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CASE 12.721

REPORT ON THE MERITS (PUBLICATION)

ÁNGEL PEDRO FALANGA
ARGENTINA

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I. INTRODUCTION

1. On April 2, 2001, the Inter-American Commission on Human Rights (hereinafter "the IACHR," "the Commission," or "the Inter-American Commission") received a petition presented by Diego Jorge Lavado, Carlos Eduardo Varela Álvarez, and Alejandro Giménez Puga (hereinafter "the petitioner") alleging that the Argentine Republic (hereinafter also "Argentina," "the State," or "the Argentine State") was responsible for violating a number of rights enshrined in the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention"), to the detriment of Ángel Pedro Falanga in the context of criminal processes brought against him for the offenses of monopoly and economic subversion.

2. The Commission approved admissibility report 87/09 on August 7, 2009.¹ On August 14, 2009, the Commission notified the parties of the report and made itself available to help them reach a friendly settlement, but the conditions were not met for resolving the case using that process. The parties were given the time provided for in the Rules of Procedure to submit additional comments on the merits. All the information received was duly transferred between the parties.

II. POSITIONS OF THE PARTIES

A. Petitioner

3. The petitioner stated that in June 1980, the military government led by Jorge Rafael Videla passed *de facto* laws 22,229 and 23,334 blocking the owners of the so-called "Greco Business Group" from managing their corporations.

4. It stated that in April 1980, on charges filed by the Prosecutor of the Federal Appeals Chamber of Mendoza, an investigation was launched into the members of the Greco Business Group and all the members of its leadership were ordered arrested—including Mr. Ángel Pedro Falanga—for the offenses of monopoly and economic subversion, as set forth in laws 12,906 and 20,840, respectively.

5. It stated that Mr. Falanga lived outside the country for five years, but on December 11, 1985, he voluntarily turned himself in to the Federal Judge of Mendoza and was placed in pretrial detention until April 7, 1986, at which point he was released on bail while the legal proceedings brought against him continued.

6. It stated that on May 17, 1993, the Lower Federal Court convicted Mr. Falanga of the crime of monopoly and sentenced him to three years in prison (suspended), a ban on engaging in commerce, and a fine. It stated that on appeal, on November 7, 1995, the Federal Appeals Chamber of Mendoza change the sentence to one year and six months of prison, a ban on engaging in commerce, and a fine.

7. It also stated that on February 17, 1997, the Federal Trial Judge convicted the alleged victim of economic subversion and sentenced him to three years of imprisonment, a ban on engaging in commerce, and a fine. The petitioner noted that the Office of the Public Prosecutor appealed the decision, and in response to the appeal, on March 17, 1999, the Federal Appeals Chamber increased the prison sentence to four years.

8. It indicated that in the same decision, the Federal Appeals Chamber joined both the sentences to establish a single sentence of four years and six months in prison, a five-year ban on participating in commerce, and the payment of a fine of US\$160,000. It noted that in response to this sentence, the alleged victim filed for a writ of *habeas corpus* to prevent it from being executed.

9. It noted that the ruling by the Federal Appeals Chamber resulted in the detention of the alleged victim from March 17 until November 5, 1999, when he was once again released after the Supreme Court of Justice granted an extraordinary remedy sought by his defense attorney.

¹ IACHR Report No. 87/09, Petition 204-01, Admissibility, Ángel Pedro Falanga, Argentina, August 7, 2009. In that report, the IACHR declared the petition admissible with respect to the possible violation of the rights enshrined in articles 8 and 25 of the American Convention, in conjunction with Article 1(1), and inadmissible regarding Article 5 of the Convention.

10. It stated that this second release was granted with restrictions on his movement requiring him to appear before the Federal Appeals Chamber of Mendoza every Wednesday and ordering him not to leave his home for more than 24 hours without informing the competent authority.

11. It stated that the alleged victim was held in pretrial detention twice: first, starting on December 11, 1985, for four months; and second, for eight months as a result of the guilty verdict issued by the Federal Chamber of Mendoza on April 17, 1999.

12. It alleged that the first process involving the crime of monopoly lasted more than nine and a half years, from the moment he turned himself in until the decision on the appeal; and the second for the crime of economic subversion lasted more than 13 years, from the moment he turned himself in until the higher court ruling.

13. It stated that the law codifying the offense of monopoly under which Mr. Falanga was convicted was repealed by the same military government that had enacted it and replaced by a less harsh law. However, this law was not applied to the benefit of the victim. It also stated that the conduct defined as the offense of economic subversion for which the alleged victim was convicted was decriminalized in 2002.

14. With regard to rights, it alleged violation of the rights to **fair trial, judicial protection, and personal liberty**. Regarding the rights to fair trial and judicial protection, it stated that the competent authorities were not diligent in pursuing the process brought against Mr. Falanga, having violated the reasonable period of time requirement established in Article 8(1) of the American Convention due to the excessive duration of the process, which, in its opinion, is not justified based on inter-American standards. It stated that the Federal Appeals Chamber of Mendoza indicated that "The pleading charging violation of the Pact of San Jose, Costa Rica, with respect to the inordinate length of the judicial proceeding from initiation to conviction, is found to be formally acceptable." It added that being subjected to a criminal process for an unreasonable period of time also violated the principle of presumption of innocence.

15. Regarding **personal liberty**, it argued that this right was violated by the measures restricting the alleged victim's freedom of movement during a lengthy period of time, measures that affected his ability to travel within and outside the country. In this regard, it noted that a restriction on liberty—even in the context of conditional release—that is prolonged without justification is indeed equivalent to preemptive punishment.

B. Position of the State

16. The State indicated that on March 31, 1980, the Federal Appeals Prosecutor of Mendoza filed a complaint against the executives of the "Greco Economic Group" for the crimes of monopoly and economic subversion. It stated that in the context of that investigation, the alleged victim was ordered detained along with other individuals. Likewise, the *de facto* military government ordered the take-over of several companies in the "Greco Economic Group" through laws 22,229 and 22,334.

17. The State described the criminal process in similar terms as the petitioner, with the exception of several details described hereinafter. It said that in response to this process, Mr. Falanga fled the country, and therefore, an international warrant was issued for his arrest. It stated that this situation persisted for five years, until December 11, 1985, when the alleged victim turned himself in to the Federal Judge of Mendoza, who ordered him placed in pretrial detention. This pretrial detention remained in force until April 7, 1986, when he was granted release.

18. It stated that on July 19, 1988, the Prosecutor filed formal charges against Mr. Falanga for the crime of monopoly, as in his capacity as an accountant, he handled the Greco Group's finances in Mendoza. It stated that according to the Prosecutor, the alleged victim used his position to conduct financial transactions with the various enterprises of the Greco group to distort prices in the domestic wine market and crush the competition from other companies.

19. It stated that on May 17, 1993, the Lower Federal Court convicted the alleged victim of the crime of monopoly and sentenced him to three years in prison (suspended), banned him from engaging in commerce for three years, and ordered him to pay a fine. It stated that this judgment was amended on November 7, 1995,

by the Federal Appeals Chamber of Mendoza, which reduced the prison term to one year and six months, but upheld the ban on engaging in commerce and the fine.

20. It stated that parallel to this process, another process was carried out against the alleged victim for the crime of economic subversion. It also stated that on February 17, 1997, Mr. Falanga was convicted of economic subversion and sentenced him to three years of imprisonment, a ban from engaging in trade, and a fine. It stated that the Office of the Public Prosecutor appealed the decision, and on March 17, 1999, the Federal Appeals Chamber increased the prison sentence to four years.

21. It noted that in the context of this latter process, the Federal Chamber moved to combine Mr. Falanga's two sentences into a single sentence of four years and six months in prison, five years banned from participating in commerce, and the payment of a fine. It stated that the Chamber ordered that the sentence be effectively served as a consequence of the alleged victim's having been a fugitive for a long period of time. The alleged victim's conditional release was therefore canceled, and he was ordered immediately detained.

22. It stated that the alleged victim was held until November 5, 1999, when the Federal Chamber of Mendoza granted him release on the effective suspension of execution of the prison term as a result of the granting of an extraordinary remedy pending resolution by the Supreme Court of Justice of the Nation. It stated that the remedy was rejected by the Supreme Court on February 20, 2001, meaning the sentence was final.

23. It indicated that following the rejection of the remedy, on March 27, 2001, the alleged victim filed for a writ of *habeas corpus* before the Federal Court of Mendoza with the aim of blocking execution of his sentence and asking that any future measure ordering execution of the sentence be declared unconstitutional.

24. It added that on April 24, 2001, the Federal Court found the detention and imprisonment of the alleged victim to be unconstitutional, as it violated the Constitution and international instruments. It stated that the Office of the Public Prosecutor filed a motion to appeal, which was denied by the Federal Chamber. It also filed an extraordinary federal appeal, which was rejected by the Supreme Court of Justice of the Nation on September 5, 2006.

25. With regard to his rights, the State argued that it is not responsible for violating the rights to **fair trial** and **personal liberty**. In this regard, it argued that the allegations of the alleged victim have become abstractions, considering that he was released in November 1999 after the Federal Chamber of Mendoza determined that the length of the process was a violation of the American Convention. Also, the writ of *habeas corpus* was granted, and in that decision, his detention was declared unconstitutional, for which reason the prison sentence was never executed. The State also argued that the alleged victim had effective access to justice and a good quality public defender, who filed the corresponding appeals.

26. Regarding **judicial protection**, it argued that this right had not been violated considering that the alleged victim had access to remedies under domestic jurisdiction, including *habeas corpus*, the result of which was that his sentence was declared unconstitutional. Domestically, the alleged victim also had access to civil action for damages to obtain financial redress for the harm caused by the unreasonable length of the criminal process brought against him.

III. ESTABLISHED FACTS

1. Relevant legal framework

27. The alleged victim was prosecuted for the crimes of monopoly and economic subversion, established in laws 12,906 and 20,840, respectively.

28. The pertinent part of Law 12.906 established as follows:

Article 1. Those who participate directly or through a third party in a consortium, pact, coalition, combination, fusion, or merger of capital aimed at establishing or maintaining a monopoly and profiting from it in one or more

sectors of industry; ground, air, river, or maritime transportation; or domestic or foreign commerce, throughout the country or in one or more parts of it, will be sanctioned under this law for the sole fact of participation.

Article 2. For the purposes of the sanctions established in this law, the following will especially be considered acts of monopoly or tending toward it:

(...) l) the involvement of the same physical or legal person in the leadership, management, or administration of different companies or corporations, or the administration or management of one and the leadership of one or others, when the connection could lead to monopoly, restricting or suppressing competition, or eliminating fair and competitive prices for consumers or users.

m) the direct or indirect acquisition by a physical or legal person of all or part of the shares or stock of another legal person when the objective of the acquisition is to build a monopoly, restrict or suppress competition, or eliminate fair and competitive prices for consumers or users.²

29. This law was repealed and replaced by Law 22,262 of August 1, 1980. The part of Law 22.262 pertinent to this case read as follows:

Article 1. Acts or conduct related to the production and exchange of goods or services that limit, restrict, or distort competition or constitute abuse of a dominant market position that could harm the general economic interest are prohibited and shall be sanctioned pursuant to the provisions of this law.

Article 2. For the purposes of this law:

a) a person enjoys a dominant market position when, for a certain product or service, the person is the only buyer or seller domestically, or, if not the only one, is not exposed to substantial competition.

b) two or more people enjoy a dominant market position when, for certain product or service, they do not effectively compete with each other and do not face substantial competition from third parties throughout the domestic market or in a segment thereof.³

Article 46 Law 12,906 is hereby repealed. The cases in progress before administrative or judicial bodies as of the entry into force of this law will remain subject to Law 12,906.

30. For its part, Law 20,840 codified the crime of economic subversion in its Article 6 as follows:

Article 6. Those who improperly relocate, destroy, damage, disappear, hide, or fraudulently lower the value of raw materials, products of any kind, machinery, equipment, or other capital goods or jeopardize, without justification, their asset value, either maliciously or with a profit motive, thereby endangering the normal operation of a commercial, industrial, agricultural, mining, or service establishment, shall be punished with two to six years in prison and a fine of between seventy-five thousand and five million pesos, in the absence of an offense with a more severe punishment (...).⁴

2. Criminal process for the crime of monopoly

31. On October 5, 1987, the Central Bank of the Argentine Republic filed a criminal complaint against the alleged victim, arguing that "the accused played a central and essential role in the management of the economic group with the necessary and sufficient decision-making authority and the consequent knowledge of the actions taken (...) the actions of which Falanga is accused clearly fall under Article 6 of law 20,840, the criminal offense of economic subversion (...)."⁵ The information submitted by the parties indicates that in April 1980,

² Law 12,906.

³ Law 22,262, August 1, 1980.

⁴ Law 20,840 of September 28, 1974.

⁵ Annex 1. Criminal complaint filed by the Central Bank of the Argentine Republic against the alleged victim for the crime of economic subversion. Annex to the brief of the petitioner of August 8, 2002.

the investigation was launched into both the crime of economic subversion—described later in this report—and the crime of monopoly, described in this section.

32. On July 19, 1988, the Federal Prosecutor filed charges against the alleged victim for the crime of monopoly established in Article 2, subparagraphs (l) and (m) of Law 12,906, which “punishes the involvement of the same person—physical or legal—in the leadership, management or the administration or management of one and the leadership of one or others, when the connection could lead to monopoly or the restriction or suppression of competition, or the elimination of fair and competitive prices for consumers or users.”⁶

33. In 1988, the judge in the case ruled to partially and provisionally dismiss the criminal process against the alleged victim for the crime of monopoly because “there was not sufficient evidence, at least on the face, to indicate that the accused (Ángel Pedro Falanga) had decision-making authority or direct knowledge of the monopolistic practices investigated.”⁷

34. This decision was appealed by the prosecutor. On May 10, 1988, the Federal Appeals Chamber revoked the decision to dismiss the charges and ordered the alleged victim be placed in pretrial detention. The decision stated:

(...) that all these elements allow for the conclusion that Falanga could not ignore the operations, methodology, objectives, etc. employed by Héctor Greco and the other individuals prosecuted in this case with regard to aspects of “monopoly.”

(...) The interpretation of Law 12,906 must be expansive: that is, it must be possible to broaden the concept from the letter of the law to match its spirit and will (...) the law itself is intended to apply the same punishment in situations analogous to those spelled out and for the list of criminal offenses to not be exhaustive or exclusive but rather a guide, with responsibility falling to the judge to assess the specific characteristics of a case (...) this general consideration is put forth to note that pursuant to the procedural status of this case, it would be incorrect to exclude individuals who have actively participated in the administration of companies that have violated the law.⁸

35. The Commission notes that in 1991, one of the owners of the Greco group being co-prosecuted with the alleged victim was pardoned by the President of the Republic, permanently dismissing the process brought against him.⁹ Based on this, on February 16, 1991, Mr. Falanga asked the National Executive Ranch for pardon, arguing that “a pardon is justifiable in the cases in which the principal actors have been pardoned, as the same should be granted to their underlings,”¹⁰ and requested a meeting with the President of the Republic. The Commission does not have the response to the request for a pardon, but a series of responses are on the record stating it would be impossible to grant him the meeting.¹¹

36. On May 17, 1993, the Federal Trial Court found the alleged victim guilty and sentenced him to three years in prison for the crime of monopoly pursuant to Article 2, sections l) and m) of Law 12,906, and banned him from participating in commerce, pursuant to Article 7, section d) of that law. The ruling stated:

(...) regarding Ángel Pedro Falanga, due to his profession as a certified public accountant, his history, and his specific activity within the bank, they cannot fail to recognize from any perspective, that through the manipulation carried out by the management itself and by Banco de los Andes officials, through the use of that lending institution to collect savings from the public and channel those

⁶ Annex 2. Charges brought by the Federal Prosecutor against the alleged victim for the crime of monopoly of July 19, 1988. Annex to the brief of the petitioner of August 8, 2002.

⁷ Annex 2. Decision of the Federal Chamber of Appeals of May 10, 1988, revoking the provisional dismissal of the charge of monopoly. Annex to the brief of the petitioner of August 8, 2002.

⁸ Annex 3. Decision of the Federal Chamber of Appeals of May 10, 1988, revoking the provisional dismissal of the charge of monopoly. Annex to the brief of the petitioner of August 8, 2002.

⁹ Annex 4. Resolution of Acting Federal Judge dismissing the process against Jorge Bassil in view of his pardon. Annex to the brief of the petitioner of August 8, 2002.

¹⁰ Annex 5. Request for pardon sent from the alleged victim to the President of the Argentine Republic on February 16, 1991. Annex to the brief of the petitioner of August 8, 2002.

¹¹ Annex 6. Letters of April 20, 1994, and March 14, 2001. Annex to the brief of the petitioner of August 8, 2002.

resources to the companies of the dominant group, which enabled a consolidation of companies—controlled by the dominant group—and associated with the main phases of wine production, it can easily be concluded that the aforementioned banking entity acted as a financier in this consolidation process, with the consequences already discussed.¹²

37. The decision noted for the record that the alleged victim and his co-defendants requested application of the new, less-harsh law as follows: “(...) as regards law 22,262, they state that it is less harsh than law 12,906 because its Article 1 requires potential harm, as well as coordination, which have not been proven in this case (...) as they were not exposed to substantial competition, nor has it been proven that, from a dominant position, partnerships were formed with two or more people, from which it can be concluded that with the application of the substantive elements of the current law, the defendants would not be convicted.”¹³

38. Regarding this pleading, the court stated:

(...) although Law 22,262 is in force, its Article 46 explicitly establishes as follows: “repeal Law 12,906 – The cases in progress before administrative or judicial bodies as of the entry into force of this law will remain subject to Law 12,906.” Thus, as we will see later on, the criminal conduct of the defendants is punished by the new law, in its broadest wording in articles 1 and 41, and thus the previous law, 12,906, shall be applied as provided for under this new law (...).¹⁴

39. Subsequently, both the Prosecutor and the alleged victim and the other convicted parties filed appeals and motions of nullification. The Prosecutor argued, among other things, that the punishment “is not in accordance with the magnitude of the harm caused.” The alleged victim alleged a series of due process violations and underscored that because Law 22,262 was less harsh and “based on the provisions of the Pact of San José, Costa Rica (Article 9), the aforementioned legal provision should be applied (Law 22,262); and if not, its Article 46 should be considered to refer to the procedure that must be followed in processing cases already launched under Law 12,906 (...).”¹⁵

40. On November 7, 1995, Court B of the Federal Appeals Chamber of Mendoza dismissed the appeal and motion of nullification. However, it reduced the sentence of the alleged victim to one year and six months in prison, suspended.¹⁶ The court found:

(...) Law 22,262 does not offer treatment that could be classified in this case—and based on its circumstances—as more benevolent for the situation under investigation (...) there is no indication that the provisions of articles 1 and 2 of Law 22,262 would be substantially less harsh than those of Law 12,906, as the element of “coordination” that, according to the appellant, must be present in the case under the new law is only applicable in the case of subsection b) of Article 2, as under subsection a), the criminal conduct is possible from a single individual, with no coordination.

(...) it would be almost naive to believe that Falanga only provided technical support as part of his profession (...) and that his accounting support was intended to protect or ensure the legality of the financial manipulations carried out by the Group.¹⁷

¹² Annex 7. Guilty verdict against the alleged victim for the crime of monopoly, issued by the First Federal Trial Court. Annex to the brief of the petitioner of August 8, 2002.

¹³ Annex 7. Guilty verdict against the alleged victim for the crime of monopoly, issued by the First Federal Trial Court, page 4992. Annex to the brief of the petitioner of August 8, 2002.

¹⁴ Annex 7. Guilty verdict against the alleged victim for the crime of monopoly, issued by the First Federal Trial Court. Annex to the brief of the petitioner of August 8, 2002.

¹⁵ Annex 8. Decision of Court B of the Federal Appeals Chamber of Mendoza, November 7, 1995. Annex to the brief of the petitioner of August 8, 2002.

¹⁶ Annex 8. Decision of Court B of the Federal Appeals Chamber of Mendoza, November 7, 1995. Annex to the brief of the petitioner of August 8, 2002.

¹⁷ Annex 8. Decision of Court B of the Federal Appeals Chamber of Mendoza, November 7, 1995. Annex to the brief of the petitioner of August 8, 2002.

41. Regarding the punishments, it stated that:

(...) based on an overall assessment of the case, not only should the prosecutor's pleadings be dismissed, but the sentence issued to both co-defendants should be reduced. (...) with regard to Mr. Falanga, I conclude it would be just to reduce his sentence to one year and six months in prison, suspended (Article 26, Penal Code). Although Mr. Falanga acted and collaborated on the execution and planning of the manipulation carried out, he did not have ownership of the capital in question, nor can he be described as the mastermind or fundamental actor behind the Group's economic impacts.¹⁸

3. Criminal process for the crime of economic subversion

42. In April 1980, on charges filed by the Prosecutor of the Federal Appeals Chamber of Mendoza, an investigation was launched into the members of the Greco Business Group for the commission of the crime of economic subversion, and all the members of its leadership were ordered arrested, including Mr. Ángel Pedro Falanga.¹⁹

43. On February 17, 1997, the Federal Trial Court convicted Mr. Falanga of the crime of economic subversion codified in Article 6 of Law 20,840 and sentenced him to three years in prison (suspended), a ban on engaging in commerce, and a fine.²⁰ This decision was appealed by the parties.

44. On March 17, 1999, the members of Court B of the Federal Appeals Chamber of Mendoza upheld the conviction of the alleged victim for the crime of economic subversion, but amended and joined the sentence with the sentence from the conviction for the crime of monopoly, handing down a combined sentence of four years and six months in prison, a five-year ban on commercial activity, and the payment of a fine.²¹ The decision ruled to "end the conditional release granted to Ángel Pedro Falanga (...) and order his immediate detention."²²

45. This decision was appealed by the alleged victim. Finally, on February 20, 2001, the Supreme Court of Justice of the Nation denied the extraordinary remedy requested, making the decision described in the above paragraph final. In its decision, the Supreme Court found that "the extraordinary remedies granted (pages 6984/6989) are not admissible (Article 280 of the Civil and Commercial Procedural Code of the Nation). Therefore, the extraordinary resources requested are denied. Let it be known and returned to the requesters."²³

4. Writ of habeas corpus

46. On March 27, 2001, the alleged victim filed for a writ of *habeas corpus* "asking that future decisions ordering the execution of the judgment to deprive me of my personal liberty be declared unconstitutional." In this regard, he argued that "despite the amount of time that has passed, the jail time I have served, and other harms, as well as not having been able to have my property restored to me, my situation remains uncertain, as after a process lasting 21 years, the courts seek to execute a sentence against me in flagrant violation of the guarantees protected by the Constitution and by the international treaties in force."²⁴

¹⁸ Annex 8. Decision of Court B of the Federal Appeals Chamber of Mendoza, November 7, 1995. Annex to the brief of the petitioner of August 8, 2002.

¹⁹ Annex 9. Judgment of the Federal Court of Mendoza of April 24, 2001. Case File 50900-B. Annex to the brief of the petitioner of March 30, 2001.

²⁰ Annex 9. Judgment of the Federal Court of Mendoza of April 24, 2001. Case File 50900-B. Annex to the brief of the petitioner of March 30, 2001.

²¹ Annex 10. Decision of Court B of the Federal Appeals Chamber of March 17, 1999. Annex to the comments of the petitioner of April 27, 2001.

²² Annex 10. Decision of Court B of the Federal Appeals Chamber of March 17, 1999. Annex to the comments of the petitioner of April 27, 2001.

²³ Annex 11. Decision of the Supreme Court of Justice of the Nation of February 20, 2001. Annex to the brief of the petitioner of August 8, 2002.

²⁴ Annex 12. Preventative writ of *habeas corpus* filed by the alleged victim before a Federal Judge, March 27, 2001. Annex to the brief of the petitioner of August 8, 2002.

47. On April 24, 2001, the Federal Judge in charge of the case admitted the writ of *habeas corpus* and found that effective compliance by the alleged victim with the sentence was unconstitutional, and thereby ordered the Acting Judge of the First Federal Court of Mendoza in case 40.07-B to suspend execution of Mr. Falanga's sentence. The Judge reasoned that:

(...) I have a deep personal conviction—and objective information indicates—that Falanga is an individual who has reintegrated himself into society. In this situation, imprisoning him in the penitentiary makes no sense; in fact, I have no doubt that it would be counterproductive.

(...) The extensive period during which this process has lasted (more than 20 years) is the direct cause for which the order to execute the sentence is baseless. It is precisely the passage of the years that has made the general and specific prevention measures effective.

Based on the foregoing, I conclude that, in compliance with the final judgment in case file 40107-B, pages 6770/6806, the detention of Ángel Pedro Falanga is baseless as it fails to comply with the special and general aims of the punishment, which are considered to be its essence. (...).²⁵

48. On April 25, 2001, the Office of the Public Prosecutor of the Nation appealed the decision, arguing that “under no circumstance can a lower court judge review, via a writ of *habeas corpus*, the execution of a final judgment with the status of Res Judicata, and thus the remedy sought must be dismissed.”²⁶ Based on this, the legal process was forwarded to the Federal Appeals Chamber of Mendoza.²⁷

49. The Federal Appeals Chamber of Mendoza upheld the decision to admit the writ of *habeas corpus*, so on September 11, 2002, the Office of the Public Prosecutor filed for an extraordinary remedy. In the filing, it indicated that “the sentence under review fails to include a substantial examination of the rights invoked in a timely fashion by this office and does not reach a well-founded conclusion supported by current law. Rather, on the contrary, it departs from constitutional and legal precedent to reach a solution based only on the opinion of the judges that, as demonstrated, includes extremely grave omissions and errors.”²⁸ According to the State, this remedy was rejected by the Supreme Court of Justice of the Nation on September 5, 2006.

5. Restrictions on liberty in the framework of the criminal processes

50. The Commission underscores that during the processing of the criminal prosecution of the alleged victim, which took place over the course of more than 20 years, he was subjected to a series of regimens restricting his personal liberty and freedom of movement.

51. Specifically, Mr. Falanga was deprived of liberty from December 11, 1985, until April 7, 1986, after turning himself in to the Federal Judge of Mendoza.²⁹ He was also deprived of liberty again between March 17, 1999—when his conviction for the crime of economic subversion was upheld—and November 5, 1999.³⁰

52. On November 5, 1999, he was granted conditional release, but was banned from leaving the country and required to appear before the Federal Appeals Chamber of Mendoza every Wednesday. He was also ordered not to leave his home for more than 24 hours without informing the competent authority.

53. Additionally, during his prosecution, the victim was prohibited from leaving the country, and if he wanted to do so, he had to request authorization and post bond. According to the case file, the alleged victim

²⁵ Annex 13. Decision of Federal *Ad-Hoc* Judge of April 24, 2001, granting the writ of *habeas corpus* filed by the alleged victim. Annex to the brief of the petitioner of August 8, 2002.

²⁶ Annex 14. Appeal filed by the Office of the Public Prosecutor of the Nation on April 25, 2001. Annex to the brief of the petitioner of August 8, 2002.

²⁷ Annex 15. Appeal forwarded to the Appeals Chamber of Mendoza on April 26, 2001. Annex to the brief of the petitioner of August 8, 2002.

²⁸ Annex 16. Extraordinary remedy filed by the Office of the Public Prosecutor on September 11, 2002. Annex to the brief of the petitioner, September 25, 2002.

²⁹ Annex 17. Judgment of the Federal Court of Mendoza of April 24, 2001. Case File 50900-B. Annex to the brief of the petitioner of March 30, 2001.

³⁰ Annex 18. Judicial Gazette, “news of the day” section, May 17, 2001. Annex to the brief of the petitioner, December 14, 2004.

asked for and obtained authorization to leave the country on bond at least 15 times on the following dates: March 22, 1989, December 4, 1989, February 12, 1991, July 12, 1994, March 1, 1995, May 1, 1995, July 6, 1995, October 14, 1995, August 13, 1996, April 25, 1997, December 20, 1997, March 18, 1998, November 19, 1998, December 14, 1999, and December 22, 2000.³¹

54. On July 6, 2001, in response to a request by the alleged victim for the certification indicating that he was not restricted from temporarily leaving the country, the Federal Ad-Hoc Judge found that the preventative *habeas corpus* that had been granted was under appeal before the Federal Appeals Chamber, for which reason "this individual cannot be authorized to leave the country, as his procedural status is now different than the one he had when previous authorizations were granted (...)." ³²

55. According to the information available, on January 29, 2012, the alleged victim tried to leave the country. However, the General Office on Migratory Movement refused to allow him to leave, as a ban on him leaving the country was in place and "there is no record that the interdiction (prohibition of exit) on him has been lifted."³³ The office indicated that the travel ban was related to the judgment of the Federal Court of Mendoza of June 20, 2001.³⁴

56. In addition to the limitations described in the above paragraphs, the IACHR notes that Mr. Falanga was also required to appear at different times throughout the processes and while serving the sentence.³⁵

IV. CONSIDERATIONS OF LAW

A. The right to a reasonable period of time³⁶

57. The IACHR recalls that Article 8(1) of the American Convention stipulates that all individuals have the right to be heard within a reasonable time period and with all due guarantees. The Inter-American Court has found that evaluation of the reasonable period of time must be conducted for each specific case with regard to the total length of the process, from the first procedural action until the issuance of the final judgment.³⁷

58. The Commission recalls that for the purposes of determining the reasonableness of the period of time, inter-American case law has established four elements: (a) the complexity of the matter, (b) the procedural activities of the individual involved, (c) the conduct of the judicial authorities, and (d) the effect on the legal status of the victim.³⁸ The Inter-American Court has found that the State is responsible for justifying—based on the above indicated criteria—the time taken to deal with cases, and where it fails to do so, the Court has broad authority to conduct its own assessment.³⁹

³¹ Annex 19. Authorizations to leave the country. Annex to the brief of the petitioner of August 8, 2002.

³² Annex 20. Decision of the Federal Judge of July 6, 2001. Annex to the brief of the petitioner of August 8, 2002.

³³ Annex 21. Official notification from the General Office on Migratory Movement of January 29, 2012. Annexed to the communication of the petitioner, February 25, 2012.

³⁴ Annex 21. Official notification from the General Office on Migratory Movement of January 29, 2012. Annexed to the communication of the petitioner, February 25, 2012.

³⁵ Information provided by the wife of Ángel Pedro Falanga, contained in the brief of May 4, 2006; Information provided by Ángel Pedro Falanga on April 19, 2004. Annex to the communication sent on May 20, 2004; Annex. Post on legal website "Mendoza Law." Annex to the communication of Ángel Pedro Falanga of December 14, 2004; Annex. Official notification of January 29, 2012. Annex to the communication of the petitioner, February 25, 2012; Annex. Information provided by Ángel Pedro Falanga on April 19, 2004. Annex to the communication sent on May 20, 2004.

³⁶ Article 8(1) establishes that 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. Likewise, Article 25(1) of the American Convention stipulates that: 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.

³⁷ Inter-American Court, Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, párr.306.

³⁸ IACHR Report No. 75/15, Case 12.923. Merits. Rocío San Miguel Sosa et al. Venezuela. October 28, 2015, para 200; Inter-American Court, Case of Kawas Fernández v. Honduras, Merits, Reparations, and Costs. Judgment of April 3, 2009, Series C No. 196, párr.112.

³⁹ Inter-American Court, Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, párr.306.

59. In this case, beginning in 1980, the alleged victim was subjected to two criminal prosecutions for the crimes of monopoly and economic subversion. In the first process, he was convicted by a lower court on May 17, 1993, which was upheld by a higher court on November 7, 1995, meaning the process lasted around 15 years. In the process on the crime of economic subversion, he was convicted by a lower court on February 17, 1997, which was upheld by a higher court on March 17, 1999. Likewise, the extraordinary remedy sought was rejected by the Supreme Court of Justice of the Nation on February 20, 2001, and therefore, the process lasted around 21 years.

60. Additionally, the Commission notes that on March 27, 2001, the alleged victim filed for a writ of *habeas corpus* to block execution of the sentence for economic subversion, which had ordered the sentences for the two crimes unified and the immediate detention of Mr. Falanga. The remedy was resolved definitively on September 5, 2006, or more than five years after it was filed.

61. Next, the IACHR will analyze whether the period of time passed is reasonable pursuant to the above-described criteria. As regards the complexity of the matter, the IACHR observes that although there were other defendants in addition to the alleged victim, the facts are not particularly complex, and the corresponding agencies should have been able to determine the alleged victim's degree of participation in the offenses alleged with regard to the same facts.

62. Regarding the procedural activity of the interested party, the Commission notes that although the alleged victim left the country between 1980 and 1985, the State did not describe the way in which, pursuant to domestic law, the defendant's failure to appear blocked the processes from moving forward. In addition, there is no indication that, subsequent to 1985, he took any actions to block the progress of the investigations or that would justify a delay of such length. Regarding the conduct of judicial authorities, the IACHR observes that the excessive period of time that judicial authorities took to issue their trial court judgments—and in a process that, as indicated, was not particularly complex—is not in any way explained by the State. The record also does not include an explanation of the delay in resolving the remedies filed by the different actors in the process. Specifically regarding the writ of *habeas corpus*, which by its very nature must be resolved particularly quickly, the Commission finds no explanation to justify a delay of more than five years in resolving it, especially when there was no dispute with regard to the facts. Under these circumstances, the Commission finds it unnecessary to look at the fourth element.

63. Based on all this, the IACHR concludes that periods of 15 and 21 years to issue final guilty verdicts against the alleged victim, and five more years to resolve the writ of *habeas corpus*, violated the guarantee of a reasonable period of time.

64. Therefore, the IACHR concludes that the State is responsible for the violation of Article 8(1) of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Ángel Pedro Falanga.

B. The right to personal liberty,⁴⁰ the right to movement and residency,⁴¹ and the principle of presumption of innocence⁴²

65. The Commission recalls that Article 7.5 of the Convention allows for the possibility of applying precautionary measures in lieu of pretrial detention, and that release could be contingent on guarantees to ensure an individual appears at trial.⁴³

⁴⁰ Article 7(5) establishes that, "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial."

⁴¹ The pertinent part of Article 22 of the Convention establishes that: 1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. 2. Every person has the right to leave any country freely, including his own. 3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

⁴² Article 8(2) of the American Convention establishes that "Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law (...)."

⁴³ Inter-American Court. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Serie C No. 330, para. 112.

66. The IACHR finds that, as with pretrial detention, alternative measures can only be imposed when there is sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation, and as long as such measures are necessary to ensure that the defendant will not obstruct the process or escape from justice.⁴⁴ Likewise, given that several of these measures also involve a restriction on the enjoyment of other rights, such as the right to movement, they must be applied pursuant to the principles of legality, necessity, and proportionality.⁴⁵

67. In the case of *Canese v. Paraguay*, the Inter-American Court found that “precautionary measures affecting personal freedom and the freedom of movement of the defendant are of an exceptional nature, because they are limited by the right to presumption of innocence and the principles of necessity and proportionality, essential in a democratic society. (...) These precautionary measures may not constitute a substitute for imprisonment or fulfill the purposes of the latter; as can happen, if they continue to be applied, when they have ceased to fulfill the functions mentioned above. Otherwise, the application of a precautionary measure affecting the personal freedom and freedom of movement of the defendant would be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law.”⁴⁶

68. The Commission finds, therefore, that the improper use of precautionary measures in the framework of criminal processes that restrict personal liberty and other rights, such as the right to freedom of movement, can, in addition to impacting the exercise of these rights, also impact the principle of presumption of innocence set forth in Article 8(2) of the American Convention. The IACHR finds that, depending on the nature and severity of the measures, imposing them without proper justification and/or for lengths of time that extend beyond what is reasonable can be equivalent to a preemptive punishment.⁴⁷

69. In this case, the Commission recalls that during the criminal processes against him, the alleged victim suffered a series of restrictions on his personal liberty and freedom of movement, with different degrees of severity. The measures included pretrial detention on two occasions—that is, from December 1985 to April 1986; and between March and November 1999—which were replaced by other measures, such as the requirement to appear regularly before different authorities and the ban on leaving the country and the province, which required him to obtain authorization and post a bond in order to do so. The information available indicates that these measures extended throughout the criminal process, which, as already indicated, lasted for the unreasonably-long period of 20 years. Under these circumstances, the IACHR finds that a reasonable time limit was not placed on the measures, and therefore, they constituted a preemptive punishment for the charges and limitations on the alleged victim’s rights.

70. The Commission also observes that, according to the information available, in 2012, the alleged victim tried to leave the country but was prevented from doing so because of an existing travel ban. The Commission finds that the continuation of the ban for a period obviously longer than the punishment imposed, particularly following the Supreme Court’s decision, is not grounded in the objectives required by Inter-American standards for limiting freedom of movement.

71. Based on this, the IACHR concludes that the State is responsible for the violation of the rights established in articles 7(5), 8(2), 22(1), 22(2), and 22(3), in conjunction with Article 1(1) of the Convention, to the detriment of Ángel Pedro Falanga.

⁴⁴ Inter-American Court, Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 111; IACHR, Measures to Reduce Pre-trial detention, OEA/Ser.L/V/II.163/Doc.105, July 3, 2017, para. 107.

⁴⁵ IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.Doc.46/13, December 30, 2013, para. 230.

⁴⁶ Inter-American Court, Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs. Judgment of January 31, 2004. Series C No. 111, párr.129.

⁴⁷ In general, see: IACHR. Report No. 86/09, Case 12.553, Merits, José, Jorge and Dante Peirano Basso, Uruguay, August 6, 2009, para. 133; IACHR Report No. 2/97, Case 11.205, Merits, Jorge Luis Bronstein *et al.*, Argentina, March 11, 1997, para. 12; IACHR. Third Report on the Human Rights Situation in Paraguay, OEA/Ser./L/VII.110. Doc. 52, adopted on March 9, 2001. Chap. IV, para. 34. Also see: Inter-American Court. Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 69; Inter-American Court. Case of Acosta Calderón v. Ecuador. Judgment of June 24, 2005. Series C No. 129, para. 111; Inter-American Court. Case of Tibi v. Ecuador. Judgment of September 7, 2004. Series C No. 114, para. 180; Inter-American Court. Case of the “Juvenile Reeducation Institute” v. Paraguay. Judgment of September 2, 2004. Series C No. 112, para. 229; Inter-American Court. Case of Suárez Rosero v. Ecuador. Judgment of November 12, 1997. Series C No. 35, para. 77.

C. Principles of legality and favorability⁴⁸

72. The Commission recalls that the principle of legality recognized in Article 9 of the Convention governs the actions of State bodies when they move to exercise their power to punish.⁴⁹ The Court has indicated that, as a corollary to the principle of legality, pursuant to Article 9 of the Convention, the State is prohibited from exercising its punitive power by retroactively applying criminal laws that increase punishments, establish aggravating factors, or establish aggravated forms of a offense.⁵⁰ Along these lines, the Court has also established that the same provision underpins the principle of the retroactivity of the most favorable criminal law, on finding that, “If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”⁵¹

73. In this case, the petitioner argued that the principle of favorability of the most favorable criminal law was violated, as the crime of monopoly was repealed and replaced by a less harsh law, which nevertheless was not applied in his case. It also stated that the offense of economic subversion was decriminalized in 2002, but that this decriminalization was not applied to this case.

74. Regarding this, the Commission underscores that although Law 12,906 was repealed and replaced by Law 22,262 in August 1980, a judgment issued on November 7, 1995, by the Court B of the Federal Appeals Chamber of Mendoza, which was the final judgment regarding the crime of monopoly, the Court substantively analyzed the argument of favorability and determined that Law 22,263 was no less harsh and would not benefit Mr. Falanga. This involves interpretation of criminal law, which falls primarily to domestic criminal judges, and the Commission does not have additional elements indicating the interpretation is arbitrary or a violation of the American Convention. Regarding the crime of economic subversion, the IACHR underscores that the petitioner did not provide information proving that this criminal offense was subsequently decriminalized, nor did it provide the exact date on which it happened to enable a determination—with certainty—that the punishment was materially without merit⁵² or other potential effects that the alleged decriminalization would have on Mr. Falanga’s situation.

75. Therefore, the Commission finds that the State is not responsible for the violation of the principles of legality and favorability established in Article 9 of the American Convention.

V. PROCEEDINGS SUBSEQUENT TO REPORT No. 53/19

76. The Commission adopted Merits Report No. 53/19 on May 4, 2019, comprising paragraphs 1 to 75 above, and transmitted it to the State on June 13 of the same year. In that report the Commission recommended:

1. Provide full pecuniary and nonpecuniary reparations for the rights violations declared in this report.
2. Order the measures of non-repetition necessary to ensure that in practice, criminal processes are conducted within a reasonable period of time, and that the precautionary measures ordered during that period do not extend to unreasonable durations and become preemptive punishments.

77. In the proceedings subsequent to the notification of the merits report, the Commission received several reports from the State and briefs from the petitioner regarding compliance with the recommendations established by the IACHR. During this period, the Commission granted 7 extensions to the State for the

⁴⁸ Article 9 of the Convention establishes that “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

⁴⁹ IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/Doc.49/15, December 31, 2015, para. 253.

⁵⁰ Inter-American Court. Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111. Par. 175.

⁵¹ Inter-American Court. Case of Ricardo Canese v. Paraguay. Merits, Reparations, and Costs. Judgment dated August 31, 2004. Series C No. 111. Par. 178.

⁵² See: Inter-American Court. Caso Mémoli v. Argentina. Preliminary Objections, Merits, Reparations, and Costs. Judgment dated August 22, 2013. Series C No. 265. Par. 158.

suspension of the time period provided for in Article 51 of the American Convention. In these extension requests, the Argentine State reiterated its willingness to comply with the recommendations. It also expressly waived the right to file preliminary objections for failure to comply with the deadline in the event that the case was submitted to the Inter-American Court.

78. After evaluating the available information on the status of compliance with the recommendations, the Commission decided on May 6, 2021, by absolute majority not to send the case to the Inter-American Court and to proceed with the publication of the merits report. In the section below, the Commission makes its determinations on compliance with its recommendations.

VI. ANALYSIS OF COMPLIANCE WITH RECOMMENDATIONS

79. The IACHR notes that on July 16, 2020, the parties signed an "Agreement on Compliance with Recommendations". The Commission also notes that on March 8, 2021, Executive Decree No. 149/2021 was published in the Official Gazette, approving said agreement.

80. The Commission notes that the Agreement on Compliance with Recommendations states that the State shall adopt the following measures:

1. Non-pecuniary reparation measures: (a) publish the agreement in the "Official Gazette of the Argentine Republic"; (b) the parties understand that the full force and effect of the new Code of Criminal Procedure of the Nation gives satisfaction to the second recommendation of the Merits Report, (c) forward a copy of the Merits Report and the agreement to the Supreme Court of Justice of the Nation and to the General Board of Courts, for their knowledge, "taking into account that the report contains valuable guidelines for the interpretation of the international obligations enforceable in matters of reasonable time in judicial proceedings and the duration of precautionary measures adopted in criminal proceedings"; to forward a copy of the Merits Report and the agreement to the judicial authorities involved in the criminal case against Mr. Falanga.

2. Measures of pecuniary reparation: constitute an ad-hoc Arbitral Tribunal to determine the pecuniary reparations and the costs of the international and arbitration proceedings, in accordance with the international standards established by the Inter-American Court. The tribunal shall be formed no later than 45 days from the publication of the Decree. The arbitration process shall begin once the IACHR approves the agreement and publishes the report provided for in Article 51.1 of the Convention.

81. The IACHR assesses the measures adopted by the State to reach an agreement on compliance with recommendations with the petitioning party.

82. The Commission notes that the parties understand that with the entry into force of the new Code of Criminal Procedure, the second recommendation of the IACHR, regarding measures of non-repetition, has been complied with. In this regard, given that the Commission does not have detailed information on the norm or its implementation, it will not follow up on this measure of reparation, taking into account the will of the parties, although this does not prevent it from analyzing the content of said regulations on another occasion. Likewise, with respect to the compliance agreement, the IACHR notes that the parties have made progress towards the establishment of the Arbitral Tribunal and that the agreed measures are still pending compliance.

VI. PROCEEDINGS SUBSEQUENT TO REPORT No. 326/21 AND INFORMATION ABOUT COMPLIANCE

83. The Commission adopted Merits Report No. 326/21 (final) on November 19, 2021 and transmitted it to the State on November 29 of the same year, granting it a period of four weeks to inform the IACHR on the measures adopted to comply with its recommendations.

84. In the proceedings subsequent to the notification of the final merits report, the Commission did not receive additional information from the State.

VII. FINAL CONCLUSIONS AND RECOMMENDATIONS

85. The Commission concludes that the Argentine State is responsible for the violation of the rights established in articles 7(5) (personal liberty); 8(1) and 8(2) (fair trial); and 22(1), 22(2), and 22(3) (freedom of movement and residency) of the American Convention on Human Rights, in conjunction with the obligations established in articles 1(1) of the Convention.

86. The Commission concludes that the State is not responsible for the violation of the principles of legality and favorability established in Article 9 of the American Convention.

87. Based on the analysis and conclusions found in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES TO THE STATE OF ARGENTINA THE FOLLOWING RECOMMENDATION, WITH A VIEW TO THEIR FULL IMPLEMENTATION:

1. Provide full pecuniary and nonpecuniary reparations for the rights violations declared in this report.

VIII. PUBLICATION

88. Pursuant to the foregoing and in accordance with the provisions of Article 51(3) of the American Convention, the Inter-American Commission on Human Rights decides to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, in accordance with the norms established in the instruments that regulate its mandate, will continue to evaluate the measures adopted by the State of Argentina with respect to the above recommendations, until it determines that they have been fully complied with.

Approved by the Inter-American Commission on Human Rights on the 31st day of December 2021. (Signed): Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.