

Spoltore v. Argentina

ABSTRACT¹

This case is about a worker who sued the private company where he was employed, alleging his health had been prejudiced due to poor working conditions. In an unusually split vote, the Court found the State in violation of Article 26 of the American Convention for the failure to provide the victim adequate judicial recourse to challenge his work conditions, and Article 8 for the failure of State courts to consider the victim's case within a reasonable time.

I. FACTS

A. Chronology of Events

September 1, 1963: Mr. Victorio Spoltore begins working for Cacique Camping S.A., an industrial manufacturing facility.² Over the course of the next two decades, Mr. Spoltore holds several different positions there, the last of which being foreman.³ During his tenure with the company, Mr. Spoltore is harassed and lodges multiple complaints with the police.⁴

May 14, 1984: Mr. Spoltore suffers a heart attack at work, from which point his health steadily declines.⁵ He then takes a six-month leave from the company for health reasons.⁶

¹ Aaron Kircher, Author; Katarina Shonafelt, Editor; Ashley Payne, Senior IACHR Editor; Alexandra Reyna, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

² Spoltore v. Argentina, Report on the Merits, Report No. 74/17, Inter-Am. Comm'n H.R., Case 12.656, ¶¶ 23, 25 (July 5, 2017).

³ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 404, ¶ 67 (June 9, 2020).

⁴ Spoltore v. Argentina, Report on the Merits, ¶ 35.

⁵ *Id.* ¶ 24. 003; Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 67.

⁶ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 67.

May 1986: Mr. Spoltore suffers a second heart attack.⁷

November 28, 1986: Having been deemed to have a seventy percent work disability, Mr. Spoltore files for retirement.⁸

May 1987: Due to his heart condition, Mr. Spoltore is no longer able to work for Cacique Camping S.A., so he ends his employment with the company.⁹

June 30, 1988: Mr. Spoltore files a complaint with the Labor Tribunal No. 3 of the San Isidro Judicial Department within Buenos Aires against Cacique Camping S.A. in which he contends that his health declined because of the work which he performed there daily.¹⁰ In his suit, he argues that this forced him to retire at seventy percent disabled and that he is owed compensation.¹¹

August 26, 1988: Cacique Camping S.A. files objections to Mr. Spoltore's complaint based on expired statute of limitations and seeks to join two companies (India Compañía De Seguros Generales S.A. and Sud Atlántica Compañía de Seguros S.A.) which provided Cacique Camping S.A. with workplace insurance.¹²

April 18, 1989: Cacique Camping S.A. seeks to bring a third insurance company into the litigation, the Suizo Argentina Compañía de Seguros S.A.¹³

May 8, 1991: Mr. Spoltore is examined by occupational medicine and psychiatry experts.¹⁴

May 31, 1991: Mr. Spoltore's medical reports from May 8, 1991, are challenged.¹⁵

⁷ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 67.

⁸ *Id.*

⁹ Spoltore v. Argentina, Report on the Merits, ¶ 14.

¹⁰ *Id.* ¶¶ 17, 25; Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 69.

¹¹ Spoltore v. Argentina, Report on the Merits, ¶ 7.

¹² *Id.* ¶ 26.

¹³ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 71.

¹⁴ Spoltore v. Argentina, Report on the Merits, ¶ 31.

¹⁵ *Id.*

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July 7, 1991: Mr. Spoltore requests the appointment of an additional expert to rectify the challenged medical reports.¹⁶

July 20, 1991: The Labor Tribunal receives the new expert from Mr. Spoltore's July 7, 1991 appointment, which is challenged again.¹⁷

September 1, 1992: The Labor Tribunal receives the latest expert report on Mr. Spoltore's medical condition.¹⁸

March 30, 1993: Mr. Spoltore requests that the proceedings be referred to the medical expert's office.¹⁹

June 21, 1993: Mr. Spoltore's psychological evaluation is presented to the Labor Tribunal.²⁰ The Tribunal further orders that notification deeds of these evaluations be issued on March 2, 1994.²¹

August 7, 1993: To address the challenges to Mr. Spoltore's expert medical examinations, the Labor Tribunal refers him to the expert's office of San Isidro.²²

March 23, 1994: Mr. Spoltore files a motion with the Labor Tribunal in which he argues that this case has been unduly and prejudicially delayed.²³

May 10, 1995: Nearly seven years after Mr. Spoltore lodged his initial complaint with the Labor Tribunal, the first hearing takes place.²⁴

May 21, 1996: Over one year after the case is initially heard, the second hearing is held.²⁵

August 21, 1996: The case is heard for the third time.²⁶

¹⁶ Spoltore v. Argentina, Report on the Merits, ¶ 32.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 33.

²¹ *Id.*

²² Spoltore v. Argentina, Report on the Merits, ¶ 32.

²³ *Id.* ¶ 33.

²⁴ *Id.* ¶ 34.

²⁵ *Id.*

²⁶ *Id.*

October 15, 1996: The fourth hearing takes place, but the case is deferred for nearly eight months.²⁷

March 3, 1997: A fifth hearing of the case takes place.²⁸

June 3, 1997: The sixth and final hearing of the case is held, during which Labor Tribunal issues its judgment finding Cacique Camping S.A. not responsible for Mr. Spoltore's health condition.²⁹ This judgment comes down nine years after Mr. Spoltore began his action against Cacique Camping S.A.³⁰

June 30, 1997: In light of this verdict, the Labor Tribunal decides to reject Mr. Spoltore's action.³¹ In its decision, the Labor Tribunal cites to six factors guiding its decision, namely (a) that there was no nexus between Mr. Spoltore's heart problems and his job; (b) that he failed to meet his burden in proving that his job exposed him to situations that would cause or aggravate a heart condition; (c) that he failed to establish whether his superiors mistreated him; (d) that his duties were neither dangerous nor irregular; (e) his complaints with the police were insufficient to establish workplace harassment; and (f) his position did not entail difficulty, dedication, or demand.³²

September 2, 1997: Mr. Spoltore files an appeal with the Supreme Court of Justice of Buenos Aires ("SCJBA") for reversal along with a motion to vacate the Labor Tribunal's first-instance judgment.³³

September 16, 1997: Mr. Spoltore files a disciplinary complaint with the Inspector General of the Buenos Aires Supreme Court in which he argues that the Labor Tribunal was negligent in handling his claim.³⁴

February 4, 1998: The SCJBA admits Mr. Spoltore's appeals.³⁵

²⁷ Spoltore v. Argentina, Report on the Merits, ¶ 34.

²⁸ *Id.*

²⁹ *Id.* ¶¶ 8, 34.

³⁰ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

³¹ Spoltore v. Argentina, Report on the Merits, ¶ 35.

³² *Id.*; Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

³³ Spoltore v. Argentina, Report on the Merits, ¶¶ 9, 36.

³⁴ *Id.* ¶ 10; Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 76.

³⁵ Spoltore v. Argentina, Report on the Merits, ¶ 36.

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April 15-16, 1999: The SCJBA finds that there was in fact an undue delay in referring the case for expert advice (“Asesoría Pericial”); however, the only remedy justified by the action is to call the delay to the attention of the court clerk responsible for the delay.³⁶

August 16, 2000: THE SCJBA dismisses Mr. Spoltore’s appeal for reversal and his motion to vacate.³⁷ In dismissing the case, the SCJBA reasoned that (a) Mr. Spoltore already had a ruling from the Labor Tribunal; (b) he was seeking a review that went beyond the purview of the Court; and (c) he was seeking an inappropriate remedy for his alleged injury.³⁸

January 29, 2012: Mr. Spoltore dies.³⁹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

September 11, 2000: Mr. Spoltore presents his initial petition to the Inter-American Commission on Human Rights (“Commission”).⁴⁰ The State requests that the Commission find Mr. Spoltore’s petition inadmissible both because he has failed to exhaust the domestic remedies available to him, and because the injuries which Mr. Spoltore alleged in his complaint do not amount to a violation of the Convention.⁴¹

June 25, 2008: The Commission deems the petition admissible and issues its Report on Admissibility No. 65/08.⁴²

³⁶ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 76; Spoltore v. Argentina, Report on the Merits, ¶ 10.

³⁷ Spoltore v. Argentina, Report on the Merits, ¶¶ 9, 37.

³⁸ *Id.* ¶ 37.

³⁹ *Id.* ¶ 10; Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 68.

⁴⁰ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

⁴¹ Spoltore v. Argentina, Report on Admissibility, Report No. 65/08, Inter-Am. Comm’n H.R., Petition. No. 460-00, ¶ 23 (July 25, 2008).

⁴² *Id.* “Decides,” ¶ 1.

July 5, 2017: The Committee approves its Merits Report No. 74/17.⁴³ The Commission concludes that Argentina violated Articles 8(1) (Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court) all in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Mr. Spoltore.⁴⁴

In light of the foregoing, the Commission recommends that Argentina provide Mr. Spoltore with fair compensation for violating his rights as well as take action to ensure that these types of labor complaints are resolved in a timelier manner in the future.⁴⁵

B. Before the Court

January 23, 2019: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁶

July 3, 2019: The State objects that Mr. Spoltore failed to exhaust all domestic remedies before petitioning the Inter-American Commission on Human Rights.⁴⁷ Five *amici curiae* briefs are submitted to the Court, including briefs by the Peace and Justice Service (Servicio Paz y Justicia; “SERPAJ”); the Intersindical Space, Health, Work and Worker Participation; the Environment Forum of San Nicolás, Generaciones Futuras and the Paraná River Basin; Director of Global Rights Advocacy Alejandro Gonza; and Mr. Xavier Flores Aguirre.⁴⁸

April 25, 2019: The Representatives of Mr. Spoltore submit their brief to the Court, formally stating their requests, arguments, and evidence.⁴⁹

July 30, 2019: The State files its answering brief of preliminary objections in which the State objects, reiterating the contention that Mr. Spoltore failed to exhaust all domestic remedies before petition the Inter-American Commission on Human Rights.⁵⁰ Additionally, five *amici curiae* briefs are submitted to the Court, including briefs by the Peace and Justice Service (Servicio Paz y Justicia; “SERPAJ”); the

⁴³ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

⁴⁴ Spoltore v. Argentina, Report on the Merits, ¶ 70.

⁴⁵ *Id.*

⁴⁶ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 4.

⁴⁷ *Id.* ¶ 8.

⁴⁸ *Id.* ¶ 12.

⁴⁹ *Id.* ¶ 7.

⁵⁰ *Id.* ¶ 8.

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Intersindical Space, Health, Work and Worker Participation; the Environmental Forum of San Nicolás, Generaciones Futuras and the Paraná River Basin; Director of Global Rights Advocacy Alejandra Gonza; and Mr. Xavier Flores Aguirre.⁵¹

February 5, 2020: The State partially accepts international responsibility for the violations for the excessive delay in reaching a judicial resolution of Mr. Spoltore's claims.⁵²

1. Violations Alleged by Commission⁵³

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25(1) (Right of Recourse Before a Competent Court)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention

2. Violations Alleged by Representatives of the Victims⁵⁴

Same violations alleged by the Commission, plus:

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 8(2)(h) (Right to Appeal)

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)

in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

⁵¹ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 12.

⁵² Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 11.

⁵³ Spoltore v. Argentina, Report on the Merits, ¶ 70.

⁵⁴ The Collective of Human Rights of Yopoi served as representatives as Mr. Spoltore. Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 37.

III. MERITS

*A. Composition of the Court*⁵⁵

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

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

June 9, 2020: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁵⁶

By three votes in favor and three votes against:⁵⁷

To dismiss the State's preliminary objection,⁵⁸

To successfully assert this objection, the Court noted that the State must present it at the appropriate procedural stage – when the Commission is determining admissibility – and there must be adequate and effective remedies left to exhaust in the jurisdiction.⁵⁹ The Court dismissed this objection principally because the remedies made available by the State were inadequate to address the damages caused by the allegedly protracted process of judicial review.⁶⁰ The Court also dismissed the objection as untimely because, although the State presented the objection initially at the correct stage, it amended the basis for its objection when it presented it before the Court.⁶¹

⁵⁵ Judge Eugenio Raúl Zaffaroni took no part in this judgment, because as an Argentine national, he is precluded from participating under Court Rules, Article 19.1 and 19.2. Similarly, no Deputy Secretary is listed as having participated in this judgment. *Spoltore v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, n.*.

⁵⁶ *Id.* ¶ 1.

⁵⁷ In cases in which there is an equal vote, the President's vote serves as the tiebreaker.

⁵⁸ *Id.* “Decide” ¶ 1.

⁵⁹ *Id.* ¶ 24.

⁶⁰ *Id.* ¶ 35.

⁶¹ *Id.* ¶ 28.

To accept the State's partial acknowledgement of international responsibility,⁶² because:

The Court accepted the State's acknowledgment of its partial responsibility for the excessive delay in reaching a judicial resolution of Mr. Spoltore's claims in violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Recourse Before a Competent Court).⁶³ The Court found the State's acknowledgement complied with Article 62 and 64 of the Convention and ceases the controversy with respect to those violations.⁶⁴

Articles 2 (Obligation to Give Domestic Legal Effect to Rights), 5(1) (Right to Physical, Mental, and Moral Integrity), 8(2)(h) (Right to Appeal), 17 (Rights of the Family), 25(1) (Right of Recourse Before a Competent Court), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) remain in controversy.⁶⁵

By a margin of three votes in favor and three against, The Court found that Argentina had violated:

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Spoltore,⁶⁶ because:

Article 26 encompasses the right to satisfactory working conditions.⁶⁷ The Court divided its analysis into three parts: (1) the right to fair and just working conditions that prioritize the health and safety of the worker; (2) the content of this right; and (3) whether this right has been infringed upon.⁶⁸

⁶² Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Decide" ¶ 2.

⁶³ *Id.* ¶ 41.

⁶⁴ *Id.*

⁶⁵ *Id.* ¶ 42.

⁶⁶ *Id.* ¶ 102.

⁶⁷ *Id.* ¶ 82.

⁶⁸ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 83.

- (1) *the right to fair and just working conditions that prioritize the health and safety of the worker*

The Court began emphasized that, to identify the series of rights contained within Article 26, it is necessary to refer to the economic, social, and cultural provisions within the Charter of the Organization of American States (OAS).⁶⁹ Because the right to work is described in detail in the OAS Charter, the Court considered it one of the rights protected by Article 26.⁷⁰

The Court then turned to the question of identifying the scope of this right.⁷¹ To that end, the Court turned to the international corpus iuris, or body of international jurisprudence, to define the scope of the right to fair and just working conditions.⁷² In so doing, the Court did not purport to claim jurisdiction over treaties to which it is not a party.⁷³

- (2) *the content of the right to fair and just working conditions which prioritize the health and safety of the worker*

The Court again turned to the OAS Charter to find what the right to satisfactory and just working conditions entails.⁷⁴ A fundamental element of this right found within the OAS Charter is protections against accidents and occupational diseases.⁷⁵ Therefore, the Court reasoned that the State has an obligation to ensure that workers had access to safeguards that effectively curtail practices that might jeopardize their health and safety.⁷⁶ Furthermore, the State is obligated not only to provide these safeguards, but also to provide them as efficiently and expeditiously as possible.⁷⁷ Finally, the obligation to protect this right is to be non-regressive in nature.⁷⁸

Here, the Court continued, the issue was one of a lack of adequate

⁶⁹ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 84.

⁷⁰ *Id.*

⁷¹ *Id.* ¶ 85.

⁷² *Id.* ¶ 86.

⁷³ *Id.*

⁷⁴ *Id.* ¶ 93.

⁷⁵ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 94.

⁷⁶ *Id.* ¶ 97.

⁷⁷ *Id.*

⁷⁸ *Id.*

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judicial process in light of an alleged violation of the right to suitable working conditions.⁷⁹ As such, Argentina was bound to ensure that a worker injured on the job or suffering from an occupational disease would be able to seek recourse through satisfactory judicial process.⁸⁰ Because Mr. Spoltore's case was protracted for such an excessive amount of time, the Court held that Argentina had in fact failed to discharge this obligation.⁸¹

(3) infringement upon the right to fair and just working conditions which prioritize the health and safety of the worker

The Court sought to determine how exactly this violation impacted Mr. Spoltore's case.⁸² The State itself acknowledged that the length of time it took to adjudicate this admittedly straightforward claim was unreasonable.⁸³ By failing to provide Mr. Spoltore with sufficient judicial recourse, the Court held that the State infringed upon Mr. Spoltore's right to satisfactory and just working conditions.⁸⁴ Therefore, the Court held that Argentina was responsible for violating Article 26 of the American Convention.⁸⁵

By a margin of three votes in favor and three votes against, the Court found that Argentina had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Spoltore,⁸⁶ because:

The Court found that the State's acknowledgement of responsibility with respect to violations of Article 8(1) and 25(1) satisfied the requirements of Articles 62 and 64.⁸⁷ Therefore, the Court did not feel it necessary to

⁷⁹ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 98.

⁸⁰ *Id.* ¶ 99.

⁸¹ *Id.* ¶ 100.

⁸² *Id.*

⁸³ *Id.* ¶ 101.

⁸⁴ *Id.* ¶ 102.

⁸⁵ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 102.

⁸⁶ *Id.* ¶ 41.

⁸⁷ *Id.* ¶ 44.

discuss in detail the State's conduct in this regard.⁸⁸ Rather, the Court emphasized the importance that claims of workplace injury need to be adjudicated with greater diligence and resolved without great delay.⁸⁹

By a margin of three votes in favor and three against, the Court found that Argentina had not violated:

Article 8(2)(h) (Right to Appeal), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Spoltore,⁹⁰ because:

The right to appeal enshrined in Article 8(2)(h) is a minimum guarantee provided to all persons subject to a criminal or administrative proceeding, and is a right to defend oneself from deprivation of liberty.⁹¹ The Court noted that Mr. Spoltore's action was one in which he sought monetary compensation and there was no implication that he would be deprived of his liberty.⁹² The Court concluded that the right contained within Article 8(2)(h) does not apply to actions seeking compensation for workplace injury or illness.⁹³ Therefore, the Court held that Argentina did not violate Article 8(2)(h).⁹⁴

The Court did not refer to the alleged violations of:

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Articles 1(1) and 2 of the Convention.

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge L. Patricio Pazmiño Freire

In a separate opinion, Judge Pazmiño Freire concurred with the Court's outcome in the case of Mr. Spoltore.⁹⁵ He added that legal

⁸⁸ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 45.

⁸⁹ *Id.*

⁹⁰ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 105.

⁹¹ *Id.* ¶ 104.

⁹² *Id.* ¶ 105.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 404, ¶ 1 (June 9, 2020).

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entities such as corporations and businesses are obligated to protect the human rights of natural persons as well as providing access to judicial recourse.⁹⁶ As a final commentary, Judge Pazmiño Freire added that this obligation does not detract from that of States, but rather complements and reinforces it.⁹⁷

2. Dissenting Opinion of Judge Vio Grossi

In a separate opinion, Judge Vio Grossi contended that the Court erred in its final judgment because there was no evidence that Mr. Spoltore had exhausted all domestic remedies before proceeding to file a petition with the Commission.⁹⁸ He stated further that the Court erroneously shifted the burden to exhaust all available domestic remedies to the State instead of Mr. Spoltore.⁹⁹ In so doing, the Court placed the State in an unfair and absurd position.¹⁰⁰ Allowing this type of exception to transpire, Judge Vio Grossi stated, may encourage other actors in international law to act similarly.¹⁰¹

3. Dissenting Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Sierra Porto partially dissented in that he held that the Court had erred by prematurely rejecting Argentina's preliminary objection to the case.¹⁰² Judge Sierra Porto was of the opinion that the case came before the Court before all appropriate domestic remedies had been exhausted.¹⁰³ Before accessing the Inter-American Court of Human Rights, a petitioner must first give the State the opportunity to remedy the alleged harm.¹⁰⁴ Moreover, not doing so unduly prejudices a State, as was the case here.¹⁰⁵ Because Mr. Spoltore's domestic remedies were inappropriate for the action

⁹⁶ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Pazmiño Freire, ¶¶ 2-3 (June 9, 2020).

⁹⁷ *Id.* ¶ 4.

⁹⁸ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 404, ¶ 4 (June 9, 2020).

⁹⁹ *Id.* ¶ 7.

¹⁰⁰ *Id.* ¶ 6.

¹⁰¹ *Id.* ¶ 17.

¹⁰² Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 404, ¶ 1 (June 9, 2020).

¹⁰³ *Id.* ¶ 9.

¹⁰⁴ *Id.* ¶ 3.

¹⁰⁵ *Id.* ¶ 10.

presented, Judge Sierra Porto held that the Court erred by rejecting the State's preliminary objections on this point.¹⁰⁶

4. Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Ferrer Mac-Gregor Poisot opined that it is a long-standing rule of the Court that the petitioner must exhaust all appropriate internal resources before seeking recourse with the Inter-American Court of Human Rights.¹⁰⁷ However, the burden is on the State to provide a detailed explanation of which domestic remedies are in fact appropriate and available to the petitioner.¹⁰⁸ Here, Argentina did not express which domestic remedies would have been effective and suitable to remedy the violation against Mr. Spoltore's rights, and so it was appropriate for the Court to reject the State's preliminary objections.¹⁰⁹ Finally, Judge Ferrer Mac-Gregor Poisot confirmed the majority's opinion on the merits that, in light of the fact that the petitioner was in fact the person with the workplace disability, it was unreasonable that Argentina took twelve years to make a determination in his case.¹¹⁰

5. Dissenting Opinion of Judge Pérez Manrique

In a separate opinion, Judge Pérez Manrique reaffirmed the fact that the function of the Court is to compliment the obligations that the State has under international law, and as a result, recourse with the Court may only be sought after domestic remedies have proven to be ineffective.¹¹¹ Judge Pérez Manrique goes on to state that particular remedies that Mr. Spoltore sought were inadequate for his action.¹¹² Because Argentina alleged that it was capable of providing different, adequate reparations, the Court erred in rejecting the State's preliminary objections.¹¹³ Furthermore, Judge Pérez Manrique concluded that the

¹⁰⁶ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, ¶ 10 (June 9, 2020).

¹⁰⁷ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 404, ¶ 1 (June 9, 2020).

¹⁰⁸ *Id.* ¶ 10.

¹⁰⁹ *Id.* ¶ 54.

¹¹⁰ *Id.* ¶ 55.

¹¹¹ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Pérez Manrique, Inter-Am. Ct. H.R. (ser. C) No. 404, ¶ 5 (June 9, 2020).

¹¹² *Id.* ¶ 8.

¹¹³ *Id.* ¶¶ 9, 11.

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Court exceeded its jurisdiction by deciding on facts that exceeded those presented in the Commission's Merits Report.¹¹⁴ In so doing, the Court violated the principle of consistency.¹¹⁵

IV. REPARATIONS

By a margin of three votes in favor and three votes against, the Court ruled that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation.

The Court held that the judgment itself shall qualify as a form of reparation.¹¹⁶

2. Publish the Judgment.

The Court also held that the State shall publish notification of the judgment one time within six months of notification thereof in a widely circulated national newspaper.¹¹⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court found it inappropriate to issue pecuniary damages in this case because the Representatives did not verify the alleged damages.¹¹⁸

¹¹⁴ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Pérez Manrique, ¶ 14 ((June 9, 2020).

¹¹⁵ *Id.* ¶ 15.

¹¹⁶ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 135(6).

¹¹⁷ *Id.* ¶ 110.

¹¹⁸ *Id.* ¶ 116.

2. Non-Pecuniary Damages

The Court ordered that \$30,000 be paid to Mr. Spoltore's heirs, with fifty percent being awarded to his wife, Mrs. Rosalinda Campitell, twenty-five percent to his son Alejandro Nicolás, and twenty-five percent to his daughter Liliana Stela Spoltore.¹¹⁹

3. Costs and Expenses

The Court ordered the State to pay \$10,000 to the Representatives for the expenses they incurred by taking on Mr. Spoltore's case.¹²⁰ Furthermore, as a result of the State's violations, the Court ordered that \$4,340.58 be issued to the Victim's Legal Assistance Fund as well.¹²¹

4. Total Compensation (including Costs and Expenses ordered):

\$ 44,340.58

C. Deadlines

The State must pay the above non-pecuniary damages, costs, and expenses within one year from the notification of the judgment.¹²² The State further must publish the judgment within six months and notify the Court immediately after it has done so.¹²³ Finally, within one year, the State must also submit a report to the Court outlining the progress of their compliance with the judgment.¹²⁴

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

¹¹⁹ Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 120.

¹²⁰ *Id.* ¶ 124.

¹²¹ *Id.* ¶ 128.

¹²² *Id.* ¶ 129.

¹²³ *Id.* ¶ 110.

¹²⁴ *Id.* "Provides" ¶ 10.

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VI. COMPLIANCE AND FOLLOW-UP

May 27, 2021: The Court found that Argentina fully complied with the requirement that it publish the judgement in a widely circulated newspaper.¹²⁵ The Court then resolved to maintain the compliance monitoring proceedings open to evaluate the State's fulfillment of its financial obligations with respect to the pecuniary damages and reimbursement.¹²⁶

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 404, (June 9, 2020).

Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 404, (June 9, 2020).

Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 404, (June 9, 2020).

Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 404, (June 9, 2020).

¹²⁵ Spoltore v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering That" ¶ 5 (May 27, 2021).

¹²⁶ *Id.* "Resolves" ¶ 2.

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Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 404, (June 9, 2020).

Spoltore v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Pérez Manrique, Inter-Am. Ct. H.R. (ser. C) No. 404, (June 9, 2020).

3. Provisional Measures

[None]

4. Compliance Monitoring

Spoltore v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (May 27, 2021).

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Spoltore v. Argentina, Report on Admissibility, Report No. 65/08, Inter-Am. Comm'n H.R., Petition. No. 460-00, (July 25, 2008).

3. Provisional Measures

[None]

4. Report on Merits

Spoltore v. Argentina, Report on the Merits, Report No. 74/17, Inter-Am. Comm'n H.R., Case 12.656, (July 5, 2017).

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5. Application to the Court

Spoltore v. Argentina, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 12.656, (Jan. 23, 2019).

VIII. BIBLIOGRAPHY

[None]

IX. CASES CITED IN THE DECISION AND ORDERS

A. Inter-American Court

A.1. Contentious Cases

[None]

A.2. Advisory Opinions

[None]

B. Inter-American Commission

[None]

C. European Court of Human Rights and European Commission of Human Rights

1. European Court of Human Rights

[None]

2. European Commission of Human Rights

[None]

D. Human Rights Committee (UN)

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[None]

E. International Court of Justice

[None]

F. Others

1. International Courts

[None]

2. National Courts

[None]

X. RELEVANT LEGAL DOCUMENTS CITED

1. International Legal Materials

[None]

2. National Legal Materials

[None]

XI. CITATIONS TO LEGAL SCHOLARSHIP

[None]