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Title/Style of Cause: Jorge Luis Bronstein, Jorge Francisco Alfonso, Hector Fabian Moyano, Juan Carlos Monino, Humberto Gil Suarez, Walter Karlikowski, Juan C. Munoz Parada, Felipe Cesar Melchiore, Carlos Alberto Montaliber, Antonio Fernandez N., Jose Luis Estevez, Alberto Fagoaga, Catalino Heber Sanabria, Raquel E. Iparraguirre, Flavio Wilfredo Vallejos, Alfredo Sequil C., Gabriel Romero Esquiven, Luciano Roberto Lescano, Eduardo Munoz Fernandez, Fabian Fernando Perez, Victor Marzana Corbo, Carlos Fabian Corbo, Jose B. Arredonde v. Argentina
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Decided by: Chairman: Ambassador John Donaldson;
First Vice Chairman: Dr. Carlos Manuel Ayala Corao;
Second Vice Chairman: Professor Robert Kogod Goldman
Members: Ambassador Alvaro Tirado Mejia, Dean Claudio Grossman, Dr. Jean Joseph Exume.
Commissioner Oscar Lujan Fappiano, national of Argentina, did not participate in the discussion and voting on this case, in accordance to Art. 19 of the Regulations of the Commission.
Dated: 11 March 1997
Citation: Luis Bronstein v. Argentina, Case 11.205, Inter-Am. C.H.R., Report No. 2/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)

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I. INTRODUCTION

1. From October 1993 to the present, the Inter-American Commission on Human Rights (hereinafter "the Commission") has received numerous claims against the Argentine Republic, the common denominator of which has been an excessively prolonged period of preventive detention for persons who were subjected to criminal proceedings but never sentenced. In many instances, those claims were rejected because they failed to comply with the norms set forth in the American Convention on Human Rights (hereinafter "the American Convention") and in the Commission's Regulations. As of the date shown above, however, work was begun on the processing of thirty-six cases that did indeed meet the requirements established in Article 46 of the American Convention. It should also be noted that thirteen of that group have been set aside due to the petitioners' failure to reply to the Commission's request for information.

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2. In all, twenty-three of those cases are now being processed by the Commission. Given the similarity of the grounds cited in the claims, the Commission has decided to consolidate these petitions in a single package and consider them as a group.

II. CLAIMS PROCESSED BY THE COMMISSION

Case No.	Petitioner	Term of Remand in Custody	Start of Proceedings
11.205	Jorge Luis Bronstein(+)	3 years 3 months	20 Oct. 93
11.236	Jorge Francisco Alonso	6 years 9 months	14 Jan. 94
11.238	Héctor Fabián Moyano(+)	3 years 6 months	23 Feb. 94
11.239	Juan Carlos Moñino	3 years 4 months	23 Feb. 94
11.242	Humberto Gil Suárez	4 years	23 Feb. 94
11.243	Walter Karlikowski	6 years 9 months	23 Feb .94
11.244	Juan C. Muñoz Parada(+)	4 years 6 months	23 Feb. 94
11.247	Felipe César Melchiore(+)	5 years 3 months	23 Feb.94
11.248	Carlos Alberto Montaliber(+)	2 years	23 Feb. 94
11.249	Antonio Fernández N.(+)	3 years 9 months	23 Feb 94
11.251	José Luis Estévez	1 year 4 months	23 Feb. 94
11.254	Alberto Fagoaga	5 years 8 months	23 Feb. 94
11.255	Catalino Heber Sanabria	3 years 4 months	23 Feb. 94
11.257	Raquel E. Iparraguirre (+)	4 years 7 months	23 Feb. 94
11.258	Flavio Wilfredo Vallejos (+)	4 years 7 months	23 Feb. 94
11.261	Alfredo Seguil C. (+)	4 years 6 months	23 Feb. 94
11.263	Gabriel Romero Esquivel(+)	4 years 6 months	23 Feb. 94
11.305	Luciano Roberto Lescano	5 years 2 months	15 Jun. 94
11.320	Eduardo Muñoz Fernández	5 years 10 months	30 Jun. 94
11.326	Fabián Fernando Pérez(+)	3 years	8 Jul. 94
11.330	Víctor Marzana Mendoza	2 years 10 months	19 Jul. 94
11.499	Carlos Fabián Corbo	5 years 6 months	19 Jun. 95
11.504	José B. Arredondo(+)	3 years 3 months	27 Jun. 95

(+) Has now been released

3. As of the date of the present report, twelve of the claimants listed have been set free. The principal cause of their release is application of the computation method established in Law 24,390, which has been in effect since November of 1994. Articles 1, 2 and 7 of that law are transcribed below:

1. The term of preventive prison may not exceed two years. When the number of offenses attributed to the accused or the evident complexity of the cases have made it impossible to conclude the proceedings within the term cited, however, an additional year's time may be granted for just cause, and the corresponding court of appeals must be apprised thereof immediately for purposes of the proper control.

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2. The terms established in the preceding article shall be extended for an additional six months when they have been met pursuant to a sentence of guilt that has not been confirmed.
7. When the two year term established in Article 1 has elapsed, each day of preventive detention will be counted as two days' of imprisonment or one day of hard labor while in prison.

4. Under the terms of the last-cited article, persons who have been tried and are being held in prolonged preventive detention are given the possibility of release by virtue of having served the term stipulated in the sentence condemning them to prison.

5. On July 29, 1996, the Government sent updated information regarding the procedural status of the claimants, including the following statement:

...In most of the cases involved, grievances resulting from prolonged preventive detention are no longer relevant, since the competent tribunals have ruled on substantive questions--in most cases, having satisfied the second petition--and the duration of preventive detention has been computed to tally with the length of time required by the sentence imposed.

6. In the same missive, the Government asked the Commission for closure of the cases at issue here, on the grounds that any possible grievances which may have been presented have been given suitable treatment and reparation.

II. GENERAL CONSIDERATIONS

7. The legal situation of the individual in preventive detention is highly imprecise: there is an aura of suspicion against that person, although it has not yet been possible to establish his or her guilt. Persons in custody under such circumstances usually suffer greatly as a result of the loss of income and forced separation from their families and communities. Emphasis should also be placed on the psychological and emotional impact to which they are exposed so long as that situation persists. In this context, the seriousness implicit in preventive detention can be appreciated, as can the importance of imbuing such action with the greatest possible legal guarantees in order to prevent any abuse of that instrument.

8. Preventive detention constitutes a serious problem in various member countries of the Organization of American States. In the specific case of Argentina, excessive use of this procedural mechanism, coupled with the delays experienced in the country's judicial system, has meant that more than 50% of the prison population has been deprived of freedom without being sentenced.[FN2]

[FN2] In presenting the draft law limiting the term of preventive detention, Argentina's National Executive Branch made the following statements, among others:
The situation has reached alarming extremes, as may be seen from the current figures for the nation's prison population and the high percentages of those held in preventive confinement: 57% are prisoners who have not been sentenced.
In Paragraph 2 of the "Basic Principles" of that draft law, Senators Figueroa, Alasino and others included the following comments:

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...most of the persons committed to penal institutions (about 65% of the prison population in our country) are being held as a preventive measure and have not yet been given a sentence that would terminate the state of uncertainty implicit in every penal procedure. This is particularly true when the accused--for reasons of security; to endow the process with continuity; or to guard against an escape from the judicial action, as well as the serious nature of the offense of which the prisoner is accused--must remain behind bars up to the very moment when the sentence is issued.

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9. In the cases cited above, the petitioners claim that preventive detention and the excessive delays entailed in their criminal proceedings constitute a violation of the right to personal freedom as set forth in Article 7.5 of the American Convention, the text of which is quoted below:

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 ensure his appearance for trial.

10. Moreover, the right to be released from preventive detention after a certain amount of time has elapsed is guaranteed by Article 8.2 of the American Convention, which provides 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.

11. In order to ensure effective judicial oversight of the detention, the competent court must be quickly apprised of the persons who are held in confinement. One of the purposes of such action is to protect the well-being of the persons detained and to avoid any violation of their rights. The Inter-American Commission on Human Rights has determined that, unless such detention is reported to the court, or the court is so advised after an appreciable length of time has elapsed from the time the subject has been deprived of his freedom, the rights of the person in custody are not being protected and the detention infringes that person's right to due process. [FN3]

[FN3] IACHR, Second Report on the Situation of Human Rights in Suriname. OEA/Ser.L/V/II.66, doc. 21/Rev.1, 1985, pages 23 and 24.

A. Duration of Preventive Detention

12. The right to the presumption of innocence requires that the duration of preventive detention not exceed the reasonable period of time cited in Article 7.5. Otherwise, such imprisonment takes on the nature of premature punishment, and thus constitutes a violation of Article 8.2 of the American Convention.

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13. The origin of the term established in Article 1 of Law 24.390 is regulated in the Argentine Code of Criminal Procedures, in effect up to September 1992. Article 379 of that Law--which cites the cases in which the judge may order the release of the accused--contains the following text in Section 6:

When the time of confinement or preventive detention has exceeded the period established in Article 701, which shall in no case be longer than two years...

14. Article 701 of the Code provides that all cases must be totally concluded within the two-year period, without counting "the delays caused by activities of the parties, the processing of warrants or letters rogatory, the conduct of services of experts or any other procedures which may be necessary, the duration of which is not regulated by the action of the court."

15. In its responses to the cases presented to the Commission--action on almost all of which began prior to the enactment of Law 24,390--the Government of Argentina stated that the concept of "a reasonable time" established in the American Convention could not result in automatic release of all accused parties at the end of the two year period set forth in the Code of Procedures. The argument utilized by the Government was to the effect that the persons in custody might abuse the procedural mechanisms available until the period stipulated in the law had elapsed, without permitting the judiciary to evaluate the merits for granting such release.

16. Prior to the enactment of Law 24,390, the system in effect allowed the judge to grant a release from prison pursuant to the criteria of sound judgment. That power was complemented by the provisions of Article 380 of the Code, which are the following:

Irrespective of the contents of the preceding article, the release from prison may be denied when an objective assessment of the details of the presumed offense and the personal characteristics of the accused provide grounds for a properly founded presumption that he will attempt to escape from the action of justice.

17. Article One of the Law on the Duration of Preventive Detention expressly limits the extension of the two-year period by requiring that this must be the result of a duly justified decision "of which the corresponding appeals court must be notified immediately to ensure that the appropriate control may be exercised." In addition, the same law empowers the Attorney General's Office (Ministerio Público) to object to the release of the accused in the event that the defense has employed "manifestly dilatory tactics"; this question must be resolved by the court within five days (Article 3).

B. Definition of a Reasonable Period of Detention

18. The Commission considers that a reasonable length of time for preventive detention cannot be established in the abstract and, accordingly, the period of two years established by Article 379.6 of the Code of Procedures and in Law 24,390 does not correspond precisely to the guarantee set forth in Article 7.5 of the American Convention. The duration of preventive detention in that document cannot be deemed reasonable solely because it is the term established

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by the law. The Commission concurs with the position of the Argentine Government to the effect that reasonability must be founded on prudent legal judgment.

19. It is up to the court hearing the case to determine whether the term in question is reasonable. In principle, it is incumbent upon the legal authority to make sure that the preventive detention period to which an accused person is subjected does not exceed a reasonable length of time. To that end, all of the relevant factors must be examined to determine whether there is a genuine need to maintain such confinement, and to express that dictum clearly in its decisions regarding the release of the accused. The effectiveness of legal guarantees should be heightened in direct proportion to the growing length of time spent in preventive detention.

20. In that context, it is fitting to note the decision adopted by the European Court of Human Rights relative to Article 5.3 of the European Convention: namely, that determination of a reasonable period of preventive detention must be based on the reasons adduced by the national legal authorities for such detention and on the undisputed facts presented by the accused parties to overturn the decision of those authorities.

21. The European Court issued the following statement in regard to the Stogmuller case:[FN4]

... an examination of the observance of Article 5, paragraph 3 of the Convention would be meaningless if the Court were unable to decide freely, and on the basis of the factors presented in the petitions and appeals, whether the prolonged period of detention has been reasonable in accordance with the sense of that Article...

[FN4] Stogmuller, sentence handed down by the European Court of Human Rights on November 10, 1969, Series A No. 9, paragraph 3, page 39.

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22. Following this line of thought, the information provided by the national legal authorities should be examined by the Commission in each case if it is to reach the right conclusion regarding the relevance and adequacy of the arguments justifying preventive detention. This will make it possible to decide whether or not there has been a violation of Article 7.5 of the American Convention.

III. ANALYSIS

23. The Commission has examined two factors to determine whether preventive detention in a specific case constitutes a violation of the right to personal freedom and the judicial guarantees set forth in the American Convention.

24. In the first place, the national legal authorities must justify the measure cited pursuant to one of the criteria established by the Commission, which will be scrutinized in the present report. In the second place, when the Commission decides that such justification exists, it must proceed

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to ascertain whether those authorities have exercised the requisite diligence in discharging the respective duties in order to ensure that the duration of such confinement is not unreasonable.

25. The Commission has reviewed its own jurisprudence and that of the international human rights organizations to establish the legitimate reasons that could justify preventive detention of an individual over a prolonged period. The Commission nevertheless firmly believes that the universal principles of presumed innocence and respect for the right to physical liberty should be taken into consideration in each case.

A. Justifications

i. The presumption that the accused has committed an offense

26. The Commission considers that the presumption of an individual's guilt is not only an important element but a sine qua non condition for continuing the restraint of freedom measure. Article 366 of the Code of Penal Procedures provides that there should exist a reasonable suspicion of the subject's guilt in order for the judge to order preventive detention of that person.

27. Such suspicion alone, however, does not suffice to justify the continued deprivation of the individual's freedom. The magistrates in each case must produce additional grounds to warrant such detention after a certain length of time has elapsed.

ii. Danger of flight

28. The seriousness of the offense and the possible severity of the punishment are two factors that must be taken into account in weighing the possibility that the accused might attempt to flee the action of justice. But these factors also are not sufficient grounds to justify the continuation of preventive detention after the passage of a certain length of time. In addition, the danger that the subject may escape or hide should be considered to diminish as the duration of detention lengthens, inasmuch as that term will be computed to ensure that the accused serves the time stipulated in the sentence.

29. The possibility that the accused may evade the imposition of justice should be examined in light of various elements. They include the moral values demonstrated by the subject; his occupation; the assets he owns; family ties; and any other considerations that would keep him from leaving the country, in addition to the possibility of a prolonged sentence.

30. As a result, unless the judges hearing the case can show that there is sufficient evidence of a possible attempt at flight or hiding, preventive detention is not justified.

31. Moreover, the Commission observes that if this is the only reason for continuing the measure restricting freedom, the judicial authorities may request the necessary measures to ensure that the accused will appear before the court, such as bond or in extreme cases, even the prohibition of leaving the country. In such cases, bond may be set at a level that will suffice to dissuade the accused from fleeing the country or avoiding the action of justice.

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iii. The risk that new offenses may be committed

32. When the legal authorities assess the danger of a recidivistic incident or the commission of a new offense by the accused, they must take into account the seriousness of that act. In order to justify preventive detention, however, the danger of a second offense must be real and it must take into account the personal history as well as the professional evaluation of the personality and character of the accused. To that end, it is particularly important to determine, among other elements, whether the subject has ever been convicted of offenses that are similar, both in nature and in seriousness.

iv. The need to investigate and the possibility of collusion

33. The complexity of a case may justify preventive detention--in particular, when the case calls for investigation that is difficult to conduct and when the accused has prevented or delayed such action or conspired for this purpose with other persons who are being investigated during the normal course of a trial. But once the investigation and interrogation have been completed, the need to investigate in itself cannot justify continued deprivation of the subject's freedom.

34. The Commission believes that it is not reasonable to invoke the "need for investigation" in a general and abstract manner as grounds for preventive detention. Such justification must be based on a real risk that the investigation process will be impeded by setting the accused free.

v. The risk of pressure on the witnesses

35. The real risk that the witnesses or other suspects might be threatened is also a valid basis for ordering the measure at the start of the investigation. But when the investigation continues and those persons have already been sufficiently interrogated, that danger is reduced and the grounds for continuing the preventive detention are no longer valid. The judicial authorities must also show that there are no longer sufficient grounds to fear that the witnesses or suspects may be intimidated by the accused.

vi. The preservation of public order

36. The Commission recognizes that under highly exceptional circumstances, the special gravity of a crime and the public reaction thereto may warrant preventive detention for a certain period, given the threat of disturbances of public order which might be triggered if the accused were released. It should be emphasized that such a threat--if it is to constitute a legitimate justification--must continue to be present throughout the term during which the accused is deprived of his freedom.

37. In all cases in which the preservation of public order is invoked as a reason for keeping a person in preventive detention, it is incumbent upon the State to provide objective and conclusive evidence that the measure is warranted on the basis of that premise alone.

B. Conduct of the procedure

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38. In cases in which the grounds adduced by the national judicial authorities are deemed to be relevant and sufficient to justify the continuation of preventive detention, the Commission must proceed to determine whether those authorities have displayed the requisite diligence in justifying the procedure, thus ensuring that the duration of that measure is not unreasonable.

39. To that end, the statement issued by the European Human Rights Commission in the Wemhoff case is transcribed below:[FN5]

Under the circumstances, the Court was unable to conclude that a violation of the obligations imposed by Article 5.3 had taken place, except that the duration of Wemhoff's preventive detention...was due (a) to the slow pace of the investigation ...(b) to the length of time that had elapsed between the end of the investigation and the accusation...or from that time to the opening of the trial....or, finally, (c) the duration of the trial. There can be no doubt that--even when an accused person has been reasonably detained during these various periods for reasons of public interest--a violation of Article 5.3 can take place if, for any reason whatever, the procedure were to continue for a considerable length of time.

[FN5] Wemhoff, Judgment of the European Court of Human Rights, June 27, 1968, Series A, No. 7, paragraph 1, page 14.

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40. In view of the provisions set forth in Articles 7.5 and 8.2 of the Convention, the Inter-American Commission on Human Rights considers that the accused, who has been deprived of his freedom, is entitled to have his case assigned the proper priority and processed expeditiously by the judicial authorities. This should not constitute an obstacle of any kind that might prevent those authorities, the prosecution and the defense from performing their duties satisfactorily.

41. Consequently, in order to determine whether the proper diligence has been displayed by the authorities who are conducting the investigation, the complexity and implications of the case must be taken into account, as well as the behavior of the accused. It should also be noted that a defendant who refuses to cooperate with the investigation--or who makes use of the procedural remedies to which he is entitled by law--may simply be exercising his rights.

42. Even when all of these elements are present, it must be demonstrated that the behavior of the person in custody has been the basic cause of the delay in the procedure. It may be noted that the European Court of Human Rights maintained in Toth[FN6] that while the case was complex and the petitioner had lodged appeals on several occasions, the prolonged duration of the process could not be directly attributed to that cause. To the contrary: the delay was due to the rules of procedure of the Austrian courts, which had the effect of suspending the investigations at various times. The European Court held that the procedures which had caused the delay in releasing the accused were not compatible with the right to physical liberty guaranteed by the European Convention in this context.

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[FN6] Toth, judgment of the European Court of Human Rights on December 12, 1991, Vol. 224, paragraph 77, page 21.

IV. DENIAL OF JUSTICE

43. It has been noted in the present report that various cases now being considered by the Commission resulted from accusations of persons who have undergone--or who continue to undergo--prolonged periods of preventive detention in Argentina without being sentenced to such punishment. The Commission considers that there exists a situation wherein justice has been denied with respect to those petitioners and to the other defendants who are in a similar situation in Argentina.

44. Every accused person who has been deprived of his freedom is entitled to have his case heard with priority, and to have special diligence used in the processing thereof. The power of the State to hold a person in custody at any point in the process constitutes the main reason for its obligation to try such cases within a reasonable length of time.

45. The legal guarantees which must be observed in the context of preventive detention constitute unavoidable obligations of the States parties to the American Convention. The Commission considers that compliance with those obligations must be progressively even more rigorous and strict as the length of time spent in preventive detention increases. In other words, the seriousness of the State's failure to abide by the legal guarantees is heightened in direct proportion to the time during which the measure depriving the accused of his liberty remains in effect.

V. THE RIGHT TO BE PRESUMED INNOCENT

46. Another feature shared by various cases of prolonged preventive detention in Argentina consists of violation of the right to be presumed innocent guaranteed by Article 8.2 of the American Convention.

47. The excessive duration of that measure results in a risk of distorting the meaning of presumed innocence. This becomes increasingly difficult to affirm, inasmuch as a person who is legally still innocent is being deprived of his liberty, and is therefore undergoing the severe punishment which the law reserves for persons who have actually been tried and sentenced.

48. At the same time, in this type of case there is a sort of pressure on the judge who evaluates the evidence and applies the law in an effort to adjust the sentence of guilt to the de facto situation which is depriving the accused of his freedom. In other words, it increases the possibility that the accused may be given a sentence which justifies the prolonged duration of preventive detention, even through the evidence leading to conviction may not be all that convincing.

49. If a limited period of time is devoted to the resolution of a criminal case, it is implicitly assumed that the persons tried by the State are always guilty; and that, as a result, the length of

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time spent to prove guilt does not matter. International standards are very clear in stating that the accused must be considered innocent until proven guilty.

50. The principle of presumed innocence should also be examined in the context of Law 24,390, which was cited at the start of this report. Article 10 of the law contains the following provision:

Persons accused of the offense established in Article 7 of Law 23,737 and those to whom the charges listed in Article 11 of that same law would be applicable are expressly excluded from the provisions of the present law.[FN7]

[FN7] Law 23,737, which amended the Argentine Penal Code, was enacted in September of 1989. Article 7 of that Law contains the following provision:
The person who organizes or finances any of the unlawful activities cited in Articles 5 and 6 above shall be punished by detention or by eight to twenty years of imprisonment plus a fine ranging from thirty thousand to nine hundred thousand australes.
Articles 5 and 6 list various offenses in the production or sale of narcotic drugs. Article 11 of that law lists some aggravating circumstances, which consist of the use of violence against or the injury of pregnant women or the mentally impaired; the participation of three or more persons; and other items.

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51. The severe restriction introduced by this law has to do with drug trafficking crimes and is based on the reprehensible nature and adverse social consequences of this type of offense. It is nevertheless yet another element that can be used to undermine the presumption of innocence, bearing in mind that the persons accused of drug trafficking offenses are automatically excluded from the measures that limit preventive detention. It might also be noted that they are being subjected to punishment in advance, before the competent judge has had a chance to rule on their guilt. This situation may lead to an arbitrary and twisted application of preventive detention, with purposes different from those considered in the law itself.

52. The exception to Article 10 affects the six defendants accused of drug trafficking whose cases are being examined by the Commission and who continue to be deprived of their freedom as of the date of the present report. The cases in question are 11,236 (Alonso); 11,242 (Gil Suárez); 11,243 (Karlikowski); 11,247 (Melchiore); 11,249 (Fernández); and 11,154 (Fagoaga). The Commission believes that the norm cited tends to create an exception to the principle of presumed innocence.

VI. GOVERNMENT'S OBSERVATIONS TO THE ARTICLE 50 REPORT

53. On October 15, 1996, during Session 1321, the Commission approved Report 37/96, pursuant to Article 50 of the American Convention. The report was transmitted with confidential status to the Government, according to the second paragraph of the above mentioned Article.

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54. The Government's observations were submitted on January 15, 1997. The Government expressed its gratitude for the Commission's recognition of the efforts undertaken to reduce the duration of preventive detention in Argentina. Likewise, they made reference to the situation created by the entry into force of a new Code of Criminal Procedure on September 5, 1992, which the Government considers was solved by the passage and implementation of Law 24.390.

55. Regarding the cases analyzed in the instant report, the Government expressed:

...the grievances caused by the prolonged preventive detention have lost virtuality: a second instance was provided, the time period was counted in accordance to Law 24.390 and deducted from the conviction...

...the experience accumulated in thirteen years of operation of human rights treaties in the country provides a firm possibility of improving the level of enjoyment and practice of the rights protected.

VII. CONCLUSIONS AND RECOMMENDATIONS

56. The Government has provided unequivocal evidence of good faith by providing regulations pursuant to Article 7.5 of the American Convention. The Commission acknowledges the favorable result of that initiative, specifically in regard to persons who have presented claims against the Argentine State and who have later been released from prison due to application of Law 24,390.

57. It should nevertheless be pointed out that the legislative reform efforts have not sufficed to render fully effective the rights and freedoms established in the American Convention. This has made it necessary to write the present report, in which the common characteristics of those rights and freedoms are examined.

58. Observance of the judicial guarantees set forth in the American Convention requires that in every case--and without exception--the national legal authorities comply by fully justifying the order for preventive detention and by exercising greater diligence in their decisions on the substance of the issue so long as that measure remains in effect.

59. Consequently, the Commission concludes that the Argentine State has violated Article 7.5 of the American Convention with respect to the right to personal liberty which should be enjoyed by the accused parties, who have been held in preventive detention for more than a reasonable length of time; and that there has been a failure to employ due diligence in conducting the respective procedures.

60. The same situation is found to obtain in regard to Article 8.1, which guarantees the right of those persons to a hearing with due guarantees and within a reasonable time; and in regard to the right to be presumed innocent. All of these factors are viewed in the light of Article 1.1, wherein that State undertook to respect and ensure the free and full exercise of all measures set forth in the American Convention.

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61. Accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

i. Acknowledges the significant progress achieved by Argentina with approval of the law establishing limits on the duration of preventive detention; however, in light of the observations set forth in this report, it recommends that the State modify its legislation with a view to adjusting it to the norms in the American Convention which guarantee the right to personal liberty.

ii. Recommends to the State that--in all cases of prolonged preventive detention which do not meet the requirements set forth in the American Convention, and in Argentina's domestic legislation--the necessary measures be taken to see that the parties affected are set free so long as the sentence remains pending.

iii. Recommends to the State that it take the necessary measures to ensure that swift and punctilious proceedings are conducted in each of the cases cited in the foregoing paragraph.

iv. Taking into account the progress mentioned supra "A", and the fact that the report under Article 51 has been forwarded to the State and the petitioners on March 21, 1997, agrees to publish this report in its Annual Report to the General Assembly of the OAS.