

Barbani Duarte et al. v. Uruguay

ABSTRACT¹

This case stems from the financial turmoil that shook the Argentinean financial system from 1998 to 2002. When, in 2002, Argentinean authorities limited access to bank deposits in Argentina, Argentineans, who had a considerable share of deposits in banks in neighboring Uruguay, triggered a run on several banks in Uruguay. The ensuing chaos was worsened by fraudulent actions by the management of some major private banks, leading to the loss of deposits of thousands of victims. Although Uruguayan authorities promptly set up in place bodies and procedures to verify the claims and compensate victims, the process left many without an effective remedy. Eventually, the Court found a violation of some parts of 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), to the detriment of some of the victims, and no violation of Article 21 (Right to Property) or Article 24 (Right to Equal Protection) of the American Convention.

I. FACTS

A. Chronology of Events

1967: The Central Bank of Uruguay (“Central Bank”) is established with the authority to regulate and supervise financial and payment systems in the State.² The Central Bank acts as economic adviser, banker, and financial representative to the State government.³

1967 – 2001: In the years leading up to December 2001, the Central Bank appears to be profitable and growing.⁴

1. Sarah Frost & Theodore Nguyen, Authors; Theodore Nguyen & Jennifer Toghian, Editors; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Bienvenidos*, BANCO CENTRAL DEL URUGUAY, <http://www.bcueduca.gub.uy/> (last visited Feb. 22, 2012).

3. *Id.*

4. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Judgment, Inter-Am.

December 2001: In Argentina, Economy Minister Domingo Cavallo and President Fernando de la Rúa sign a decree that prohibits the public from withdrawing more than \$150 per week from their bank accounts.⁵ In response to the bank freeze, known as “el corralito,”⁶ Argentines begin withdrawing their deposits from Uruguayan banks.⁷

At that time, the total deposits in the banking system amount to 83% of the gross domestic product (“GDP”) of the State, 90% of which are foreign currency deposits.⁸ Forty-seven percent of foreign currency deposits belong to non-residents.⁹ Approximately 35% of total bank deposits in the State belong to non-residents, most of whom are Argentines.¹⁰ Bank deposits from Argentina amount to over \$1 billion.¹¹

January 2002 – June 2002: The run on State banks continue, ultimately triggering a financial crisis in the State.¹² By July, 37.6% of total bank deposits are withdrawn, and the Central Bank loses 79% of its international reserves.¹³ As a result, three financial institutions, specifically Banco de Montevideo, Banco La Caja Obrera, and Banco Comercial, face liquidity issues and are forced to dissolve.¹⁴

Additionally, the Banco de Montevideo’s situation is worsened from having to provide increasing financial support to the Trade & Commerce Bank (“TCB”), which is also suffering from a severe outflow of funds.¹⁵ The TCB is a bank with a license to conduct banking activities granted by the Cayman Islands and is represented in the State by TCB Mandatos S.A.¹⁶

At this time of the crisis, TCB maintains an office in Montevideo,

Ct. H.R. (ser. C) No. 243, ¶ 66 (Oct. 13, 2011).

5. Barbani Duarte et al. v. Uruguay, Admissibility Report, Report No. 123/06, Inter-Am. Comm’n H.R., Case No. 12.587, ¶ 8 n.2 (Oct. 27, 2006).

6. *The Corralito Risk*, THE ECONOMIST, <http://www.economist.com/node/21555972> (last visited Nov. 1, 2014).

7. Pamela Druckerman & Jonathan Karp, *Uruguay Shuts Banks All Week; Brazil’s Currency Extends Slides*, WALL STREET JOURNAL, <http://online.wsj.com/articles/SB1028128311812952680> (last visited Nov. 1, 2014).

8. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 62.

9. *Id.*

10. Peirano Basso v. Uruguay, Report on Merits, Report No. 86/09, Inter-Am. Comm’n H.R., Case No. 12.553, ¶ 30 (Aug. 6, 2009)

11. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 62.

12. *Id.* ¶ 63.

13. *Id.*

14. *Id.*

15. *Id.* ¶ 67.

16. *Id.* ¶ 66.

the State's largest city and capital.¹⁷ Though TCB is authorized to offer technical assistance and advisory services to its clients, it cannot participate in financial exchanges or receipt of funds from third parties.¹⁸ TCB also shares a building with the Banco de Montevideo.¹⁹ The Banco de Montevideo, along with the Banco La Caja Obrera, belongs to the Velox Group.²⁰ The majority shareholder of the Velox Group is the Peirano Family.²¹

Funds are being transferred to TCB in three ways: (1) by means of TCB Mandatos; 2) by the opening of an account by a client through the Banco de Montevideo, acting as an intermediary and charging for the transfer on behalf of the client; or 3) by making a deposit at TCB through the Banco de Montevideo for shares in certificates of deposit issued by TCB, which remained in TCB's custody.²² The sale of shares in certificates of deposits by the Banco de Montevideo on behalf of TCB, as well as the formation of deposits by the Banco de Montevideo in TCB, conform with existing law at the time because, while the two institutions are related, they have no common directors.²³ Sale of certificates of deposits issued by other financial institutions, including the Central Bank, is and continues to be standard practice in the State.²⁴

Frequently, the Banco de Montevideo offers certificates of deposits and shares that allow clients to withdraw their funds any time before maturity.²⁵ Yet on February 25, 2002, Mr. Marcelo Guadalupe, General Manager of the Banco de Montevideo, instructs bank officials to automatically renew deposits and shares, including certificates of deposit at TCB, unless a client communicates directly with the Banco de Montevideo that he or she does not wish to renew.²⁶ Furthermore, advances on matured deposits and shares are prohibited without exception given the worsening state of the financial system.²⁷

Also in February 2002, the Central Bank requests "intensive supervision" of the Banco de Montevideo and issues a series of instructions to the Banco de Montevideo to improve its deteriorating situa-

17. Barbani Duarte et al. v. Uruguay, Admissibility Report, Report No. 123/06, Inter-Am. Comm'n H.R., Case No. 12.587, ¶ 6 (Oct. 27, 2006)

18. *Id.*

19. *Id.*

20. *Id.* ¶ 5.

21. *Id.*

22. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 69.

23. *Id.* ¶ 70.

24. *Id.*

25. *Id.* ¶ 71.

26. *Id.*

27. *Id.*

tion.²⁸

Without approval or apparent supervision of the Central Bank, TCB receives deposits and falsifies the consent of depositors through Banco de Montevideo.²⁹ TCB and the Banco de Montevideo employ manipulative techniques, such as using the same logo in order to falsify depositors' consent.³⁰ Additionally, customers are being deceived into believing that their deposits are going into the Banco de Montevideo and are unaware that their funds are actually being transferred to off-shore accounts.³¹

June 9, 2002: Due to the failure of the Banco do Montevideo to comply with the Central Bank's instructions, the consequent increasing risk assumed by the Central Bank with respect to its affiliates, and the deterioration of the financial situation, the Central Bank appoints an overseer at the Banco de Montevideo.³² The overseer has the highest authority to veto any transaction at the bank.³³ The Central Bank similarly appoints an overseer at the Banco La Caja Obrera.³⁴

June 21, 2002: The Banco de Montevideo has been paying off TCB's obligations with those who had acquired the shares in deposits, essentially granting this institution a credit.³⁵ The Central Bank intervenes in the administration of the Banco de Montevideo and the Banco La Caja Obrera without terminating their activities.³⁶ Once authorities intervene, the Banco de Montevideo ceases providing financial resources to TCB for certificates of deposit that have not reached maturity.³⁷

June 24, 2002: Approximately 1,200 Banco de Montevideo depositors in Uruguay, Argentina, and Paraguay realize their savings have been transferred offshore.³⁸

28. *Id.* ¶ 67

29. Barbani Duarte et al. v. Uruguay, Admissibility Report, Report No. 123/06, Inter-Am. Comm'n H.R., Case No. 12.587, ¶ 6 (Oct. 27, 2006).

30. *Id.* ¶7.

31. *Id.* ¶7.

32. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 67.

33. *Id.*

34. *Id.*

35. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 72.

36. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 5; *see also* Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 68.

37. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 72.

38. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶¶ 5-7.

July 5, 2002: The High Court of the Cayman Islands liquidates TCB. At the time of liquidation, the Banco de Montevideo controls \$97 million in loans corresponding to its clients with respect to TCB.³⁹ Before the intervention, there had been no reported complaints by clients of TCB or any other Velox or Peirano Group companies, such as Velox Investment Company (“VIC”).⁴⁰

July 30, 2002: The Central Bank suspends all activities of the Banco de Montevideo and the Banco la Caja Obrera for sixty days.⁴¹ The suspension is extended until December 2002.⁴²

August 2, 2002: The financial crisis sparks riots breaking out in Montevideo.⁴³ Shops are looted and up to twenty people are arrested.⁴⁴ Thousands join in a general strike to prevent another shutdown of the banks.⁴⁵

August 8, 2002: State courts bring criminal actions against Mr. Jorge Peirano Basso, Mr. José Peirano Basso, and Mr. Dante Peirano Basso, board members of Banco de Montevideo and Banco la Caja Obrera.⁴⁶

December 27, 2002: In an effort to mitigate the effects of the crisis on the public, the State Parliament passes Law 17.613, titled the “Fortification of the Financial System.”⁴⁷ Law 17.613 establishes standards for protecting and strengthening the financial system, which authorizes the Central Bank to act as liquidator of the financial intermediation institutions to protect the rights of their depositors and public interest.⁴⁸

Article 31 of Law 17.613 establishes the Advisory Commission⁴⁹ to evaluate the claims of customers of the Banco de Montevideo.⁵⁰ It provides for how to handle the claims of the depositors whose funds

39. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 73.

40. *Id.* ¶ 74

41. *Id.* ¶ 68.

42. *Id.*

43. Heather Stewart, *Uruguay Riots Fuel Fear of Financial Meltdown*, The Guardian, <http://www.theguardian.com/world/2002/aug/03/heatherstewart> (last visited Nov. 1, 2014).

44. *Id.*

45. *Id.*

46. Barbani Duarte et al. v. Uruguay, Admissibility Report, Report No. 123/06, Inter-Am. Comm’n H.R., Case No. 12.587, ¶ 11 n.4 (Oct. 27, 2006).

47. *Id.* ¶ 8.

48. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 75.

49. *Id.* ¶ 79.

50. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 8.

have been transferred without their consent.⁵¹ Petitioners must satisfy all three requirements established by Law 17.613: (1) existence of a prior deposit; (2) transfer to another institution; and (3) no consent from the depositor.⁵² The Advisory Commission is comprised of three legal experts experienced in public law and banking and applies banking law as substantive law, and administrative law as procedural law.⁵³ The Advisory Commission examines a depositor's claim and determines whether a prior deposit existed and had been transferred to another institution without consent of the depositor.⁵⁴ Depositors have the burden of proving they did not agree to transfer their funds offshore in order to recover their money,⁵⁵ but also have the opportunity to present evidence and witnesses.⁵⁶ If the Advisory Commission determines that a claim satisfies the requirements established by Law 17.613, it allows recovery of depositor's money.⁵⁷ Depositors whose claims are denied have fifteen days to appeal.⁵⁸ The Advisory Commission reviews the appeals and either ratifies or amends its prior determination.⁵⁹ The Advisory Commission then reports its decision to the Central Bank, which issues a final ruling within thirty days.⁶⁰

Customers of the Banco de Montevideo whose funds were transferred without their consent are required to submit claims with the Central Bank before January 31, 2003.⁶¹

December 31, 2002: The Central Bank orders the liquidation of the Banco de Montevideo and announces the establishment of the Bank Capital Recovery Fund.⁶² The Banco La Caja Obrera and the Banco Comercial are also liquidated.⁶³ Using healthy assets from the suspended or liquidated institutions, the Bank Capital Recovery Fund is administered by the Central Bank.⁶⁴ Assets remain in the Bank Capital Recovery Fund until creditors establish their rights through valid certificates

51. *Id.*

52. *Id.*

53. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 80.

54. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶¶ 8, 35.

55. *Id.* ¶ 36.

56. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 87.

57. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 8.

58. *Id.* ¶ 35.

59. *Id.*

60. *Id.*

61. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 82.

62. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 29.

63. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 64.

64. *Id.* ¶ 78.

of deposits.⁶⁵

February 1, 2003: The Advisory Commission created by Article 31 goes into operation.⁶⁶ Initially established for a term of sixty days, the Advisory Commission's mandate is extended multiple times, ultimately expiring around 2004.⁶⁷

December 20, 2003 – December 29, 2005: The Board of Directors of the Central Bank conducts its reviews of decisions by the Advisory Commission.⁶⁸

The Advisory Commission categorizes claimants as those who deposited or made direct contact with TCB, those who invested in mutual funds through a separate legal entity called BM Funds SA, and those who purchased shares in certificates of deposit in TCB.⁶⁹ The Advisory Commission determines that claimants falling into the second category do not meet the requirements of Law 17.613.⁷⁰ Most claimants fall into the third category, having either voluntarily purchased shares in certificates of deposit, or acquired such shares without giving consent.⁷¹

To qualify as a “depositor” under the first requirement of Article 31, the individual must have had a savings, checking, fixed term, or demand deposit account.⁷² The Advisory Commission and the Central Bank consider whether consent was obtained in several ways.⁷³ First, signatures to General Conditions for Investment Management contracts gave broad authorization to the Banco de Montevideo to administer accounts and invest in securities issued by foreign institutions, releasing the bank from liability for losses resulting from its administration.⁷⁴ Consent is also found where customers specifically instructed the Banco de Montevideo to purchase certificates of deposits and other products so that their assets would not remain idle.⁷⁵ Clients also impliedly consented by failing to notice or to object to account statements, which indicated that transfers of deposits in TCB certificates of deposit were going

65. *Id.*

66. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 35.

67. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 81.

68. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 35.

69. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 92.

70. *Id.*

71. *Id.*

72. *Id.* ¶ 154.

73. *See id.* ¶ 94.

74. *Id.* ¶ 94.

75. *Id.*

through their accounts.⁷⁶ Lastly, consent is found due to the common practice of managing these types of operations.⁷⁷

Out of more than 1,426 claims, only twenty-two are declared admissible by the Advisory Commission and are affirmed by the Central Bank Board of Directors.⁷⁸ Three former officers and directors of the Banco de Montevideo had submitted three of the approved claims, whose deposits were made under similar circumstances as other depositors whose claims had been denied.⁷⁹ Five hundred and thirty-nine victims file claims with the Central Bank; each one of them is denied.⁸⁰

Of the twenty-two approved claims, nineteen exhibit lack of consent for reinvesting in TCB certificates of deposit; two indicate the Banco de Montevideo had unilaterally changed its offered terms by not allowing redemption or early withdrawal of funds which had not matured; and one claim was lacking of consent altogether for the investment operation.⁸¹

In reviewing claims, the Central Bank feels it is not competent to nullify investment and other contractual agreements since examining the defects in securing consent, the question of financial institution responsibility and the interrogation of witnesses, seem to be judicial functions not granted to the Central Bank under Law 17.613.⁸² For that reason, the Advisory Commission and the Central Bank decide not to analyze elements that could invalidate or modify customers' consent.⁸³

October 13, 2005: Prosecutor Eduardo Fernández Dovat requests an indictment from Judge Luis Charles against the Former Board of Directors of the Central Bank⁸⁴ for not adopting uniform guidelines for approving claims by depositors.⁸⁵

November 7, 2005: In response to a criminal case filed by alleged victims against the Advisory Commission, the Court of First Instance de-

76. *Id.*

77. *Id.*

78. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 9; *See also* Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶¶ 91, 96.

79. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 9.

80. Barbani Duarte et al. v. Uruguay, Merits, Reparations, and Costs, ¶ 91.

81. *Id.* ¶ 96.

82. *Id.* ¶ 95.

83. *Id.* ¶ 141.

84. Specifically, Prosecutor Fernández Dovat seeks an indictment against Mr. Julio de Brun, Mr. Miguel Vieytes, and Mr. Andrés, Pieroni, former directors of Central Bank. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 46.

85. *Id.*

termines that officials had acted within the scope of their powers and according to existing law, and had not acted arbitrarily in reviewing claims.⁸⁶ The Court of Appeals upholds the dismissal issued by the Court of First Instance on August 14, 2006.⁸⁷

February 24, 2006: Article 309 of the State Constitution provides for individuals to bring actions for nullification of an administrative act causing injury before the Contentious-Administrative Tribunal (“the Tribunal”).⁸⁸ In February 2006, approximately eighty actions are instituted before the Tribunal seeking annulment of denials by the Central Bank.⁸⁹ The Tribunal holds that actions before it cannot proceed if there is an administrative proceeding still in process.⁹⁰

After exhausting the administrative process, claimants can seek annulment of claims denied by the Central Bank Board of Directors before the Court of Administrative Disputes, an entity independent of the judiciary.⁹¹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

October 17, 2003: Ms. Alicia Barbani Duarte and Ms. María del Huerto Breccia Farro submit petition P-997-03 to the Commission on their own behalf and on behalf of 686 others.⁹²

October 27, 2006: The Commission approves Report on Admissibility No. 123/06.⁹³

November 9, 2009: The Commission approves its Report on the Merits

86. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 99.

87. *Id.*

88. Barbani Duarte et al. v. Uruguay, Admissibility Report, ¶ 38.

89. *Id.*

90. *Id.* ¶ 39.

91. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶¶101-102.

92. Barbani Duarte et al. v. Uruguay, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.587, ¶ 10 (Mar. 16, 2010).

93. *Id.* ¶ 13.

No. 107/09.⁹⁴ The Commission finds that the State violated Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in relation to Article 1(1) (Obligation to Respect Rights).⁹⁵ The Commission determines that the State should adopt specific measures of reparation and payment of costs and expenses.⁹⁶

B. Before the Court

March 16, 2010: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁹⁷

1. Violations Alleged by Commission⁹⁸

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 to Respect Rights) of the American Convention

2. Violations Alleged by Representatives of the Victims⁹⁹

Same Violations Alleged by Commission, plus:

Article 21 (Right to Property)

Article 24 (Right to Equal Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention

94. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, ¶ 1.

95. *Id.* n.5.

96. *Id.* ¶ 3.

97. *Id.* ¶ 1.

98. *Id.* ¶ 3.

99. *Id.* ¶ 5. Ms. Alicia Barbani Duarte, Ms. María del Huerto Breccia Farro, and unidentified representatives serve as representatives of the victims. *Id.*

III. MERITS

A. *Composition of the Court*¹⁰⁰

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

Pablo Saavedra Alessandri, Secretary

B. *Decision on the Merits*

October 13, 2011: The Court issues its Judgment on Merits, Reparations and Costs.¹⁰¹

The Court found by four votes to one that Uruguay had violated:¹⁰²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the American Convention, to the detriment of the 539 persons who filed a petition under Article 31 of Law 17.613,¹⁰³ because:

*Under Article 31 of Law 17.613 the State created a special administrative procedure to ascertain the rights of the “depositors” of the banks that had to be liquidated due to the financial crisis, including the Banco de Montevideo and the Banco La Caja Obrera, whose savings had been transferred to other institutions without their consent.*¹⁰⁴

The Court found that when examining the requirements of Article 31, the Central Bank reviewed exclusively the elements from which consent could be inferred,¹⁰⁵ but refused to examine the evidence that could in-

100. Judge Alberto Pérez Pérez did not take part in the proceeding because he is a Uruguayan national. *Id.* n.1. Judge Leonardo Franco and Deputy Secretary, Emilia Segares Rodríguez could not participate in the proceeding for reasons beyond their control. *Id.* n.2.

101. Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs.

102. *Id.* ¶ 280.

103. *Id.* ¶ 280(1).

104. *Id.* ¶ 133.

105. *Id.*

validate or impair consent.¹⁰⁶ This resulted in the inadequate analysis of the third requirement of Article 31, a finding of no consent,¹⁰⁷ which influenced the decision whether to accept the petitions of the alleged victims.¹⁰⁸

The Court indicated that because a finding of no consent was a crucial requirement in order for a claimant to benefit from Article 31, it was vital that the Central Bank analyze the issue of consent fully.¹⁰⁹ This would require an analysis of not only the elements in which consent could be found, such as a contract, but also encompassing the evidence that could negate or impair consent, such as the deceptive measures and the failure to provide complete information from the Banco de Montevideo and the Banco La Caja Obrera.¹¹⁰

Based on the forgoing, the Court deemed that there was an incomplete analysis of the merits regarding the petitions made by the 539 alleged victims.¹¹¹ Thus, the Court found a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹¹²

Article 1(1) (Obligation to Respect Rights) and 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention, to the detriment of Ms. Alicia Barbani Duarte and Mr. Jorge Marenales,¹¹³ because:

The petitioners, Ms. Alicia Barbani Duarte and Mr. Jorge Marenales, argue that there was arbitrary and discriminatory treatment of their claims by the Advisory Commission.¹¹⁴ Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention stipulates that every person has the right to a fair trial that is conducted in a timely, reasonable, competent, and impartial manner.¹¹⁵ The Court noted that, Article 1(1)(Obligation to Respect

106. *Id.* ¶ 141.

107. *Id.* ¶¶ 157-158.

108. *Id.*

109. *Id.* ¶ 136.

110. *Id.*

111. *Id.* ¶ 142.

112. *Id.*

113. *Id.* ¶ 280(2).

114. *Id.* ¶ 175.

115. *Id.* at n.31.

Rights) requires that the State guarantee and respect, without discrimination, the rights iterated by the Convention.¹¹⁶

According to the Court, there were twenty-two cases in which the petitioners were able to prove the requirement of “absence of consent” required by Article 31 of Law 17,613.¹¹⁷ The Court verified that in the twenty-two approved cases, the Board of the Central Bank decided that the petitioners were able to prove the absence of consent in three different ways: (1) in one case, the petitioner proved that no consent was given; (2) in nineteen cases, the petitioners proved that, prior to the maturity date, they had expressed their desire not to renew their share in the certificate of deposit, and that the renewal was made against their will; and (3) in two cases, the petitioners proved that their placements were maintained despite, before maturity, their request for the withdrawal or early buyback of their funds.¹¹⁸

Thus, in determining whether Ms. Alicia Barbani Duarte and Mr. Jorge Marenales’ claims were treated in an arbitrary or discriminatory manner the Court had to determine whether their “absence of consent” was similarly situated to any of the twenty-two approved cases, but nonetheless rejected.¹¹⁹

Regarding Ms. Alicia Barbani Duarte, the Court found that she had expressed her desire to withdraw her money and to not renew her certificate before the maturity date.¹²⁰ The Court confirmed that there were at least two cases that were accepted that paralleled Ms. Barbani Duarte’s situation.¹²¹ Accordingly, the Court determined that there was no rational or objective reason to subject Ms. Barbani Duarte’s claim to differential treatment from the other two cases that were approved.¹²² Thus, the court was able to find that there was a violation of Article 1(1)(Obligation to Respect Rights) and 8(1)(Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.¹²³

116. *Id.*

117. *Id.* ¶ 170.

118. *Id.*

119. *Id.* ¶ 179.

120. *Id.* ¶ 183.

121. *Id.*

122. *Id.*

123. *Id.*

Regarding Mr. Jorge Marenales, the Court found that he had given instructions not to renew his share in a deposit certificate that matured on June 20, 2002.¹²⁴ According to a member of the Advisory Committee, a determining factor for the rejection of Mr. Marenales' claim was because the date of maturity of his certificate was on June 20, 2002.¹²⁵ This was the same day the Central Bank instructed the Banco De Montevideo not to pay the TCB CD.¹²⁶ The Court found that there was at least one case admitted that resembled the same scenario as Mr. Marenales' situation where the maturity date was also on June 20, 2002.¹²⁷ Thus, the Court ruled that there was no rational and objective reason to justify the differential treatment of Mr. Marenales' application. Therefore, the Court was able to find a violation of Article 1(1)(Obligation to Respect Rights) and 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.¹²⁸

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Daniel Dendrinós Saquieres, Ms. Fabiana Litjenstein, Ms. Jean Leroy, Mr. Martín Guerra, Ms. María Ivelice Gigli, Mr. Rodríguez, Mr. Leandro Rama Sienna, Ms. Clara Volyvovic, Mr. Pablo Raúl Roure Casas, Ms. Marta Rodríguez Lois, Mr. Ángel Notaro, Ms. Alba Bonifacino, and Mr. Thomas Máximo Neuschul,¹²⁹ because:

According to the Court, the Tribunal, a jurisdictional body that is not part of the Judiciary, was responsible for rendering decisions regarding the appeals for annulment of the decisions made by the Board of the Central Bank.¹³⁰ The Court indicated that in order for the Tribunal to be effective it must have examined fully whether the Central Bank's analysis of the requirement of consent conformed to the provisions of Article 31 of Law 17.613.¹³¹

The Court observed that in the eleven judgments that were provided, the Tribunal examined the requirements stipulated in Article 31 and the Central Bank's application of the rule. The arguments submitted re-

124. *Id.* ¶ 184.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.* ¶ 280(5).

130. *Id.* ¶ 101.

131. *Id.* ¶ 216.

garding defects of consent or non-compliance, however, were not verified to confirm whether or not the obligation to provide information was enforced. According to the Court, the Banco de Montevideo had a duty to provide information regarding their precarious financial situation to their clients.¹³²

The Tribunal's failure to examine this issue resulted in the incomplete examination of the claims submitted for its consideration.¹³³ Thus, the Court was able to find that, in the eleven cases, the State did not guarantee the petitioners a judicial remedy that protected their right to be heard before an administrated body.¹³⁴ Therefore, the Court ruled that the State violated the right to judicial protection stipulated in Article 25(1) (Right of Recourse Before a Competent Court) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights).¹³⁵

The Court found by four to votes to one that Uruguay had not violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) of the American Convention, to the detriment of Mr. Oscar Eduardo Pivovar Vannek and Ms. Alba Fernández,¹³⁶ because:

The Court found that, regarding Mr. Pivovar Vannek and Ms. Fernández, the arguments concerning their cases were not proven.¹³⁷ In Mr. Pivovar Vannek's case, the Court was solely provided with the decision issued by the Board of the Central Bank that decided his initial claim, which does not indicate that he had offered any testimonial evidence that was rejected.¹³⁸

In regards to Ms. Fernández, her representatives claimed that her signature was forged to renew her account and that she had reported this fact to the Advisory Commission, but it was never investigated.¹³⁹ The Court found that there was no evidence of her allegations.¹⁴⁰

132. *Id.* ¶ 111.

133. *Id.* ¶ 218.

134. *Id.* ¶ 220.

135. *Id.*

136. *Id.* ¶ 280(3).

137. *Id.* ¶ 182.

138. *Id.*

139. *Id.*

140. *Id.*

Due to the lack of evidence the Court was able to conclude that the Central Bank's conduct did not equate to arbitrary and discriminatory treatment, because its acceptance of the alleged victims' cases was based on the requirements set out by Article 31 of Law 17.613, and not on new criterion that only benefitted some petitioners.¹⁴¹ Accordingly, the Court found that the State did not violate Article 8(1)(Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention to the detriment of these persons.¹⁴²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention in relation to the alleged “presumption of consent” by applying “disqualifying criteria,” the alleged application of a new criterion, or the alleged lack of information concerning probative elements,¹⁴³ because:

In determining whether or not to find a violation of Article 8(1)(Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), the Court examined the requirements set out in Article 31 of Law 17.213.¹⁴⁴ The Court found that Article 31 required that the individual be: (1) a “depositor” of the Banco de Montevideo or the Banco La Caja Obrera; (2) whose savings had been transferred to other institutions; and (3) without his or her consent.¹⁴⁵

Regarding consent, the Central Bank understood that consent could be given in several ways that include the signature of contracts, the existence of specific instructions in which the client authorized the banks to buy certificates of deposits or other products, and the absence of objections or observations made by the client.¹⁴⁶ The Court also found that the Tribunal had a set of elements in which they considered whether consent was given. This included evidence of signed contracts, the petitioner's investment profile, or specific instructions given by the client to the banks.¹⁴⁷ Thus, the Court found that none of the administrative bod-

141. *Id.* ¶185.

142. *Id.*

143. *Id.* ¶ 280(4). The Merits Judgment did not indicate which victims this violation was committed against.

144. *Id.* ¶153.

145. *Id.*

146. *Id.* ¶155.

147. *Id.* ¶156.

ies applied a “presumption of consent.”¹⁴⁸ Instead, the Court verified that these bodies had analyzed the evidence provided to them to determine whether consent had been given with consideration of elements such as signed contracts or specific instructions.¹⁴⁹

Additionally, the Court rejected the Commission’s assertion that the claims that had been accepted were initially rejected due to a “disqualifying characteristic.”¹⁵⁰ The Court could find no evidence to support this assertion.¹⁵¹

The Commission asserted that a new criterion was applied to the benefit of twenty-two cases accepted by the Board of the Central Bank but to the detriment of the other claims.¹⁵² The Court, however, found that the Commission had this “new criterion” confused for what was in fact the analysis of the absence of consent.¹⁵³

Additionally the Court found that it was not the responsibility of the Advisory Commission or the Board of the Central Bank to provide specific information to the petitioners regarding the possibility of presenting witnesses to support their claims because this information is available in general public norms.¹⁵⁴ Based on the forgoing, the Court concluded that no violation of the Convention had occurred based on the lack of evidence.¹⁵⁵

Article 21 (Right to Property) of the American Convention,¹⁵⁶ because:

*In relation to Article 21 (Right to Property) of the Convention, the Court stated that case law has developed to include not only material goods and acquired wealth, including personal wealth.*¹⁵⁷

148. *Id.* ¶159.

149. *Id.*

150. *Id.* ¶171.

151. *Id.*

152. *Id.* ¶ 176.

153. *Id.*

154. *Id.* ¶ 191.

155. *Id.* ¶ 194.

156. *Id.* ¶ 280(6). The Merits Judgment did not indicate which victims this violation was committed against.

157. *Id.* ¶ 238.

In the present case, the Court has not ruled on whether the alleged victims complied with the requirements established in Article 31 of Law 17.613 to establish a claim under Article 21 (Right to Property) because it was not necessary to decide on this fact.¹⁵⁸ As a result, the Court concluded that no evidence has been presented to support a finding of a violation of Article 21 (Right to Property) of the Convention.¹⁵⁹

Article 24 (Right to Equal Protection) of the American Convention,¹⁶⁰ because:

The Court underscores a distinction between Article 1(1) (Obligation to Respect Rights) and Article 24 (Right to Equal Protection).¹⁶¹ The Court indicated that the general obligation under Article 1(1) (Obligation to Respect Rights), a convention-based right, refers to the State's obligation to ensure the rights of the Convention are applied without discrimination.¹⁶² In contrast, if the alleged discrimination refers to the unequal protection by domestic law, the question must be examined under Article 24 (Right to Equal Protection).¹⁶³

The Court found that the issue surrounding the present case involved the arbitrary and discriminatory treatment by the administrative body responsible for deciding claims made under Article 31 of Law 17.613, rather than the unequal protection of Article 31, a domestic law, itself.¹⁶⁴ Thus, the Court found that the alleged discrimination regarding the rights contained in the Convention must be analyzed under the general obligations established by Article 1(1) (Obligation to Respect Rights) of the Convention rather than Article 24 (Right to Equal Protection).¹⁶⁵

158. *Id.*

159. *Id.*

160. *Id.* ¶ 280(7). The Merits Judgment did not indicate which victims this violation was committed against.

161. *Id.* ¶ 174.

162. *Id.*

163. *Id.*

164. *Id.* ¶175.

165. *Id.*

C. Dissenting and Concurring Opinions

1. Dissenting Opinion of Judge Eduardo Vio Grossi

In a separate dissenting opinion, Judge Eduardo Vio Grossi disagrees with the Court's decision for finding a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹⁶⁶ According to Judge Vio Grossi, there was no evidence to indicate that, under Article 31 of Law 17.613, there was an intention to transform the Bank into a jurisdictional body or to grant it contentious judicial powers.¹⁶⁷ Thus, decisions rendered by the Bank did not constitute a real remedy to disputes, but only a mechanism to benefit from Article 31.¹⁶⁸ Judge Vio Grossi indicated that the decisions rendered by the Bank were merely to ensure compliance with requirements of Article 31 to accede to certain rights without resorting to the court of law, but did not curtail the powers of the ordinary courts regarding their power to safeguard rights.¹⁶⁹ Therefore, Judge Vio Grossi determined that the Bank's procedure did not constitute a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) because the issue was not the right of every individual to a hearing by a competent judge or tribunal.¹⁷⁰

Furthermore, Judge Grossi indicated that he also disagreed with the Court's decision regarding Article 25(1) (Right of Recourse Before a Competent Court).¹⁷¹ Judge Vio Grossi indicated that the Tribunal considered the decisions rendered by the Bank in terms of the Constitution, and deemed that the Bank's decisions were "not contrary to the rule of law."¹⁷² Thus, contrary to what the Court believed, the Tribunal did rule on the issue in accordance with the law. Thus, Judge Vio Grossi determined that Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) should have been applied to the rulings rendered by the Tribunal, rather than Article 25(1) (Right of Recourse Before a Competent Court).¹⁷³

166. *Barbani Duarte et al. v. Uruguay*, Merits, Reparations and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 243 at 9 (Oct. 13, 2011).

167. *Id.* at 7.

168. *Id.*

169. *Id.* at 8.

170. *Id.*

171. *Id.* at 13.

172. *Id.*

173. *Id.*

2. Concurring Opinion of Judge Diego García-Sayán

In a separate concurring opinion, Judge Diego García-Sayán emphasized the fact that Article 8 of the Convention, the right to a fair trial, should not only be interpreted in the context of the judicial sphere.¹⁷⁴ Thus, the right extends to proceedings of other types and diverse situations.¹⁷⁵ Judge García-Sayán indicated that whether the proceeding is occurring before a judicial authority or before other mechanisms of extrajudicial authority, case law — as this judgment reaffirms — has consistently found that the petitioner must have adequate guarantees to defend his or her legitimate interest.¹⁷⁶ Thus, Judge García-Sayán stated that even though the Central Bank was not a judicial authority, it still had to respect procedural guarantees established in Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).¹⁷⁷

3. Concurring Opinion of Judge Margarette May Macaulay

In a separate concurring opinion, Judge Margarette May Macaulay expressed that Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention does not apply exclusively to courts of law but to all tribunals.¹⁷⁸ According to Judge May Macaulay, the term “tribunal” encompasses courts of law and all administrative and quasi-judicial tribunals such as police service commissions, professional committees, and school boards.¹⁷⁹

4. Concurring Opinion of Judge Rhadys Abreu Blondet

In a separate opinion, Judge Rhadys Abreu Blondet agreed with the Court regarding two conclusions: (1) no provision of the American Convention can be interpreted restrictively; and (2) it aligns with consistent case law of the Court.¹⁸⁰ Judge Abreu Blondet indicated that due

174. *Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Concurring Opinion of Judge Diego García-Sayán, Inter-Am. Ct. H.R. (ser. C) No. 243, ¶ 6 (Oct. 13, 2011).*

175. *Id.* ¶ 7.

176. *Id.* ¶ 10.

177. *Id.* ¶ 15.

178. *Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Concurring Opinion of Judge Margarette May Macaulay, Inter-Am. Ct. H.R. (ser. C) No. 243, ¶ 2 (Oct. 13, 2011).*

179. *Id.* ¶¶ 3-4.

180. *Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Concurring Opinion of Judge Rhadys Abreu Blondet, Inter-Am. Ct. H.R. (ser. C) No. 243, ¶ 1 (Oct. 13, 2011).*

process is to be guaranteed in determining the rights and obligations of every person, whether they are of a civil, labor, fiscal, or any other nature.¹⁸¹ Due process is not limited to the judicial sphere.¹⁸² Additionally, Judge Abreu Blondet found that the Court's decision regarding Article 8 (Right to a Fair Trial), is consistent with case law in finding that due process is not reserved exclusively for judicial hearings.¹⁸³ Rather, due process should be recognized in all matters pertaining to public authority, whether judicial or not.¹⁸⁴

IV. REPARATIONS

The Court ruled by four votes to one 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 considered that this judgment is *per se* a form of reparation for the victims.¹⁸⁵

2. Guarantee New Petitions

The Court ordered the State to guarantee that the victims or their heirs have the ability to present new petitions for the determination of rights established by Article 31.¹⁸⁶ Further, the State must ensure that these petitions are decided with all the due guarantees by a body with the required competence to make an analysis of the requirements of Article 31.¹⁸⁷

3. Publish the Judgment

The Court ordered the State to publish an official summary of the Judgment prepared by the Court in the Official Gazette and a national

181. *Id.* ¶ 3.

182. *Id.*

183. *Id.* ¶ 8.

184. *Id.*

185. *Id.* "Orders" ¶ 1.

186. *Id.* ¶ 248

187. *Id.*

newspaper with widespread circulation.¹⁸⁸ Secondly, the Court ordered the State to publish the Judgment in its entirety on an official website, available for one year.¹⁸⁹

4. Admissibility Report

The Court ordered the State to provide the Court with a report on the measures adopted to comply with the Judgment.¹⁹⁰

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court determined the State must pay \$3,000 to each of the 539 victims indicated in the Annex of the judgment.¹⁹¹ These damages were given to cover the distress caused by the violation of the victims' rights to judicial guarantees, judicial protection, and the uncertainty in the determination of their rights.¹⁹²

3. Costs and Expenses

The Court determined that the State owed \$15,000 total for the incurred expenses of litigating before the Inter-American Human Rights system.¹⁹³ The State must deliver this money, in equal parts, to Ms. Alicia Barbani Duarte and Ms. María del Huerto Breccia, the representatives of the majority of the victims before the Court.¹⁹⁴

188. *Id.* ¶ 252

189. *Id.*

190. *Id.* "Orders" ¶ 5.

191. *Id.* ¶ 260.

192. *Id.* ¶ 259.

193. *Id.* ¶ 272.

194. *Id.*

4. Total Compensation (including Costs and Expenses ordered)

\$ 1,647,000

C. Deadlines

The Court required that the State determine which body will decide the new petitions within six months of the notification of the Judgment.¹⁹⁵ Additionally, the State must guarantee that the new petitions be heard and determined within three years of when the State has designated this body.¹⁹⁶

With regard to the publications, the State must publish the summary of the Judgment and the Judgment in its entirety within six months of its notification.¹⁹⁷

Additionally, the State must pay the pecuniary and non-pecuniary damages to each victim within one year of notification of the Judgment.¹⁹⁸ These payments must be paid directly to the victims indicated in the Judgment.¹⁹⁹ In the event the victims are deceased or die before they receive compensation, the money is to be paid directly to their heirs in accordance to domestic law.²⁰⁰ If, by reason ascribed to the beneficiaries of the damages or their heirs, it is impossible to pay the damages within the time frame required, the State must deposit the money in an account or certificate of deposit under the beneficiary's name in a solvent State financial institution under the most beneficial financial terms allowed by law and banking practice.²⁰¹ Should the money go unclaimed after ten years, the money will be returned to the State with the accrued interest.²⁰²

Lastly, the State must provide a report on compliance measures within one year of this notification.²⁰³

V. INTERPRETATION AND REVISION OF JUDGMENT

February 13, 2012: The representatives submitted a brief to the Court

195. *Id.* ¶ 249.

196. *Id.* "Orders" ¶ 2.

197. *Id.* "Orders" ¶ 3.

198. *Id.* ¶ 273.

199. *Id.*

200. *Id.* ¶ 274.

201. *Id.* ¶ 276.

202. *Id.* ¶ 277.

203. "Orders" ¶ 5.

requesting an interpretation of the Judgment because after reviewing the list of beneficiaries, the representatives became aware that three persons should not have been included as beneficiaries of the Judgment.²⁰⁴

*A. Composition of the Court*²⁰⁵

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

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Merits

The Court rejected the representative's request for interpretation of the Judgment because the request is not within the meaning and scope of the Judgment and a judgment cannot be modified or annulled by means of a request for interpretation.²⁰⁶

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

204. *Barbani Duarte et al. v. Uruguay, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 243, ¶ 2 (June 26, 2012).*

205. Judge Alberto Pérez Pérez and Judge Leonardo A. Franco did not participate in the deliberation and signing of the Judgment and thus did not participate in this proceeding on the request for interpretation of the Judgment. *Id.* n.1.

206. *Id.* ¶¶ 13, 26.

2. Decisions on Merits, Reparations and Costs

[Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 243 \(Oct. 13, 2011\).](#)

[Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 243 \(Oct. 13, 2011\).](#)

[Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Concurring Opinion of Judge Diego García-Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 243 \(Oct. 13, 2011\).](#)

[Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Concurring Opinion of Judge Margarette May Macaulay, Inter-Am. Ct. H.R. \(ser. C\) No. 243 \(Oct. 13, 2011\).](#)

[Barbani Duarte et al. v. Uruguay, Merits, Reparations and Costs, Concurring Opinion of Judge Rhadys Abreu Blondet, Inter-Am. Ct. H.R. \(ser. C\) No. 243 \(Oct. 13, 2011\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[Barbani Duarte et al. v. Uruguay, Request for Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 243 \(June 26, 2012\).](#)

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Barbani Duarte et al. v. Uruguay, Admissibility Report, Report No. 123/06, Inter-Am. Comm'n H.R., Case No. 10.792 \(Oct. 27, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Barbani Duarte et al. v. Uruguay, Report on Merits, Report No. 86/09, Inter-Am. Comm'n H.R., Case No. 12.553 \(Aug. 6, 2009\).](#)

5. Application to the Court

[Barbani Duarte et al. v. Uruguay, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.587, \(March 16, 2010\).](#)

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