dated February 25, 2002 (calling for "intensive supervision" of the *Banco de Montevideo*). Annex 3.

[12] See: Indictment "Peirano Basso, Jorge *et al.,*" 7th Rota Criminal Court of First Instance. Annex 4. The preventive detention of the owners was one of the facts in Case 12,553 *Jorge, José and Dante Peirano Basso v. Uruguay,* which the Commission decided on August 6, 2009. (Merits report 86/09 is available at: http://www.cidh.org/annualrep/2009eng/Uruguay12553eng.htm).

[13] See: Central Bank Resolution D/110/2002, dated March 7, 2002. Annex 5.

[14] See: Central Bank Resolution D/199/2002 dated April 25, 2002. Annex 6.

2002 of the Central Bank Board authorized the appointment of an Overseer for the BM due to its failure to comply with the resolutions of the Central Bank.[15]

32. Following an extensive list of actions carried out by the BM in defiance of the Central Bank's Resolutions, the Central Bank Board adopted Resolution D/35-/2002 of June 21, 2002 by which it intervened in the affairs of the BM and removed its statutory authorities. [16] Following the liquidation of the BM, the more than 1,400 persons affected by the collapse, who comprise the entire group of depositors, sought to recover their deposits and were informed that their funds had been deposited, without their consent, in the TCB in the Cayman Islands. In addition, contrary to what they had been told by the BM officials, they were informed that the BM was not responsible for the liabilities of the TCB and that there was no institutional connection between the two institutions. On July 30, 2002 the Board of the Central Bank adopted Resolution D/454/2002 ordering the complete suspension of the BM's activities for a period of 60 days.[17] Following the intervention, the depositors continued to withdraw their money from the BM and the Caja Obrera, deepening the problems of liquidity and compromising the continued viability of both entities.

33. On December 31, 2002, the Board of the Central Bank issued Resolution D/933/2002, ordering the dissolution and liquidation of the BM due to "the failure of the BM to comply with the regulatory provisions and also the specific instructions issued by the Central Bank, which determined that the Bank found itself in a compromised economic-financial situation with direct implications for its patrimonial situation." [18] Likewise, the Uruguayan Parliament, on December 27, 2002, unanimously adopted Law Nº 17.613, the Financial System Reform Law (LRSF), which set forth norms for strengthening the supervision of the financial system.[19] Law Nº 17.613 empowered the Central Bank to be the liquidator of the entities of financial intermediation for the purpose of protecting the rights of the depositors of these bodies, and to be the custodian of their savings in the general interest. [20]

34. Article 27 of Law Nº 17.613 authorizes that priority be given to "depositors" who held current accounts, savings accounts and fixed-term deposits in the affected entities and that they be compensated up to the first US$100,000 of their deposit. In the BM, according to information provided by the petitioners and not disputed by the State, at the time of the Central Bank intervention of the BM, on June 21, 2002, there were 10,600 accounts of different kinds, amounting to a total of US$ 270 million. Fixed-term deposits (e.g. savings accounts for 30, 45, 60 days) amounted to a total of US$ 80 million and the interest rates varied between 3% and 6.5% according to the amount deposited. The CDs in the TCB accounted for a total of US$97 million, and the interest rates varied between 3.5% and 7%. In 2002, during the financial crisis, the BM was paying up to 8.5% interest on CDs in the TCB; at that time the Banco Hipotecario del Uruguay, a State institution, was paying 9%.[21]

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[15] See: Central Bank Resolution D/322/2002 dated June 9, 2002. Annex 7.
[16] See: Central Bank Resolution D/35-/2002 dated June 21, 2002. Annex 8.
[17] See: Central Bank Resolution D/454/2002 dated July 30, 2002. Annex 9.
[18] See: Central Bank Resolution D/933/2002 dated December 31, 2002. Annex 10.
[19] See: Law No. 17.613, Financial System Reform Law, approved by the Uruguayan Parliament on December 21, 2002. Annex 11.
[20] See: Law No. 17.613, Financial System Reform Law, approved by the Uruguayan Parliament on December 21, 2002. Annex 11, Article 22.
[21] For example, in 2002 the following rates were provided for different amounts of money-- 8.5% for US $80,000 deposited 3 January 2002 for 91 days (file 2003/1044); 5.7% for US$ 23,000 deposited 23 January 2002 for 180 days (file 2003/0469); 8.0% for US $ 178,000 deposited 8 February 2002 for 6 months (file 2003/0637); 6.25% for US$ 90,000 deposited 21 February 2002 for 91 days (file 2003/0880); 7.5% for US$ 173,000 deposited 1 March 2002 for 88 days (file 2003/0624); 5.5% for US $ 49,000 deposited 21 March 2002 for 93 days (file 2003/0709); 7.7% for US$46,000 deposited 25 March 2002 for 90 days (file 2003/0804); 5.5% for US$23,000 deposited April 2002 for 90 days (file 2003/1495); 8.0% for US $31,000 deposited 4 April 2002 for 88 days (file 2003/0952); 7.5% for US $15,000 deposited 5 April 2002 for 95 days (file 2003/0804); 7.5% for US$146,000 deposited April 2002 (file 2003/0493); 6% for US$25,000 deposited 18 April 2002 for 90 days (file 2003/0598); 7.0% for US $ 65,000 deposited 25 April 2002 for 56

35. The majority of the depositors were induced to deposit their money in CDs rather than in fixed-term deposits, because they were permitted to withdraw their funds in whole or in part at any time without penalty and the interest rates were almost the same.[22] The petitioners protested on behalf of the class of depositors that they were representing, whom they claimed were entitled to recover their deposits, and lobbied the Uruguayan Parliament to take their claims into consideration. Article 31 was included in Law 17.613 of December 27, 2002, to take these depositors into consideration and the law empowered the Uruguayan Central Bank to "grant the depositors of the Banco de Montevideo and of the Caja Obrera, whose deposits had been transferred to other institutions without their consent, the same rights that correspond to the rest of the depositors of those banks."[23]

c. The creation of the Advisory Commission (Article 31)

36. To review the claims of the persons who alleged that they were covered by Article 31 of Law 17.613, the Central Bank was authorized to establish a Commission which went into operation on February 1, 2003. [24] Whenever the Advisory Commission denied a claim, the Board of

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days (file 2003/0610); 8.5% for US $28,000 deposited 25 April 2002 for 90 days (file 2003/0950); 7.0% for US $50,000 deposited 10 May 2002 for 28 days (file 2003/0438); 7.0% for US $60,000 deposited May 2002 (file 2003/1329); 8.0% for US $300,000 deposited 16 May 2002 for 88 days (file 2003/0443); 8.5% for US $30,000 deposited 20 May 2002 for 30 days (file 2003/0950); 7.5% for US $75,000 deposited 23 May 2002 for 98 days (file 2003/0880); 7.7% for US $42,000 deposited May 2002 for 31 days (file 2003/0650); 7.3% for US$202,000 deposited June 2002 for 90 days (file 2003/0880 and file 2003/0228); 5.0% for US $69,000 deposited 3 June 2002 for 17 days (file 2003/0438); 7.5% for US $35,000 deposited 6 June 2002 for 93 days (file 2003/0521); 6.5% for US $50,000 deposited 6 June 2002 for 86 days (file 2003/0595) .

[22] For example, in the file of depositor 2003/0469, one of 22 depositors accepted by the Central Bank, the following is stated:

> the placement carried out in January 2002 in the Trade and Commerce Bank with a maturity date of July 22, 2002, was made with the condition that it could be withdrawn at any time prior to the date of maturity. In addition, Mr. X requested in March 2002 the withdrawal of the entire account, a request that he reiterated at various opportunities (...) and in response to which he received no satisfaction because the conditions had been changed and the anticipated withdrawal was no longer permitted.

The file indicates that the witness, a bank official, testified that "he was denied, on the argument that the operation could not be cancelled until the maturity date because of a decision taken by the Central Bank." Also, in file 2003/0598, concerning another of the 22 accepted depositors it is stated:

> from the testimony provided by the witness, the fixed-term deposit in the T.C.B. was made in consideration that the Banco de Montevideo, offered him 'a placement for 90 days with the possibility of withdrawal prior to the date of maturity.' The witness testimony received informs that when the claimant sought to withdraw his deposit, before the maturity date, the Bank denied him, unilaterally modifying the conditions offered, without receiving the consent of the client.

In addition, in file 2003/0637, another of the 22 accepted depositors it is stated:

> from the evidence received (...) results that the fixed-term deposit in the T.C.B. was made in consideration that the Banco de Montevideo offered him a timed placement with the possibility of withdrawal before the date of maturity. The witness testimonies received inform that when the claimant went to withdraw his deposit, before the maturity date, the Bank denied him, unilaterally modifying the conditions offered.

See: Files of the cases submitted to the Advisory Commission. Annex 12.

[23] The intention of the Uruguayan Parliament to satisfy these claims is reflected in the statements of Vice President of the Central Bank, Dr. Vieytes and Senator Michelini. Vice President Vieytes stated in the Senate during the debate on the issue:

> As is natural, this is not the best of worlds, but if we are trying to provide an economic solution to the problem –and clearly this is what we are trying to do- in Article 27 there are sufficient resources to permit the depositors to protect themselves in the legal quota in their character as depositors with the same rights as the genuine creditors of the Banco de Montevideo. This would be a solution in which we would not be affecting the creditors of the Banco de Montevideo.

All the different accounts offered by the BM were compensated after the liquidation: bonds, fixed-term, current accounts, savings accounts. The current account and the savings account holders were able to recover their entire deposit, they were not limited to US$100,000.

[24] See: Law No.17.613, Financial System Reform Law, approved by the Uruguayan Parliament on December 21, 2002.

the Central Bank had to confirm the rejection.[25] The Board of the Central Bank took the final decisions between December 30, 2003 and December 28, 2005.[26] This remedy functioned as follows:

- The depositors submit their claims together with the documents that accredit their status;

- The Committee evaluates each case and presents its opinion to the Central Bank;

- The Board of the Central Bank (headquarters) approves the report and returns it to the Commission;

- At that stage a list is made public of those who will be compensated and those who will not;

- The depositors have 15 days to appeal. They may submit the appeal themselves or through an attorney. The Commission reviews the cases appealed and modifies or ratifies the earlier decision in a report submitted to the Central Bank.

- The Board of the Central Bank (headquarters) issues a final ruling within 30 days.

37. The approximately 1,400 depositors of the BM-Caja Obrera, who claimed that their accounts were with the BM-Caja Obrera and not with an "offshore" entity, presented their claims to the Advisory Commission and all but 22 claimants were rejected.

38. In the process before the IACHR the parties maintained conflicting positions with respect to the efficacy of the remedy provided by the creation of the Advisory Commission. The State indicated that the petitioners had an appropriate recourse in the Uruguayan judicial system and it noted that the petitioners could have impugned the decisions of the Advisory Commission/Central Bank by seeking the annulment of these decisions before the Uruguayan Contentious-Administrative Tribunal. The petitioners, for their part, responded that they did not receive a full and fair hearing before the Contentious Administrative Tribunal and that consequently it was a spurious recourse. They concluded that they had no access to a simple and prompt recourse, or any other effective remedy for the protection of their human rights. The judgments of the Contentious Administrative Tribunal confirm that not one of the petitioners was able to win his or her case before this Tribunal.

d. The Law

i. The Domestic Law

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[25] The State in its response dated October 12, 2007 "*Amplification of the information referring to Case 12.587 "Depositors of the Banco de Montevideo before the Inter-American Commission on Human Rights*" noted that:

> In the rest of the petitions, the [Article 31] Commission understood that the three requisites required by law had not been verified and –for that reason- recommended their rejection. The Board of the Institution, the hierarchical organ that must adopt the corresponding decision, followed the advice of the [Article 31] Commission, for which reason it only accepted the petitions which the [Article 31] Commission reported out with a favorable recommendation.

See: Copy of the record of the case with the Inter-American Commission on Human Rights, Appendix 3

[26] Information that the State supplied in its response of September 15, 2006, in an attached report from the Central Bank of Uruguay, which is part of the record of the case with the Commission, Appendix 3.

39. The Constitution of Uruguay establishes that:

Article 24.- The State, Departmental Governments, Autonomous Entities, Decentralized Services and, in general, all State organs will be liable under civil law for damage done to third parties in the performance of public services managed or directed by them.

40. Law of the System of Financial Intermediation, No. 15.322[27] indicates:

The power to punish of the Central Bank of Uruguay

Article 20.- Private persons who violate the laws or decrees governing financial intermediation or the general norms in specific directives issued by the Central Bank of Uruguay may be liable to the following measures, without prejudice to any criminal charges that may be warranted:

1º) Observation;
2º) Warning;
3º) Fines of up to 50% (fifty percent) of the minimum net capitalization (*responsabilidad patrimonial*) required for Banks to operate;
4º) Intervention, which can be accompanied by the full or partial substitution of the bank's authorities. When the intervention is accompanied by an across-the-board substitution of the authorities, that shall automatically halt any commissions or mandates issued by them and suspends, for 20 business days, any deadline faced by the intervened enterprise;
5º) Total or partial suspension of activities for an expressly stated period of time;
6º) Revocation of the bank's authorization to operate.

The measures contemplated in the first five of the foregoing subparagraphs may be imposed by the Central Bank of Uruguay. The revocation of a bank's authorization to operate shall be determined by the Executive Branch, following a report by the Central Bank of Uruguay.

41. Law No. 17.613 of December 27, 2002[28] establishes the following:

SECTION I. NORMS GOVERNING FINANCIAL INTERMEDIATION
CHAPTER I. NORMS FOR STRENGTHENING THE SUPERVISION OF THE FINANCIAL SYSTEM

Article 1º. (Supervision of entities pertaining to economic groups).- The Central Bank of Uruguay shall exercise its regulatory, oversight, and disciplinary powers over entities of financial intermediation that belong, with other enterprises, to an economic group, taking into account the existence and financial position of the group and its impact on the activity, soundness, and solvency of the supervised institution. The Board of the Central Bank of Uruguay shall, in a reasoned resolution, declare the existence of the economic group and the fact that the supervised entity is integrated into it.

[...]

CHAPTER II. POWERS OF THE CENTRAL BANK OF URUGUAY TO LIQUIDATE BODIES OF FINANCIAL INTERMEDIATION.

Article 13.- Article 41 of Decree-Law No. 15.322 of September 17, 1982, incorporated by Article 4 of Law No. 16.327 of November 11, 1992 shall be replaced by the following: Article 41.- The Central Bank of Uruguay shall act as liquidator, in administrative headquarters, for companies that are part of the financial intermediation system and for their

[27] See: Financial Intermediation System Law No. 15.322, Annex 13.
[28] See: Law No.17.613, Financial System Reform Law, approved by the Uruguayan Parliament on December 21, 2002. Annex 11.

respective collaterals. To that end, it shall determine what companies are considered collateral.
The Central Bank of Uruguay shall exercise its powers as liquidator of financial intermediation entities for the primordial purpose of protecting the savings for reasons of public interest.

Article 14.- The dissolution of the banks and the ensuing liquidation shall be declared by the Central Bank of Uruguay, in applicable cases under the current laws on financial intermediation and other applicable corporation laws.
The liquidation shall be governed by the provisions of this law and, secondarily, and as appropriate, by the norms regarding the liquidation of corporations.

[...]

Article 21.- In exercising its powers as liquidator, the Central Bank of Uruguay shall bear in mind the privileges of certain legally established creditors as well as the equality of creditors of the same category.
The categorization of creditors for the purpose of including or not including them in bank assets recovery funds shall not per se be considered discrimination, in reaching collective agreements in accordance with Article 19 of this law, or in total estate transferred to third parties, to the extent that there is reasonable equivalency between assets and liabilities transferred or the difference is compensated for by the price added to the total or through any other compensation, in full compliance with Central Bank of Uruguay rules on accounting and assets and liability appraisal for bodies of financial intermediation and, failing this, other generally admissible rules.

CHAPTER III, NORMS REGARDING THE LIQUIDATION OF INSTITUTIONS OF FINANCIAL INTERMEDIATION THE OPERATIONS OF WHICH ARE SUSPENDED ON THE DATE OF PROMULGATION OF THIS LAW

Article 22.- The provisions of this Chapter, adopted as a result of the situation faced by institutions of financial intermediation, the activities of which have been suspended by the Central Bank of Uruguay, are intended to ease the impact which a plain and simple application of the current norms would have on the society.
Pursuant to the provisions of the preceding paragraph, the aim is to secure the highest value for the assets belonging to the suspended institutions of financial intermediation, through mechanisms arising from the application of these norms for the purpose of protecting the rights of creditors.
The Central Bank of Uruguay shall exercise its powers as liquidator for institutions of financial intermediation identified in this Chapter, in order to protect the rights of the depositors of these institutions, for the general purpose of safeguarding their savings.
The State shall not contribute any additional resources in any of these situations.

[...]

Article 27.- For the primary purpose of protecting the savings for reasons of the public interest, the Executive Branch is authorized to allocate a part of the cash or stock resources to which the State is entitled as creditor of the institutions referred to in Article 24 of this law, in accordance with the procedures established in this Chapter, to enable more favorable friendly settlements for categories of depositors or depositors of up to certain amounts, in the non-financial private sector, in those institutions.
Priority will be given to the depositors of the non-financial sector holding checking accounts, savings accounts and fixed-term deposit accounts, in order to supplement with the resources referred to in the preceding paragraph, for the first US$100,000 (one hundred thousand US dollars) or its equivalent in local currency or other currencies, taking into account, for these purposes, the total of the credits held in the three institutions that have been liquidated.
The Central Bank of Uruguay, as liquidator, is empowered to apply any proceeds derived from the implementation of the article in favor of a depositor, firstly to repay or settle said depositor's debts with any of the companies to which this Chapter applies.

Deposits made by individuals or companies related to the shareholders or directors of any of the three entities that have been liquidated are excluded from the benefits under this article.

[…]

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

ii. Domestic Rules and Procedures

42. Rules for the functioning of the Advisory Commission created by Article 31:

a. The Central Bank's Administrative Rules of Procedure:

Article 1. (General principles). The Central Bank of Uruguay must serve the public interest with fairness, with full respect for the Law, and must act in accordance with the following general principles:

a) impartiality
b) strict legality
c) drive office
d) material truth
e) economy, speed, and effectiveness
f) managed informality in administrative procedures
g) flexibility, materiality and absence of ritualism
h) material delegation
i) due process
j) adversary procedure
k) good faith, loyalty and presumption of truth unless proven otherwise
l) a reasoned decision

b. General Code of Procedure:

Article 161 (2): The tribunal will require the witness to provide the reasons for his knowledge of his statements, with an explanation of the circumstances of time, manner and place in which each act occurred and the way in which he learned of it.

VII. CONSIDERATIONS OF LAW

a. Violation of Articles 8 (right to a fair trial) and 25 (right to judicial protection) in conjunction with Articles 1(1) and 2 of the American Convention

43. The American Convention on Human Rights provides:

Article 1(1). The States parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sec, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

[…]

Article 8(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.
>
> [...]
>
> Article 25(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.

44. The States Parties to the American Convention have undertaken the obligation of respecting and ensuring all the rights and freedoms set forth in the Convention with respect to persons subject to their jurisdiction. Article 1 of the American Convention obliges States Parties to undertake to respect the rights and freedoms recognized in the Convention and to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights."

45. The constant case-law of the Inter-American Court has reaffirmed that Article 8(1) of the American Convention, which concerns the right to a hearing by a competent, independent and impartial tribunal, establishes the main lines of what is known as "due process of law." Due process consists of the right of every person 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 measure.[29]

46. In order to establish a violation of Article 8, it is necessary to determine whether the procedural rights of the alleged victims were respected.[30] Article 8 does not establish the right to a remedy, but rather due process, that is, the set of requirements that any State body must observe in all proceedings.[31] For cases which concern the determination of a person's rights and obligations of a civil, labor, fiscal, or any other nature, Article 8 does not specify any minimum guarantees similar to those provided in Article 8(2) for criminal proceedings. It does, however, provide for due guarantees; consequently, every individual 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.[32] The *reasonable time* to which Article 8(1) of the Convention refers has to be a "global analysis of the proceeding" right up to the point at which a final ruling is delivered.[33]

i. The right to be heard by an impartial tribunal with due process of law (Articles 8 and 1(1) of the American Convention)

47. In the instant case, the petitioners alleged that their right to a fair trial was violated by the Advisory Commission in that the proceedings were not conducted in a fair and impartial manner in violation of Article 8 of the American Convention. The petitioners claimed that the State provided the presumed victims with a legislative remedy, which appeared neutral and objective on its face. In the application of this remedy, however, both the administrative body (the Advisory Commission together with the Directorate of the Central Bank), and the judicial body, (the Contentious-Administrative Tribunal), disqualified most of the claimants before the Advisory

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[29] I/A Court H.R., *Genie Lacayo v. Nicaragua Case*. Judgment of January 29, 1997. Series C No. 30, para. 74.
[30] *Id*, para. 75.
[31] I/A Court H. R., *Gómez Paquiyauri Brothers v. Peru Case*. Judgment of July 8, 2004. Series C No. 110, partially dissenting vote from Judge Cecilia Medina, para. 2.
[32] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Arts. 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28.
[33] I/A Court H.R., *Genie Lacayo v. Nicaragua Case*. Judgment of January 29, 1997. Series C No. 30, paragraph 77.

Commission because they presumed their "consent" to the transfer of the depositor's funds offshore. If the State had applied the criteria in a uniform manner to all the depositors, the entire group of account holders of CDs in the TCB would have been disqualified and this would have undermined the legislative remedy. Although other criteria were included in the requirements, the presumption of consent was the decisive element. The Advisory Commission granted "depositor" status to certain individuals who, generally with the assistance of a witness, were able to state that they had intended "not to renew" their CDs in the TCB and these individuals were included in the group to be compensated. Despite the creation of this new criteria, not all the persons affected were notified of its existence and consequently it was applied arbitrarily and in a biased manner, resulting in the violation of the judicial guarantees to the detriment of the group of depositors represented by the petitioners.

48. In this line of reasoning, the petitioners contended that the Advisory Commission approved claims of individual depositors who were in exactly the same conditions as the alleged victims who were rejected. They noted, for example, that the signing of a "General conditions" contract permitting the BM to administer his or her assets or the receipt of a monthly status of account notice[34], either of these factors, standing alone, was sufficient to disqualify the claimant. On the other hand, some depositors were accepted by the Advisory Commission, despite the fact that they had signed a contract authorizing the BM to administer their funds, whereas others were rejected, despite they did not sign a document stating the contrary..[35] In order to single out and accept 22 depositors, whose funds had been deposited in CDs in the TCB and, who were, therefore, in receipt of monthly status of account notices, the administrative body created a "new" test which would eliminate these "disqualifying" factors. This "new" test sought a specific instruction on the part of the depositor that he or she had sought *not to renew* a CD placement in the TCB. In addition, the Advisory Commission allowed some depositors to introduce witnesses whose uncorroborated testimony was not subject to verification in contradiction with the specificity required by the administrative Rules of Procedure of the Uruguayan Central Bank. For these reasons the petitioners contended that the proceeding was flawed and deprived them of due process, alleging that it was unfairly administered and produced arbitrary results.

49. The Inter-American Court has stated that all the organs that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the American Convention.[36] In addition, the Court has emphasized that decisions adopted by domestic bodies that could affect human rights should be duly; otherwise, they would be arbitrary decisions.[37]

1. The criteria set forth in the legislative test

50. It has been established that Article 31 of Law 17.613 created an Advisory Commission to examine the claims of depositors whose funds had been transferred abroad without their consent and to grant them equal rights with other depositors of the BM provided that they met all three conditions established by the Law: existence of a prior deposit in the BM (i.e. status of "depositor"), transfer of the funds to an offshore institution, and lack of consent of the depositor to the transfer. The State created a legal remedy for the victims of the BM collapse and endowed the

[34] The "General Conditions" contract was considered to have "authorized" the BM to administer the assets in whatever way it considered appropriate and the monthly status of account statements were considered elements of "acceptance and knowledge" of the existence of a CD in the TCB.

[35] The successful claimants, as demonstrated in file 2003/0221, 2003/1463 and 2003/0880 both signed documents authorizing the BM to administer their assets and received monthly status of account notices, whereas the petitioner, as demonstrated by file 2003/0624, never signed such a contract and was rejected by the Advisory Commission.

[36] I/A Court H. R., *Yatama v. Nicaragua Case*. Judgment of June 23, 2005. Series C No. 127, para. 149; I/A Court H.R., *Ivcher Bronstein v. Peru Case. Competence.* Judgment of September 24, 1999. Series C No. 54, para. 104; and I/A Court H.R., *Constitutional Court v. Peru Case.* Judgment of January 31, 2001. Series C No. 71, para. 71.

[37] I/A Court H. R., *Yatama v. Nicaragua Case*. Judgment of June 23, 2005. Series C No. 127*,* párr. 152.

Central Bank, the relevant administrative body, with the authority to determine who should be a beneficiary of this remedy; consequently, the Central Bank was required to adopt all its decisions in conformity with the legal guarantees of due process,[38] including the guarantee of independence and impartiality.

2. The acts that led to a presumption of "consent": the "disqualifying" criteria

51. The allegations and evidence presented in this case have further established that the Advisory Commission presumed the requisite legislative "consent" on the part of the BM depositor to the transfer of his or her funds to the TCB, if one of the following existed: (1) A signed "General Conditions" contract to permit the Banco de Montevideo's administration of one's assets; (2) A specific instruction by which the Banco de Montevideo was authorized to proceed with the acquisition of a participation in a certificate of deposit; (3) The receipt of the monthly status of account notices in which it was clearly stated that one held a certificate of deposit in the Trade & Commerce Bank. The existence of even one of these acts was sufficient to disqualify the depositor from recovering any of his funds. Since all of the 1,400 claimants who came before the Advisory Commission had CDs in the TCB it is clear that, given the existence of these presumptions, they would all have received monthly status of account notices and therefore been disqualified by the mere presumption resulting from the third criterion. Twenty-two claimants were not eliminated by these disqualifying factors and the petitioners alleged that the Advisory Commission applied the criteria in an inconsistent manner to the depositors granting preferential treatment to the twenty-two depositors who were permitted to recover their funds.

3. The inconsistent application of the criteria to the claimants before the Advisory Commission

52. Having reviewed the allegations and evidence presented by the parties, the IACHR concluded that the results of the decisions made by the Advisory Commission demonstrate the application of the criteria was not uniformly defined or applied. While the normative framework supposedly disqualified such cases, many of the depositors who were accepted by the Advisory Commission had signed a "General Conditions" contract, had issued specific instructions, or had received monthly status of account notices, conditions that were explicitly defined as a "constructive manifestation of consent" to an off-shore placement with the TCB, and identified as a *per se* disqualification for the acceptance of the claim. Nevertheless, the following situations were presented:

(i) Some depositors were not disqualified despite having signed a "General Conditions of Administration of Investments" considered grounds for disqualification. In this manner there were persons who signed the "General Conditions" contract and nevertheless were favorably accepted by the Advisory Commission. This is the situation as demonstrated, for example, by files 2003/0602, 2003/0598, 2003/0880, 2003/0595, 2003/0610, 2003/0952, 2003/0650, 2003/0532, 2003/1329, 2003/0582 and 2003/0221[39].

(ii) Some depositors were disqualified for having signed a "General Conditions" contract, considered grounds for disqualification. In contrast with the previous example, there were persons whom the Advisory Commission considered disqualified for having signed the "General Conditions" contract and whose consent it presumed for the transfer of funds to the TCB. These situations are reflected, for example, by files 2003/0653, 2003/0647, 2003/0697, 2003/1044, 2003/0950, 2003/0702 and 2003/0671[40].

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[38] I/A Court H.R., *Constitutional Court v. Peru Case.* Judgment of January 31, 2001. Series C No. 71, para. 82.

[39] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[40] See: Files of the cases submitted to the Advisory Commission, Annex 12.

(iii) Some depositors were disqualified for having received monthly status of account notices, considered grounds for disqualification. These situations are reflected, for example, by files 2003/0804, 2003/0616, 2003/0597, 2003/0762, 2003/0728, 2003/0885, 2003/0518 and 2003/0646[41].

(iv) At least one depositor was disqualified for having signed a specific order for the purchase of a certificate of deposit in the TCB, since the order was considered grounds for disqualification, despite the fact that it was not one of the criteria established by the Advisory Commission. Said situation is evidenced by file 2003/0443[42].

(v) At least one depositor was disqualified for the presumption of consent to the transfer of funds –due to the existence of monthly account notices—despite the fact that the information used was not sufficient to prove the existence of these accounts. Said situation is evidenced by file 2003/0804[43].

(vi) The majority of the 22 depositors who were accepted by the Advisory Commission were disqualified at an earlier stage due to the presence of constructive manifestations of consent; nevertheless, they were eventually accepted after repeated attempts.

4. The selective introduction of witnesses

53. The selective introduction of witnesses was sufficient to turn around the decision of the Advisory Commission. At least in one case, as demonstrated by file 2003/0438, the depositor, on the basis of a single statement by a BM Manager, succeeded in changing the decision of the members of the Advisory Commission, who proceeded to grant him "depositor" status. The BM Manager's statement was very vague. He spoke of having received a letter, which he did not produce and did not specify the date of. The vagueness of the Manager's statement contradicts Article 161(2) of the General Code of Procedure which requires the witness explanation of the circumstances of time, manner and place in which each act occurred and the way in which he learned of it. [44]

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[41] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[42] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[43] In this case, the deposits of the claimant were "lost" and the deposit did not appear in the books of the BM. As demonstrated by file 2003/0804, the depositor made three deposits in the BM which were placed by the BM in CDs in the TCB: one for US$ 15,400, another for US$ 26,694 and a third for US$ 46,300. The latter two placements had a maturity date of June 24, 2002 (after the liquidation of the BM). The Advisory Commission rejected the claimant because he had signed a "General Conditions" contract and had received monthly status of account notices. The Central Bank only recognized his CD for US$ 15,000, but rejected his claim for compensation due to his "constructive consent" to the placements; but the latter two placements for US$ 26,694 and US$ 46,300 did not appear in the documentation supplied by the BM (in liquidation), which the Advisory Commission stated were grounds for not subjecting them "to analysis," despite the fact that the claimant produced status of account notices as evidence that the deposits had been made. This depositor (file 2003/0804) sought the revocation of the denial of his claim and presented several Bank officials as witnesses. The BM official was asked whether the TCB deposits were considered BM deposits and if the money was physically deposited in the BM and if a certificate was issued with the BM logo and signed by managers and agents of the BM. The official replied that it was not considered a deposit in the BM, but in the TCB, although the money was deposited in the BM and a paper receipt (*constancia*) was issued with the BM letterhead in which the investment was indicated and it was signed by the account officials of the BM. The official was asked whether the client's authorization had been sought in order to open an account in the TCB. The official replied that no consent had been sought because management in February or March had given instructions to automatically renew any deposit that had reached the date of maturity. The BM official was asked what happened with the client's deposit of US$ 46,312, which, according to the records, was in BM account number 01704507, at a time when the BM was intervened by the Central Bank. The BM official stated that he did not know what happened to those funds. Despite testimony of BM officials to the effect that the client never authorized the placements of his funds in CDs in the TCB and a placement of US$ 46,312 was unaccounted for following the Central Bank's intervention of the BM, and considered "lost", the Advisory Commission affirmed its denial of this claim. See: Files of the cases submitted to the Advisory Commission, Annex 12.

[44] See: Files of the cases submitted to the Advisory Commission, Annex 12.

54. Other cases follow this pattern of an initial Advisory Commission denial of the claimant that is subsequently changed to an acceptance, due to the generally uncorroborated testimony of a BM employee. Among these are the situations reflected, for example, in the following files: 2003/0602, 2003/0595, 2003/0952, 2003/0532, 2003/0521,[45] 2003/0637, 2003/0708,[46] 2003/1045,[47] 2003/0228,[48] 2003/0650,[49] and 2003/1329.[50]

55. From an examination of the files that were accepted by the Advisory Commission, the only difference that distinguished these cases from those that were rejected was the testimony of a witness, who, in response to questioning by the members of the Advisory Commission, substantiated the claim of the depositor in question. In a number of cases the witnesses failed to remember whether the depositor told him what he wished to do with his account, or on what date, or whether it was before, on or after the date of maturity of the certificate of deposit, in contradiction with the Central Bank's Administrative Rules of Procedure.

5. The Advisory Commission's inconsistent application of a "new" test

56. Virtually all the depositors had renewed their placement of funds in CDs in the TCB. Evidence that a depositor sought *not to renew* his or her placement of funds in a CD with the TCB should have constituted a *per se* disqualification by the Advisory Commission, since the renewal of an offshore account was considered by the Central Bank to reveal the profile of an "investor" rather than that of a "depositor". Many account renewals in this class of cases, however, were made without the client's consent, since Mr. Marcelo Guadalupe, the General Manager of the BM, on February 25, 2002, had sent an e-mail to the BM branch managers to automatically renew all deposits in order to stem the hemorrhaging of funds. The message informed the managers: "From now on, it is totally prohibited to give advances for deposits or other investments" and as regards the "date of maturity of the deposits or investments, the client must contact the bank and give instructions as to what to do, but in the case that the client does not communicate with you, that shall be interpreted as a renewal for the same period as the one that just expired."[51] The

[45] The depositors were former employees of the BM and the Advisory Commission based its decision on the sole testimony of a bank employee. See: Files of the cases submitted to the Advisory Commission, Annex 12.

[46] The depositor was originally rejected by the Advisory Commission because knowledge of her CD in the TCB was imputed by virtue of her receipt of status of account notices. After presenting the testimony of two bank employees, however, the Advisory Commission changed its rejection into an acceptance of this claimant. See: Files of the cases submitted to the Advisory Commission, Annex 12.

[47] The owner of a CD in the TCB-Cayman Islands, who received monthly status of account statements, indicating his "acceptance and knowledge" that his funds had been placed in the TCB, was twice rejected by the Advisory Commission before finally being accepted. The Advisory Commission accepted his claim after he presented two witnesses, X and Y, the latter, a manager of the Carrasco branch of the BM. Mr. X reportedly is a friend of 30 years standing of Mr. Y and the petitioners note that Mr. Y did not present any documents to corroborate his statements. See: Files of the cases submitted to the Advisory Commission, Annex 12.

[48] The depositor was not the account holder but he filed the claim on behalf of his relatives, the owners of the account, A and B, without legal assistance, after the time period had expired. The situation is similar to those above: there was a signed "General Conditions" contract that authorized the BM to administer the deposits; and the CD holders received monthly account notices from which their "acceptance and knowledge" of the placements in the TCB were made known and consent presumed. Initially the Advisory Commission rejected the claim. After a second declaration by the only witness, a bank employee, the Advisory Commission accepted his claim. The witness declared in a vague manner, in a second appearance before the Advisory Commission, that he remembered that the owners of the placements came to withdraw their money, but he could not specify whether that occurred before or on the date of maturity. The second statement of the witness is similar to statements made by other bank managers or agents in the files of other claimants, whose claims were rejected.

[49] The depositor had three placements in CDs in the TCB but was accepted by the Advisory Commission for only one of her placements in the amount of US$ 42,000, after having been rejected four times previously for having signed a "General Conditions" contract. She was finally accepted when she produced a witness who indicated that she had sought to withdraw her placement on the maturity date, June 20, 2002, but was advised that she should return for her money the next day because the interest had not been added to the amount. The next day, June 21, 2002, the Central Bank intervened the BM and she was informed that her placement had been automatically renewed.

[50] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[51] A copy of this e-mail is in the Commission's files.

depositors, who agreed to renew their placements in the TCB accounts, based on the misrepresentations regarding the bank's soundness and solvency made by the bank officials, were penalized for having had confidence in the BM and the word of its officials when compared with those who decided not to renew.

57. Another successful claimant, as demonstrated by file 2003/0221, an Argentine national, had not signed a general authorization, but signed two earlier specific authorizations from the year 2000, and these authorizations were considered sufficient for the Advisory Commission to reject her claim. This depositor claimed that she gave instructions by telephone not to renew but learned that the placement in a CD had been renewed automatically. The Advisory Commission reconsidered her case and ruled in her favor based on nothing more than the statement of a BM employee. [52]

58. An owner of a CD in the TCB-Cayman Islands, received monthly account statements, which was considered "acceptance and knowledge" of the fact that her funds had been placed in the TCB. Nonetheless, as demonstrated by file 2003/0956, the Advisory Commission determined that she was a "depositor" because she gave a specific instruction not to renew the placement, according to the testimony of a bank employee.[53]

59. In addition, although the Advisory Commission sought to achieve unanimity in its decisions, one claimant was accepted by the Advisory Commission despite a dissenting vote, which highlighted the inconsistency in the application of the criteria by the Advisory Commission. This situation is demonstrated by file 2003/0908 and offers an example of the lack of uniformity in the Advisory Commission's application of criteria as explained by one of its members.[54]

60. If the test had been whether the claimant sought not to renew his or her placement of funds in a certificate of deposit with the TCB, then the procedure employed by the Advisory Commission could be justified; although virtually all the depositors sought to withdraw their money fearing that the Uruguayan banks would collapse in light of the recent experience of their neighbors in Argentina. Virtually everyone was advised not to remove his or her funds by employees of the BM, who assured them that their funds were safe and guaranteed by the BM.[55]

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[52] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[53] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[54] The depositor was accepted by majority vote, with the dissenting vote of Dr. Brause and provides an example of the lack of uniformity in the application of the criteria. In his vote he indicated that there was no doubt that the claimant knew the nature of her investment in CDs in the TCB and that this was known because she had been placing funds in the TCB since July 2001, which indicated a pattern of investing, since periodically she took money out of her account. While on July 12, 2001 she signed a "General Conditions" contract and on that same day also signed a communication that stated in the event of the maturity of the funds, if she had not provided specific instructions as to what to do, she thereby conferred to the bank the right to administer the referenced assets. The witness, who testified on the depositor's behalf, stated that she remembered the depositor telling her that her daughter had placed funds in the TCB and that she also wished to place funds in the same place. According to Dr. Brause, the mere circumstance that she been unable to withdraw her funds before the date of maturity cannot be interpreted as a "specific instruction" not to renew her placement on the date of maturity. See: Files of the cases submitted to the Advisory Commission, Annex 12.

[55] Cf. Testimony of one of the petitioners, Alicia Barbani, before the Contentious Administrative Tribunal on November 29, 2004 (in Annex I of the Commission's file) in the request for annulment presented by Adolfo Donamari et al. Alicia Barbani stated that on May 27, 2002 she went to the BM to withdraw her savings because of the rumors of a possible "corralito" in Uruguay. Her BM account agent, Mr. Jorge Fontana, calmed her fears reassuring her that the BM was strong and that he himself had all his savings in the Bank, that it was the strongest bank in the market and that all the bank employees were more than calm and that if she was insecure or afraid that she could withdraw her funds at any moment and that he would turn them over to her. His reassurance was such that she went to withdraw the last US$ 10,000 that she had in her account in Lloyds Bank, which she deposited that same day in the BM. What he never told her was that on that same day, May 27th, in which her fixed term deposit expired, that he had received instructions from management not to return these funds and in whatever manner to convince his clients not to withdraw their savings. She returned to the BM in early June because the rumor was growing in the Uruguayan financial market that some banks were closing and she wanted to withdraw her savings, as the bank official had advised her she could do at any time should she feel uneasy or insecure. She

61. The petitioners alleged before the IACHR that all the depositors wanted to withdraw their money from the BM but that they were not advised nor aware that the Advisory Commission would interpret witness testimony in one's favor. For example, as demonstrated by file 2003/1339, on May 23, 2002, the owners of two certificates in the TCB met with the BM Manager, to request that their funds, that were to mature on June 3 and 6, 2002, respectively, be returned to them and not be reinvested in the TCB. The depositor drafted a letter to that effect and on May 27, 2002 the wife of the depositor personally took the letters to the Bank, which were stamped and copies returned to her. The Bank did not comply with the express instructions of the letters and reinvested the funds and the depositors complained to Mr. Xavier, the liquidator of the BM. They hired lawyers who interrogated the BM Manager, who stated that the deposit: "was renovated without authorization because the Bank, by means of its General Manager, Mr. Marcelo Guadalupe, had given the order, by e-mail, to the Managers of the branches, that any deposits, including those of the TCB, at maturity, and for which there had been no express request on the part of the client to not renew, the Bank would automatically renew them for the same period of time." The depositors presented the testimony of the BM Manager and, on the basis of their complaints, a search of the letters was carried out but they were never found. The Advisory Commission determined that the depositors were to be included and the decisive element in their favor was the testimony of the BM Manager.[56]

62. The petitioners alleged before the IACHR that the Advisory Commission/Central Bank's acceptance of certain cases and the denial of others constituted the crime of abuse of office. The petitioners alleged that in order to determine that depositors sought *not to renew* their deposits, the owner of the funds had to present a specific instruction before the maturity date of the placement or on the date of maturity in order to prove that this was requested by the owner, since purely verbal instructions not to renew were not accepted. Nevertheless, the petitioners argued, in some cases this instruction was allowed to be proven by the mere word of the managers or account agents of the BM, who in interrogation affirmed that they remembered that before the maturity date or on that date, the owner had verbally mentioned that he or she intended not to renew the placement.[57] In this way, these owners were considered to have substantiated that they did not consent and were accepted by the Advisory Commission.

63. In general, the claims that were accepted had also initially been rejected for evidencing a "disqualifying" characteristic, but the Advisory Commission suggested some claimants to return with a witness who could confirmto the fact that they sought not to renew their placements. By doing so, the Advisory Commission added eligibility requirements that were not made known to all the depositors, but only to those whom it accepted, and requirements that were outside the scope of the legislative test. The legislative test was simply that one had to prove that he or she was a depositor, that had placed his or her funds in the BM and that those funds had been transferred to the TCB without the depositor's consent. There was no additional requirement in the legislative test that the claimant demonstrate that he or she sought not to renew a placement that had already been made or that a placement was renewed despite the existence of a specific instruction not to renew it.

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tried to cancel her account but he told her that she had to wait for the maturity date, i.e. June 27, 2002. See: Record of the case with the Inter-American Commission on Human Rights, Appendix 3.

[56] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[57] For example, as demonstrated by file 2003/1329 involving a depositor who was accepted, the Advisory Commission asked the witness, a BM Bank Manager "In the cases where a bank employee received instructions *not to renew* how was this instruction noted? The witness responded that the file would be marked "do not renew." In the case of depositor X, the Advisory Commission asked, was this annotation made? The witness replied, "Right now, I don't remember, I always put "do not renew", I am almost sure that in this case it was marked "do not renew.'" See: Files of the cases submitted to the Advisory Commission, Annex 12.

6. The failure of the Advisory Commission to notify of the "new" test

64. The State, by applying a "disqualifying" characteristic to some depositors but not to others, decided, by means of the Advisory Commission and the Central Bank's finalization of these recommendations that "new" information could serve to trump the disqualifying characteristic, but not all depositors were informed thereof. In addition, depositors who produced a witness to corroborate that they intended not to renew their placement in a CD with the TCB, were not required to substantiate their allegations with any documentary or other proof. This procedure violated the Central Bank's Rules of Procedure, which require that the Central Bank act pursuant to the general principles of "impartiality," "strict legality," "material truth," "due process," and "good faith." Article 161(2) of the General Code of Procedure further establishes that the witness must provide the reasons for his knowledge of his statements, with an explanation of the circumstances of time, manner and place in which each act occurred and the way in which he learned of it , requirements that the Advisory Commission ignored.

65. The petitioners contended in the proceeding before the IACHR that the abovedescribed situation (as demonstrated by file 2003/1339) can be compared to the following situations of depositors whose claims were denied, who had similar or even better cases. For example, the case demonstrated by file 2003/0707 was denied by the Board of the Central Bank on April 2, 2004. The Resolution found that even though the depositors had placed their funds in the BM, the Bank placed them in CDs in the TCB, which is a different Bank, based in the Cayman Islands, and that the documents signed by the depositors authorized the BM to place the funds in the TCB at their risk, that the status of account notices informed them that the funds had been placed in the TCB, and that consequently they had consented to the transfer of their funds. The depositors presented a former BM employee as a witness to the Advisory Committee in their request for reconsideration. The witness was asked if she had ever informed the depositors that their funds were going to be sent abroad, and she replied "never." When asked how the documents were signed in the Bank, she answered that when the client opened an account with the BM, they were asked to sign the required documents as a matter of policy. All the documents that they signed had the BM letterhead. When asked by the Advisory Commission whether the clients had attempted to withdraw their funds before the date of maturity in either of the accounts or in both, the witness replied that they sought to withdraw their funds from both accounts. She had told them that they could not withdraw their funds since the management had issued an instruction against the authorization of early withdrawals. The persons came with the intention to make a withdrawal and she told them that her supervisor did not authorize it. The petitioners pointed out that despite the attempt to withdraw their deposits from the BM and the denial of the Bank to permit them to do so, the Advisory Commission rejected their claims on the basis that they had signed an authorization to the BM allowing the Bank to administer their funds.[58]

66. Similarly, the case demonstrated by file 2003/0624, referred to a depositor who did not sign the contract permitting the BM to administer her assets and whose witness, a former bank employee, testified that because of an e mail of the BM Manager, Mr. Guadalupe, her CDs were automatically renewed without seeking the consent of the client. The case of thiis depositor was rejected by the Advisory Commission because the monthly status of accounts notices presumed "acceptance and knowledge" of the placements in CDs.[59]

67. The Advisory Commission, by offering the accepted depositors additional requirements for recovering their assets that were not offered to the entire class of individuals whose funds had been transferred to the TCB, or by rejecting the allegations of similar witnesses who testified that the depositor was not consulted about the renewal of his placement, the State

[58]See: Files of the cases submitted to the Advisory Commission, Annex 12.
[59] See: Files of the cases submitted to the Advisory Commission, Annex 12.

violated the victims' right to due process of law, enshrined in Article 8(1) of the American Convention. Depositors in the group represented by the petitioners, demonstrated by file 2003/0624, file 2003/0804, or file 2003/0707 (supra) for example, were not asked by the Advisory Commission whether they sought not to renew their placements in CDs in the TCB, and even when they made such claims and presented evidence thereof, their claims were rejected because of the presence of one of the per se disqualifying elements.[60] The Commission considered that by applying to certain claimants requirements that differed from those applied to others in order to at least recover part of their savings, or in some cases all of them, the State acted in an arbitrarily manner, without using reasonable and objective criteria, and in a way that constituted a denial of due process of law to the detriment of the account holders of the 708 savings accounts whose claims were rejected.

68. Therefore, the Commission considered that the State failed to comply with its obligation to ensure the rights embodied in the American Convention, which means that not only the State has to respect them (negative obligation) but also it must adopt all appropriate measures to ensure them (positive obligation). The evidence the claimants needed to present in order to prove that they deposited their funds in the BM and that they were placed in offshore accounts without their consent should be reasonable and objective and should not constitute an obstacle to the transparent implementation of the procedure for the recovery of their assets. The Commission considered that by applying to certain claimants requirements that differed from those applied to others who were able to recover at least part of their savings, or in some cases all of them, the State acted in a partial manner, without using reasonable and objective criteria, and in a way that constituted a denial of due process of law to the detriment of the account holders of the 708 savings accounts whose claims were rejected by the Advisory Commission in violation of Article 8(1), read in conjunction with Article 1(1) of the American Convention. As a consequence, the State failed to provide the depositors with an independent and impartial mechanism that afforded the claimants due process of law.

ii. The right to judicial protection (Article 25 in conjunction with 1(1) of the American Convention)

69. Article 25(1) of the Convention establishes, in broad terms, the obligation of every State to provide, to all persons subject to its jurisdiction, an effective legal recourse against acts that violate fundamental rights.[61] It also sets forth that the guarantee therein enshrined is applicable not only with regard to the rights contained in the Convention, but also to those rights recognized by the Constitution or the laws of the State concerned.[62] Article 25(1) provides:

> 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.

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[60] See: Files of the cases submitted to the Advisory Commission, Annex 12.

[61] The Inter-American Court has interpreted this provision as giving "expression to the procedural institution known as '*amparo*', which is a simple and brief judicial procedure designed for the protection of all of the rights recognized by the constitutions and laws of the States Parties and by the Convention. The particular importance of *amparo* was underlined by the Court, which emphasized that the procedure of *amparo* is among those judicial guarantees that are essential for the protection of various rights whose derogation is prohibited by Article 27(2) and that serve, moreover, to preserve legality in a democratic society."[61] In Uruguay, the remedy of *amparo* was not available to the petitioners. In fact, article 1 of Law 16.011 does not permit *amparo* to be used against judicial decisions, or decisions of political trials (i.e. impeachment), military jurisdiction, decisions of the electoral court or against decisions of the Contentious-Administrative Tribunal.

[62] I/A Court H.R., Salvador-Chiriboga v. Ecuador Case. Preliminary Objections and Merits. Judgment of May 6, 2008 Series C No. 179, para. 57; I/A Court H.R., 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. 23 and I/A Court H.R., Constitutional Court v. Peru Case. Judgment of January 31, 2001. Series C No. 71.

1. The available domestic remedy: filing a writ of nullification

70. In the instant case, the State repeatedly referred during the proceeding before the IACHR to the failure of the victims to seek an appeal of annulment of the Advisory Commission/Central Bank's denial of their claims before the Contentious Administrative Tribunal. In its response of October 17, 2007, the State argued that the petitioners had the possibility of requesting or filing actions seeking the annulment of the decision of the Advisory Commission/Central Bank, but that they did not do so. Consequently, the State maintained that the petitioners tacitly consented to the denial of their claims, which thereby acquired finality.[63]

71. The State submitted 11 decisions of the Contentious-Administrative Tribunal with its response in October 2007, to demonstrate that the depositors represented by the petitioners had a judicial remedy available and that they could have sought the judicial annulment of the Advisory Commission/ Central Bank rejection of their claims. It is important to analyze the decisions to determine if in the pertinent judicial proceedings due process of law was applied. The decisions of the Contentious- Administrative Tribunal reveal that the depositors who are the victims of the present case, had no possibility of having their claims heard or of having the Advisory Commission denials overturned because the Contentious-Administrative Tribunal mechanically applied the three *per se* disqualifying criteria to reject all the depositors claims who sought a judicial remedy.[64]

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[63] See: File of the case before the IACHR. Appendix 3.

[64] See: Files of the cases submitted to the Advisory Commission, Annex 12, specifically the following situations:

(i) Case of Angel Notaro and other, No. 47/05, decided on June 4, 2007.

The Court confirmed the decision of the Central Bank in denying this claim because the petitioner was required to demonstrate that the impugned administrative act was issued as a result of "deviation, abuse or excess of power" which he had not done. Article 31 of the "Bank Law", No. 17.613, the Court held, is a norm of "exceptional character" in so far as it concedes to the Central Bank the power to grant the depositors of the BM and the Caja Obrera, whose deposits had been transferred to other institutions without their consent, the same rights that correspond to the other depositors of these banks. Given its exceptional nature, the Court stated that the norm should be interpreted "restrictively" and in this sense, only those cases in which all the requisites set forth in Article 31 are satisfied, should be included. The Court held that the petitioners were not able to prove compliance with these requisites. First, the law requires that they prove that they are depositors of the BM, *viz*. that they have a demand or time account, or a savings account. The Court found, however, that they are owners of a certificate of deposit in the TCB, a bank which is distinct from the BM and which has its seat in the Cayman Islands. In addition, the Court noted that the petitioners received monthly status of accounts notices which indicated that their funds had been placed in certificates of deposit in the TCB and they did not protest these notices. The certificates of deposit in this case were renewed on June 4, 2002 for US$ 90,459.99 dollars at 8% interest. The petitioners had investments in the Velox Investment Co., since September 2000, which revealed an "investor," not a mere "depositor," profile, etc. Consequently, the Tribunal rejected the claim.

(ii) Case of Marta Rodriguez, No. 804/04, decided on June 6, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous case. The petitioner placed funds in certificates of deposit of the TCB since September 2000, the last renewal occurring in May 2002 for US$ 23,463 for two months at a 5.5% interest rate. The petitioner referred to Resolution D/350/2002 by which the Central Bank intervened in the BM and the Banco La Caja Obrera S.A., in compliance with Article 15 of Decree Law 15.322 and Circular No. 1.687. She alleged that the violation of the existing legal order by these financial institutions was tolerated by the Central Bank, at least from February to June 2002. The Central Bank knew about the operations of the Velox Group, in that it lent money to different physical and juridical persons until May 15, 2002, and gave the Banco de Montevideo a deadline of May 15, 2002 to correct these irregularities. In fact, nothing was corrected and the situation was aggravated. The supposed placement of the petitioner's funds in the certificate of deposit of the TCB supposedly occurred on May 15, 2002, and if the Central Bank had taken the measures at its disposal, the placement would have not been made. She maintained that the existing norms led the Central Bank to consider the TCB and the BM as part of the Velox Group. In order to consider the two businesses as part of the same Economic Group, however, a judicial decision is required. She urged the Court to consider the TCB and the BM as the same economic group and thereby overturn the denial of her claim. The Tribunal, however, did not consider any of her arguments and decided the case pursuant to the same criteria used in the preceding case.

(iii) Case of Curt Remmer, No. 681/04 decided June 11, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner, an Argentine national, in March 2002, renewed his placement of funds (which began in June 2001) in the amount of US$ 102,000 in certificates of deposit of the TCB for three months. The petitioner argued that a fraud was committed against the depositors, the TCB was an instrument of that fraud, and that even the Legislature recognized this, in including Article 31 in Law No. 17.613. He alleged that his relationship with the TCB is through the BM, that there was no consent on his part to substitute and eliminate the BM, and to pass to a sole and direct relationship with the TCB. Article 31, he alleged, was included in the law, because it was public knowledge that the situation of several hundred of the affected depositors had been deprived of their funds by means of tricks, schemes and false and incomplete information. The Tribunal, however, did not consider any of her arguments and decided the case pursuant to the same criteria used in the preceding cases.

(iv) Case of Pablo Roure, No. 792/04 decided June 18, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner had placed funds in the TCB since September 2000. He made two deposits in certificates of deposit in April and May 2002 for a total of US$ 163,000 at 7.75% interest rate. The petitioner argued that he consented to depositing his money in the BM under the conditions offered by the Bank, but that he was induced by error and tricks on the part of the bank employees with regard to the transference of his funds to the TCB. As a depositor in the BM he claims not to have signed a contract to let the bank administer his funds. Once again, the Court determined that the petitioner's arguments were not admissible and applied the formulaic test to determine whether the case was covered. In addition the Court derived consent for the placement of funds in the TCB from the high interest rate provided. The Court stated that it was evident that the interest rate provided in the marketplace (local banks) was less than half that provided by placements of the BM in the Cayman Islands. Consequently the petitioner, the Court stated, could not argue that he did not know of the risk assumed or the authorization that he granted. In exchange for a higher interest rate, it concluded, the petitioner had assumed a higher risk.

(v) Case of Maria Gigli, No. 805/04 decided June 18, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner placed her foreign currency in a savings account in the BM since March 2001. In June 2001 she placed US$ 27,500.00 in certificates of deposit of the TCB. She later made a deposit in a certificate of deposit in March 2002 for a total of US$ 13,632.00 at 5% annual interest rate with maturity on June 24, 2002. She claims that she was a depositor in the BM on the basis of her savings account and that she never signed a contract permitting the BM to administer her funds. The Court relied on her status of accounts statements to derive her consent to the certificate of deposit in the TCB and noted that she must have been aware of the difference in interest payments since the 5% from the certificate of deposit was considerably higher than the 1% paid by the BM for savings accounts.

(vi) Case of Vito Atijas and other, No. 663/04 decided July 25, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner (on an unspecified date) made a time deposit of US$ 98,319.21 in the TCB through the BM at 7.25% interest, with a maturity date of July 31, 2002. The petitioners alleged that the BM and the TCB formed a single economic group, the Velox Group, and that those who placed their funds in the TCB did so with the conviction that it was backed by the Banco de Montevideo, S.A., an institution that enjoyed prestige in the marketplace, based on the confidence it had earned. The State replied that the concept of a single economic group, as justification for the supposed obligation on the part of the BM to respond for the deposits or investments in the TCB, lacks a basis in positive law. The State added that there is no general norm in Uruguayan law that establishes that the existence of various enterprises belonging to the same Economic Group, engage the responsibility of all of them for the debts of one. The Court found that petitioners have argued that they did not consent to the transference of their funds offshore but that this argument falls in light of the high interest rates that they received which implicated greater risk.

(vii) Case of Antonio Lomonaco, No. 682/04 decided July 25, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner, an Argentine national, on April 1, 2002, renewed his placement of funds (which began in February 2001) in the amount of US$ 68,730.00 in a certificate of deposit in the TCB at 6.5% interest rate. Again the Court concluded that the consent to the transfer could be derived from the petitioner's having received status of account notices and the fact that he was receiving interest rates that were twice the amount being granted in local banks; and that a higher interest rate implicated greater risk.

(viii) Case of Juana Salbucci, No. 779/04 decided August 27, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner deposited funds in the TCB since September 2000 and upon maturity these funds were regularly renewed. In April 2002 she renewed a certificate of deposit in the TCB for US$ 13,015.82 at a 5.5% annual interest rate. The Court concluded that consent was derived from her failure to question the status of account notices and the habitual renewals of the certificate of deposit.

(ix) Case of Leonia Herzog, No. 14/05 decided August 22, 2007

72. In its report on the merits, the Commission considered that when examining the requests for annulment of the administrative decisions of the Advisory Commission/Central Bank, the Tribunal merely applying the three proof requirements established by law --was there a deposit, was the deposit transferred abroad and was there consent--, and the decisive elements of that analysis were presumed from certain facts. The Contentious-Administrative Tribunal was precluded from examining any of claims raised by the depositors who are represented by the petitioners, which, in general, focused on the issue of their failure to give "consent" to the transfer of their funds to a foreign entity with no institutional connection with the BM.

73. In the case of Sergio Goldstein, for example, the depositor argued that his funds were transferred to the TCB in March 2002, without his consent; although he knew that his funds had been transferred to the TCB, it was never with the consent that this transfer would substitute or eliminate the BM and that he would have a direct and unique relationship with the TCB. Article 31, he argued, was included in the Law because the State recognized that hundreds of depositors had been prejudiced by the transfer of their funds to the TCB by misrepresentation, situations where there was no clear consent which the law requires to consider that the depositor had intentionally cut his ties to the BM.

74. Similarly, in the case of Ana Castro, the depositor stated that on December 31, 2002, the BM was dissolved and liquidated and the Recovery Fund was established. She thought that her deposit would be included in the list of recoverable funds but learned, on January 13, 2003, when the list was published, that she was not included. She presented a note to the Central Bank stating that she was a depositor of the BM in the amount of US $73,240, but discovered that her funds were documented as US $23,387 and US $49,852 respectively, as CDs in the TCB, a transfer that was effectuated without her knowledge or consent. She alleged that the receipt of monthly status accounts cannot be interpreted as consent on her part to the transfer of funds which she did not know about and would never have authorized. [65]

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner, an 81 year old woman (in 2007) deposited US $ 230,000.00 in a certificate of deposit for 90 days at a 7.5% interest rate. In August 2002, following the decree of the suspension of the activities of the BM, she came to withdraw her funds from the Savings Account and from the Demand Account, when Mr. Gerardo Caino let her know that since more than a year ago her time deposit had been transferred to the TCB, where it had been renewed every three months. She alleged that since June 28, 2001 the movements of the funds from her timed deposit were indicated by means of unintelligible codes, which the claimant alleged, at her advanced age, she could not understand. She would have never thought that the BM, to which she had confided all her assets for the past twenty years, would have transferred the bulk of her savings to another institution without seeking her express consent. The Court confirmed the denial of her claim noting that she had removed her funds from the Velox Investment Company and placed them in the TCB since the year 2000, receiving high interest rates, and had granted the "Private Banking" department of the BM broad powers to administer her funds.

(x) Case of Leandro Rama, No. 634/04 decided August 22, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner deposited an unspecified sum of money in the TCB since the year 2001 at a 7.75% annual interest rate. He received the periodic notices of the status of his account. He stated that he was tricked by the BM and was made to sign the General Conditions of the administration of investments contract which authorized the Bank to administer his funds. The Court applied the same criteria, and noted that since he was a lawyer by profession, it could infer that he had a greater appreciation for the conditions in contracts.

(xi) Case of Gisela Perles, No. 59/05 decided September 3, 2007

The Court confirmed the decision of the Central Bank denying the petitioner's claim. The circumstances are similar to the previous cases. The petitioner deposited funds in the TCB since September 2000 and upon maturity these funds were regularly renewed. The petitioner on February 1, 2002 renewed a deposit of US$ 183,459.08 in the Velox Investment Company at a 9% annual interest rate. Given her investments in the TCB and the VIC, the Court held that she could not validly allege that she did not know where her investments were. In addition she received periodic notices of the status of her accounts and if she does not contest these notices within a period of ten days of receipt, her tacit approval is presumed.

[65] The cases of Sergio Goldstein and Ana Castro were submitted to the Commission with the State's response dated December 27, 2006. See: Record of the case with the IACHR. Appendix 3.

75. The Contentious-Administrative Tribunal decided the cases of Sergio Goldstein and Ana Castro, and the others (supra note 54), on the basis of "constructive consent" derived from the existence of a "General Conditions" contract signed by the depositor, or the receipt of monthly status of account notices. The Contentious-Administrative Tribunal rejected all claims filed before it, on the basis of one or more "disqualifying characteristic" and did not conduct an independent and impartial examination of the requirements of the legislative test set forth in Article 31 of Law 17.613 nor the petitioners' claims of the violation of their right to property.

76. The State contended before the IACHR that in all cases of accepted depositors, the Advisory Commission/Central Bank, on the basis of the evidence presented, was able to conclude that the placements were made or renewed without the depositor's consent. On the other hand, as regards the rest of the depositors (the majority of claims were rejected) the State contended that it was proven that they expressly or tacitly consented to the placement of their investments or their successive renewals in an offshore entity having no link to the BM. [66]

77. As discussed above, some depositors were encouraged to return to the Advisory Commission, after having been rejected for a disqualifying characteristic, with a witness who could confirm the fact that the depositor sought not to renew his or her placements. By doing so, the Advisory Commission added eligibility requirements that were not made known to all the depositors, but only to those whom it accepted. The Advisory Commission adapted requirements to certain depositors that were outside the scope of the legislative test. There is no additional requirement in the legislative test that the depositor must demonstrate that he or she sought *not to renew* a placement that had already been made or that a placement was renewed despite the existence of a specific instruction not to renew it. The mere fact of holding a CD in the TCB and receiving a monthly status of account notice was considered a "disqualifying" characteristic, sufficient to provoke the rejection of the claims of some depositors, yet subsequently, the decision *not to renew* a placement in the TCB was interpreted as the requirement for acceptance by the Advisory Commission.

78. Despite having adopted these additional requirements, the depositors who were rejected on the basis that consent was presumed, for example, as a result of their receipt of a monthly status of account notice, were not routinely asked by the Advisory Commission, as part of the examination of their claim, whether they sought *not to renew* their placements in the TCB. The arbitrariness of the Advisory Commission/ Central Bank decisions is underlined in the case of a depositor, whose witness testified before the Advisory Commission that he never consulted his client to seek consent for the transfer of his funds to the TCB since he had received an internal BM instruction to automatically renew all certificates of deposit once they became due. Yet, the claim of this depositor was rejected by the Advisory Commission/Central Bank and one of his deposits, despite a monthly status of account notice substantiating its existence, was not subject to analysis and was simply written off as "lost" by the Advisory Commission.

79. The State, by applying a "disqualifying" characteristic to some depositors but not to others, decided, by means of the Advisory Commission and the Central Bank's finalization of these recommendations, that the presentation of "new" additional information could serve to trump the disqualifying characteristic, but not all depositors were informed of what they needed to prove. The depositors who produced a witness to corroborate that they intended not to renew their placements with the TCB, were not required to substantiate their allegations with any documentary or other proof. This procedure violated the Central Bank's Rules of Procedure, which require that the Central Bank act pursuant to the general principles of "impartiality," "strict legal," "material truth," "due process," and "good faith." Article 161(2) of the General Code of Procedure further establishes

[66] See: The State's reply of May 17, 2007, in the record of the case with the IACHR, Appendix 3.

that the witness must provide the reasons for his knowledge of his statements, with an explanation of the circumstances of time, manner and place in which each act occurred and the way in which he learned of it , requirements that the Advisory Commission ignored, in violation of the depositors´ right to a fair hearing and due process of law.

80. The presumption that the holder of a CD in the TCB was per se an investor and not a depositor, determined the rejection of a depositor´s claim without providing him or her with an opportunity to defend himelf or herself. The decision of this case was solely based on the mechanical application of the legislative test, which did not conform to the test applied in the administrative procedure before the Advisory Commission and did not allow the consideration of the substantive issues raised by the petitioners as regards their unequal treatment when compared with other depositors and their claims that their funds, deposited in the BM had been transferred to the TCB without their consent.

81. This mechanical application of the legislative test helped to promote a climate of absence of judicial protection and legal cretainty that, to a great extent, prevented or hindered the persons affected from determining with reasonable clarity the appropriate proceeding to which they could or should resort to claim the rights they considered violated.[67] For this reason, most of the depositors represented by the petitioners in the instant case did not seek the judicial annulment of the decisions of the Advisory Commission/Central Bank before the Contentious-Administrative Tribunal since it was not seen as an effective remedy, a conclusion also reached by the Inter-American Commission in its Admissibility report and report on the merits on this case. [68]

82. In the present case, it has been demonstrated that when the Contentious-Administrative Tribunal was presented with a request for the annulment of the denial of a claim by the Advisory Commission/Central Bank, it: (i) determined whether a disqualifying criterion was present and then confirmed the denial of the claim on that basis; (ii) did not inquire whether the depositor sought *not to renew* his or her placement in the CD in the TCB, which was the test applied by the Advisory Commission/Central Bank in the claims that were accepted; (iii) did not provide the depositor with a fair hearing as regards his or her claims that his or her funds had been transferred to a foreign entity that had no relationship with the BM without his or her consent.

83. The European Court has established that "in the determination of 'civil rights and obligations,' decisions taken by administrative authorities [...] be subject to subsequent control by a 'judicial body that has full jurisdiction".[69] The European Court held in a 1993 case that the Constitutional Court of Austria did not have "full jurisdiction" and therefore "it could inquire into the contested proceedings only from the point of view of their conformity with the Constitution, which, on the Government's own admission, did not make it possible for it to examine all the relevant facts. The Constitutional Court did not therefore have the power required under Article 6 §1."[70] In order for a judicial body to constitute an effective mechanism it must be able to examine all the relevant facts.

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[67] *Cf.* I/A Court H.R., *Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, párr. 120.

[68] See: IACHR, Admiissibility Report No. 123/06, Petition 997-03, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Depositors of the *Banco de Montevideo*), October 27, 2006, Appendix 2, paragraph 42 ("The State has not presented any information to show that the actions for annulment were dealt with and that the situation alleged by the petitioners was remedied. In this context, according to the State, the only case decided by the Courts, in four years, concerned an action for annulment that was refused because the Court found that the appropriate remedy was for the petitioner to invoke Article 31 of Law 17.613. Therefore, the Commission finds that the action for annulment is neither an adequate nor an effective remedy for resolving the petitioners' claims") and IACHR, Report on the Merits No.107/09, Case 12,587, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Depositors of the *Banco de Montevideo*), November 9, 2009, Appendix 1.

[69] ECHR, *Albert and Le Compte v. Belgium*, Judgment of 10 February 1983, para. 29.

[70] ECHR, *Zumtobel v. Austria*, Judgment of 21 September 1993, para. 30.

84. Similarly, in the instant case, the Contentious-Administrative Tribunal, pursuant to the writ of nullification, could only inquire into the contested proceedings from the point of view of whether a disqualifying factor existed. It could not examine all the relevant facts, in particular as related to the petitioners' alleged lack of consent to the transfer of funds to the TCB, an essential element of proof in the legislative test. From the information provided by the parties, the Inter-American Commission concluded that the State, by means of the Contentious-Administrative Tribunal, did not provide the depositors represented by the petitioners in this case with their right to a simple and prompt recourse for protection against acts that violate their fundamental rights set forth in Article 25 of the American Convention.

iii. The right to access to judicial protection (Article 25 in conjunction with Article 1(1) of the American Convention)

85. The protection established in Articles 8 and 25 of the American Convention is strengthened by the general obligation to ensure the rights established in the Convention, as provided in its Article 1(1). The Inter-American Court has held that Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice so that human rights violations may be clarified judicially, those responsible for such violations may be prosecuted, and reparations may be obtained for the damages suffered.[71] In this context, the Inter-American Court has stated:

> In this regard, the Court has understood that, for an effective recourse to exist, it is not enough for it to be established by the Constitution or law, or be formally admissible; rather it needs to be truly appropriate for establishing whether there has been a human rights violation and for providing whatever is necessary to repair this. However, the fact that a specific recourse is decided against the party who filed it does not necessarily mean a violation of the right to judicial protection.[72]

86. The Advisory Commission's interpretation of Article 31 of Law 17.613 could not be challenged by the presumed victims in the Uruguayan courts. The Advisory Commission was the sole administrative remedy and there was no full jurisdictional judicial appeal possible, although petitioners could reappeal to have the Advisory Commission reconsider its decision. The exclusion of the so-called TCB or VIC depositors from any compensation, because they were "offshore" investments was not a due determination, given the absence of a judicial forum where the petitioners could raise their claims that the TCB was not, in fact, a foreign entity, which they alleged was proven by the fact that the BM was permitted to assist the TCB to the point of its own insolvency.

87. The decisions of the Contentious-Administrative Tribunal in each of the eleven cases decided (*supra* note 54) demonstrated that the appeal for annulment was not an effective remedy for the victims. The victims, to date, eight years after the liquidation of the BM, still have not been able to have their claims properly adjudicated. The State informed the Commission that the appeal for annulment was the adequate remedy for the victims in this case. This remedy, however, was not effective and the Contentious-Administrative Tribunal was not competent to examine all the questions of fact and law relevant to the case.

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[71] I/A Court H.R., *Case of Loayza-Tamayo v. Peru*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, para. 169.

[72] I/A Court H.R., *Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 125.

88. For example, the victims were unable to submit to judicial resolution the central issue of the nature of the consent required to satisfy the test that their funds were transferred offshore "without their consent".

89. As regards the protections set forth in Article 25 of the American Convention, the Commission noted in its report on the merits that for the determination as to whether an individual's fundamental rights have been violated, the competent tribunal in question must have jurisdiction to examine *all questions of fact and law* relevant to the dispute. As the European Court of Human Rights has stated:

> Furthermore, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental rights be, in certain cases, subject to some form of adversarial proceedings before an independent body competent to review the reasons for the measures and the relevant evidence. (…) …it implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures.[73]

90. In the instant case, the State did not provide a remedy that was competent to examine all questions of fact and law relevant to the dispute in violation of Article 25 of the American Convention and to the detriment of the victims.

91. The Inter-American Court has emphasized in this regard that the State must guarantee an adequate and effective right to access to justice to all persons:

> In conclusion, the Court observes that this case took place within the framework of practical and normative impediments to a real access to justice and a general situation of absence of guarantees and ineffectiveness of the judicial institutions to deal with facts such as those of the instant case. In this context and, in particular, the climate of legal uncertainty promoted by the norms that restricted complaints against the evaluation procedure and the eventual dismissal of the alleged victims, it is clear that the latter had no certainty about the proceeding they should or could use to claim the rights they considered violated, whether this was administrative, under administrative-law, or by an action for *amparo*.
>
> In this regard, in *Akdivar v. Turkey*, the European Court of Human Rights found, *inter alia*, that the existence of domestic recourses must be sufficiently guaranteed, not only in theory, but also in practice; to the contrary, they would not comply with the required accessibility and effectiveness. It also considered that the existence of formal recourses under the legal system of the State in question should be taken into account, and also the general political and legal context in which they operate as well as the personal circumstances of the petitioners or plaintiffs.
>
> In this case, the existing domestic recourses were not effective, either individually or as a whole, to provide the alleged victims dismissed from the Peruvian Congress with an adequate and effective guarantee of the right of access to justice in the terms of the American Convention.[74]

92. Article 25(1) of the American Convention incorporates the principle recognized in international law of human rights of the effectiveness of the procedural instruments or means

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[73] E.C.H.R., *Case of Družstevni Záložna Pria and others v. The Czech Republic,* Judgment 31 July 2008, para. 89.

[74] I/A Court H.R., *Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, paras. 129-131.

designed to guarantee such rights.[75] The Convention requires that the remedy in question must be truly effective in establishing whether there has been a violation of the rights established in the Convention and in providing redress.[76] The Inter-American Court has concluded that "[a] remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective."[77] In its case-law, the Court has held that the remedies available for judicial clarification of whether human rights violations have occurred must not only exist formally, but must be appropriate and effective in protecting the right to justice of all persons subject to the State's jurisdiction.[78]

93. The European Court, in a recent case, reiterated its constant case-law that for the determination of civil rights and obligations by a tribunal to satisfy Article 6 § 1 of the [European] Convention, "the tribunal in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it."[79] The Court noted that it

> found violations of Article 6 § 1 of the [European] Convention in other cases where the domestic courts had considered themselves bound by the prior findings of administrative bodies which were decisive for the outcome of the cases before them, without examining the relevant issues independently. [...] The Court found a violation of the right to access to a court where the applicant could not challenge before a court an assessment of facts in a decision adopted by an administrative authority acting within its discretionary power. [...] In that case, the judicial review never led to a full scrutiny of the factual basis of such a decision.[80]

94. The Inter-American Court has established that the purpose of international human rights law is to provide the individual with the means of protecting internationally recognized human rights before the State. When establishing the international responsibility of the State for the violation of human rights, a substantial aspect of the dispute before the Court is not whether judgments of administrative decisions were issued at the national level or whether certain provisions of domestic law were applied with regard to the violations that are alleged to have been committed to the detriment of the alleged victims, but whether the domestic proceedings ensured genuine access to justice, in keeping with the standards established in the American Convention, to determine the rights in dispute.[81]

95. Based on the foregoing, in its report on the merits the Commission concluded that the State had violated Article 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the 708 account holders named in the first footnote of this application. The Commission concludes that the information provided is not sufficient to demonstrate State responsibility related to a failure to comply with the obligation undertaken in Article 2 of the Convention.

VIII. REPARATIONS AND COSTS

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[75] I/A Court H.R., *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.

[76] *Id*.

[77] *Id*.

[78] I/A Court H. R., *"Five Pensioners" v. Peru Case*. Judgment of February 28, 2003. Series C No. 98, para. 126; I/A Court H.R., *Barrios Altos v. Peru Case.* Judgment of March 14, 2001. Series C No. 75, párr. 43.

[79] E.C.H.R., *Case of Družstevni Záložna Pria and others, supra* note 62, para. 107.

[80] *Id.* para. 111.

[81] I/A Court H.R., *Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, párr. 125; I/A Court H. R., *Indigenous Community Yakye Axa v. Paraguay Case*. Judgment of June 17, 2005. Series C No. 125, párr. 61 y I/A Court H. R., *"Five Pensioners" v. Peru Case*. Judgment of February 28, 2003. Series C No. 98, párr. 136.

96. Based on the facts alleged in the instant petition and on the constant case-law of the Inter-American Court which provides that "it is a principle of International Law that any violation to an international obligation that has caused injury generates an obligation to repare it adequately,"[82] the IACHR submits to the Court its position on the reparations and costs the Uruguayan State should provide as a consequence of its responsibility for the violations committed to the detriment of the injured party.

97. The Inter-American Commission will now proceed to outline the general criteria with regard to reparations and costs that it considers the Court should apply in the instant case in accordance with the Court's Rules of Procedure which grant the individual autonomous representation. The Commission is keenly aware that it is the responsibility of the injured party to substantiate its claims in accordance with the provisions of Article 63 of the American Convention, and Article 25 and other applicable articles of the Rules of Procedure of the Inter-American Court. In the event that the injured party does not exercise this right, the IACHR requests that, during the proceedings, the Court grant the Commission the opportunity to quantify the pertinent claims.

a. Obligation to make reparation and measures of reparation

98. Article 63(1) of the American Convention establishes 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.

99. This provision contains a customary norm "that constitutes one of the basic principles of contemporary international law on State responsibility."[83] Reparation of the injury caused by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of reestablishing the situation before the violation. If this is not possible, the Court must order adoption of measures that ensure respect for the rights that were abridged and provide reparation of the consequences caused by the violations by paying compensation for the damages caused.[84] Reparations have the additional purpose, although no less important, of avoiding and preventing future violations.

b. Measures of reparation for pecuniary and non pecuniary damages

100. The Court has indicated that measures of reparation are intended to erase the effects of the violations committed.[85] Those measures encompass the various ways a State can

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[82] I/A Court H.R., *Case of the Gómez Paquiyauri Brothers Vs. Perú*. Judgment of July 8, 2004. Series C No. 110, paragraph 187; I/A Court H.R., *Case Myrna Mack Chang Vs. Guatemala*. Judgment of November 26, 2003. Series C No. 101, paragraph 141; I/A Court H.R., *Case Bulacio Vs. Argentina*. Judgment dated September 18, 2003. Series C No. 100, paragraph 72 and I/A Court H.R., *Case Juan Humberto Sánchez Vs. Honduras.* Judgment dated June 7, 2003. Series C No. 99, paragraph 147.

[83] I/A Court H.R. *Case Carpio Nicolle et al Vs. Guatemala*. Judgment of November 22, 2004. Series C No. 117, par. 86; I/A Court H.R., *Case Masacre Plan de Sánchez Vs. Guatemala*. *Reparations* (Art. 63(1) (American Convention on Human Rights). Judgment dated November 19, 2004. Series C No. 116, par. 52 and I/A Court H.R., *Case De la Cruz Flores Vs. Perú*. Judgment dated November 18, 2004. Series C No. 115, par. 139.

[84] I/A Court H.R., *Case of Gómez Paquiyauri Brothers Vs. Perú*. Judgment dated July 8, 2004. Series C No. 110, paragraph 189; I/A Court H.R., *Case of 19 Tradesmen Vs. Colombia*. Judgment dated July 5,2004. Series C No. 109, par. 221; I/A Court H.R., *Case Molina Theissen Vs. Guatemala*. *Reparations (A*rt. 63(1) American Convention on Human Rights). Judgment dated July 3, 2004. Series C No. 108, paragraph 42.

[85] I/A Court H.R. *Case Carpio Nicolle et al Vs. Guatemala*. Judgment dated November 22, 2004. Series C No. 117, par. 89; I/A Court H.R., *Case De la Cruz Flores Vs. Perú*. Judgment dated November 18, 2004. Series C No. 115, par 141 and I/A Court H.R., *Case of the Hermanos Gómez Paquiyauri Vs. Perú*. Judgment dated July 8, 2004. Series C No. 110, par. 190.

redress the international responsibility it incurred, which, according to international law, consist of restitution, compensation, rehabilitation, satisfaction and measures of non-repetition[86].

101. The Court has established the essential criteria that must guide just compensation for the purpose of providing effective and adequate monetary compensation for harm inflicted as a result of human rights violations.[87] The Court's case law on reparations has consistently established that pecuniaryl damages include consequential damages and loss of earnings, as well as non-pecuniary or moral damage both to the victims and to their family nucleus.[88]

102. Consequential damages are understood to mean the direct and immediate pecuniary consequences of the facts on a person's estate. According to this concept, consideration is given to the pecuniary effect on the estate immediately and directly derived from the facts in relation to the expenses incurred by the injured party in order to obtain justice[89]. On the other hand, loss of earnings is understood as the loss of future economic earnings or benefits as of the events happened to the detriment of the victims.

103. Notwithstanding any claims filed by the representatives of the victims at the appropriate time during the proceedings, the IACHR requests that the Court, pursuant to the broad powers vested in the institution in this area, set a fair and equitable amount as compensation for consequential damages and loss of earnings.

104. With regard to non-pecuniary damage, the Court has establisehd that:

> [...] can include the suffering and hardship caused to the direct victims and to their next of kin, the harm of objects of value that are very significant to the individual and also changes, of a non-pecuniary nature, in the living conditions of the victims. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated in two ways in order to make integral reparation to the victims. First, by the payment of a sum of money that the Court decides by the reasonable exercise of judicial discretion and in terms of fairness. Second, by performing acts or implementing projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that it does not happen again. Such acts have the effect of restoring the memory of the victims, acknowledging their dignity, and consoling their next of kin.[90]

105. Notwithstanding any claims that the representatives of the victims may file at the appropriate time during the proceedings, the Commission requests that the Court order the State to

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[86]See: United Nations*, Final Report presented by Theo Van Boven, Special Rapporteur for the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, E/CN.4/Sub2/1990/10, July 26, 1990. See also: I/A Court H.R., *Case Blake. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment dated January 22, 1999. Series C Nº 48, par. 31; I/A Court H.R., *Case Suárez Rosero, Reparations (Art. 63(1) American Convention on Human Rights), Judgment dated* January 20, 1999. Series C No. 44*,* par. 40, and I/A Court H.R., *Case Castillo Páez. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment dated November 27, 1998. Series C No. 43.

[87]See I/A Court H.R. *Case of Hilaire, Constantine and Benjamin et al.,* paragraph 204; *Case of the "White Van" (Paniagua Morales et al.). Reparations,* paragraph 80; *Case of Castillo Páez. Reparations,* paragraph 52 and *Case of Garrido and Baigorria. Reparations* (Art. 63(1) American Convention on Human rights). Judgment of August 27, 1998, Series C No. 39, paragraph 41.

[88] I/A Court H.R. *Case of Tibi.* Judgment of September 7, 2004. Series C No. 114, paragraph 237; I/A Court H.R., *Case of El Caracazo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002, Series C No. 95; and I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94.

[89] I/A Court H.R. *Case of Loayza Tamayo. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, paragraph 147; *Case of Aloeboetoe et al. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, paragraph 50.

[90]I/A Court H.R., *Case Plan de Sánchez Massacre*. Judgment dated November 19, 2004. Series C No. 116, par. 80; I/A Court H.R., *Case De la Cruz Flores*. Judgment dated November 18, 2004. Series C No. 115, par. 155; Also see, I/A Court H.R., *Case Carpio Nicolle et al*. Judgment dated November 22, 2004. Series C No. 117, par. 117.

pay appropriate compensation for the damages that the victims named in the report on the merits and in the present application sustained as a result of the violations of articles 8 and 25 of the American Convention.

c. Satisfaction measures and guarantees of non-repetition

106. Satisfaction is understood to mean any measure that the perpetrator of a violation must adopt in accordance with international instruments or with customary law, for the purpose of recognizing the commission of an illicit act.[91] Satisfaction is achieved when three actions are taken, usually in aggregate form: an apology or any other gesture that demonstrates acknowledgment of authorship of the violation in question; prosecution and punishment of the individuals responsible, and the adoption of measures to prevent the repetition of the damage inflicted.[92]

107. In that sense, the Commission considers that among the measure of reparation, the Uruguayan State should take the necessary measures to establish a suitable and effective mechanism so that the victims named in the present case and the other members of the group of more than 1400 depositors have some recourse and the opportunity to prove whether they meet the critieria that the applicable law establishes for them to qualify to receive the compensation provided for in Law 17.613.

d. Beneficiaries of the reparation owed by the State

108. Article 63(1) of the American Convention demands reparation for the consequences of a violation and that "fair compensation be paid to the injured party." The persons who have a right to such compensation are generally those who have been directly harmed by the facts of the violation in question.

109. Given the nature of the instant case, the injured party or the beneficiaries of any reparations that the Court should see fit to order as a consequence of the human rights violations committed by the Uruguayan State are the 708 depositors named in footnote 1 or their heirs in those cases in which the victim is deceased.

e. Costs and expenses

110. In accordance with the Court's consistent case law, costs and expenses should be interpreted as included within the concept of reparations enshrined in Article 63(1) of the American Convention, since the efforts made by the injured party, his successors or representatives to accede to international justice entail expenses and financial commitments that must be compensated.[93]

111. The Inter-American Commission requests the Court to, once the injured party has been heard, order the Uruguayan State to pay the costs and expenses properly documented by the injured party.

IX. CONCLUSIONS

112. For all the arguments of fact and of law set forth in the present application, the Commission requests the Inter-American Court to adjudge and declare the international responsibility of the State for violation of the following human rights:

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[91] Brownlie*, State Responsibility, Part 1.* Clarendon Press, Oxford, 1983, pg. 208.
[92] *Idem*.
[93] I/A Court H.R., *Case Carpio Nicolle et al*. Judgment dated November 22, 2004. Series C No. 117, par. 143; I/A Court H.R., *Case Plan de Sánchez Massacre*. Judgment dated November 19, 2004. Series C No. 116, par. 115; I/A Court H.R., *Case De la Cruz Flores*. Judgment dated November 18, 2004. Series C No. 115, par. 177.

a. The Uruguayan State is responsible for its failure to provide the victims with an impartial hearing of their claims by either the Advisory Commission or the Contentious- Administrative Tribunal, and thus violated the right to a fair trial set forth in Article 8(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the victims; and

b. The State failed to provide a simple and prompt recourse for an examination of all the issues of fact and of law related to the dispute before it, and thereby violated the right to judicial protection set forth in Article 25(1) of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the victims.

X. PETITION

113. Based on the conclusions in the present case, the Inter-American Commission requests that the Court order the Uruguayan State to:

a. Pay appropriate compensation for the damages that the victims named in the report on the merits and in the present application sustained as a result of the violations of articles 8 and 25 of the American Convention;

b. Establish a suitable and effective mechanism by which those named as victims in the present application and the other members of the group of more than 1400 depositors may have some recourse and the opportunity to prove whether they meet the critiera that the applicable legislation establishes for them to qualify to receive the compensation provided for in Law 17.613; and

c. Compensate the victims for the costs and expenses incurred in the litigation of their case in the domestic and international jurisdictions.

XI. EVIDENTIARY SUPPORT

114. In support of the arguments of fact and of law set forth in the instant case, the Commission attaches the documentary evidence listed below:

Appendix 1. IACHR, Merits Report No.107/09, Case 12,587, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Depositors with the *Banco de Montevideo*), November 9, 2009.

Appendix 2. IACHR, Admissibility Report No.123/06, Petition 997-03, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Depositors of the *Banco de Montevideo*), October 27, 2006.

Appendix 3. Copy of the record of the case with the Inter-American Commission on Human Rights.

Annex 1. World Bank, Policy Research Working Paper Series, Working Paper No. 3780, December 2005 (*"An analysis of the 2002 Uruguayan banking crisis,"* Luís de la Plaza, Sophie Sirtaine).

Anexo 2. Uruguay, Banking System Strengthening Sector Program, IDB document prepared by Guillermo J. Collich *et al.* (UR-0150).

Annex 3. Resolution P/16/2002 of the Office of the President of the Central Bank, dated February 25, 2002.

Annex 4. Indictment "Peirano Basso, Jorge *et al.*", Seventh Rota Criminal Court of First Instance.

Annex 5. Central Bank Resolution D/110/2002 dated March 7, 2002.

Annex 6. Central Bank Resolution D/199/2002 dated April 25, 2002.

Annex 7. Central Bank Resolution D/322/2002 dated June 9, 2002.

Annex 8. Central Bank Resolution D/350/2002 dated June 21, 2002.

Annex 9. Central Bank Resolution D/454/2002 dated July 30, 2002.

Annex 10. Central Bank Resolution D/933/2002 dated December 31, 2002.

Annex 11. Law No. 17.613, Financial Sector Reform Law, approved by the Uruguayan Parliament on December 21, 2002.

Annex 12. Files of the cases submitted to the Advisory Commission.

Annex 13. Financial Intermediation System Law No.15.322.

Annex 14. CV of the expert witness.

115. The Inter-American Commission, for its part, is offering the testimony of an expert in administrative law and human rights, to testify on the guarantees that must be observed in adminnistrative proceedings, the guarantees that *ad hoc* courts must apply in administrative procedures and those necessary to establish the rights of persons in light of the human rights set forth in the American Convention.

XII. INFORMATION ON THE ORIGINAL PETITIONERS, THE VICTIM AND THEIR RELATIVES

116. In accordance with the Rules of Procedure of the Court, the Inter-American Commission hereby informs the Court that the original petitioners are Alicia Barbani Duarte and María del Huerto Breccia Farro, who have power of attorney to represent approximately 300 victims. Their address is: [redacted].

Washington, D.C.
March 16, 2010