THE CLASH OF CONSTITUTIONAL AND INTERNATIONAL LAW IN ARGENTINEAN CASE LAW

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I. INTRODUCTION

The Argentinean Supreme Court has recently held that decisions of the Inter-American Court of Human Rights (the Inter-American Court) cannot modify res judicata decision of the Argentinean judiciary. This decision overruled prior Supreme Court precedent and, as this article will demonstrate, ignores both explicit provisions of the American Convention on Human Rights and the provision of the Argentinean Constitution that establishes the constitutional supremacy of international human rights treaties. The Argentinean Supreme Court should have remained faithful to its prior precedents. Nevertheless, it is important to recognize that the Supreme &RXUW¶V DSSURDFK ZDV PRWLYDWHG LQ SDUW E\ WKH

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Inter-$PHULFDQ &RXUW¶V GHFLVLRQV ZLWK UHJDUGV S acts not before the Court. Since only the petitioner and the state appear before the Inter-American Court, its decisions required reopening cases where the party who had prevailed in the domestic court system did not enjoy representation before the Court. This is not the typical situation when a tribunal provides additional appellate review. The Inter-American Court needs to modify its procedures if it wishes to protect itself from the attack that it acts as an appellate tribunal, reopening domestic cases without providing full procedural guarantees to all interested parties.

Until 1992, the majority of the Argentinean Supreme Court (the Court) decided, as the United States Supreme Court held, that treaty law had the same status as statutes enacted by the Congress. That meant that a subsequent statute could repeal an international treaty. In 1992, the Court decided *Ekmekdjian v. Sofovich*,[1] where it introduced a fundamental change LQ WKH &RXUW¶V FDVH ODZ 7KH &RXUW SRVLWHG WKDW in relation to domestic law.[2] The Court arrived at that conclusion interpreting Article 31 of the Argentinean Constitution, originally enacted in 1853, which VWDWHV 3 7KLV &RQVWLWXWLRQ WKH ODZV RI WKH 1DWLRQ pursuance thereof, and treaties with foreign powers, are the supreme law of the Nation; and the authorities of each province are bound thereby, notwithstanding any provision to the contrary included in the provincial laws RU FRQVWLWXWLRQV.[3] ´

This change in the case law was ratified by the constitutional reform of 1994.[4] Article 75, Section 22 of the new constitutional text states that 3>W@UHDWLHV DQG FRQFRUGDWV KDYH D KLJKHU KLHUDUFK\ WKDQ ODZV.[5] It further provides that

> The Interamerican Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or

1. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 3(NPHNGMLDQ 0LJXHO F 6RIRYLFK *HUDUGR RWURV V UHFXUVR GH KHFKR Fallos H[WUD

> Degrading Treatments or Punishments; the Convention on the Rights of the Child; in the full force of their provisions, they have constitutional hierarchy, do not repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein. They shall only be denounced, in such event, by the National Executive Power after the approval of two-thirds of all the members of each House.[6]

In order to attain constitutional hierarchy, other human rights treaties and conventions require a two-thirds vote of all the members of each House, after their approval by Congress.[7]

Human Rights containing denunciations or complaints of violation of this Convention by a state party.[10]

operation of the statute of limitations of the Argentinean Criminal Code.[18] The Court reasoned that the case could not reopen under the Due Process Clause of the Argentinean Constitution.[19] Nevertheless, under the express provisions of Article 68.1 of the Convention, the Court accepted the ruling of the Inter-American Court and ordered the lower courts to reopen the criminal case against Espósito.[20]

A partial change in the composition of the Court in 2016[21] brought about a fundamental development in its case law pertaining to the relationship between domestic constitutional law and international law. This change happened in *Fontevecchia, Dô Amico*, and Ministerio de Relaciones Exteriores

G R P H V W L F F R X U W V ¶ G H F L V L R Q V L Q F O X G L Q J W K H G H F L V
two journalists.[26]

In its decision from February 14, 2017,[27] the Court ruled that the lent

Congress, and the treaties

Monism, instead, views international law that has been ratified by national authorities as domestic law. According to André Nollkaempfer, some countries have decided to make international law automatically part of WKH µODZ RI WKH QDWLRQDO¶ order.[42] The author mentions Argentina, Belgium, Brazil, the Dominican Republic, France, and the Netherlands as examples of this approach. Professor Nollkaempfer cites a case from the Dominican Republic which stated that it was clear from Article 3 of its constitution that international law was part of the national legal order, rendering it binding on the Dominican Republic.[43] The Court, thus, did not DFFHSW WKH 6XSHULRU /DQG &RXUW¶V LQWHUSUHWDWLRQ WKDW WUHDWLHV were foreign legislation (legislación extranjera).[44]

> By holding that the Superior Land Court should have applied the treaties relied on by the plaintiff, the Supreme Court clarified that treaties adopted by the Dominican Republic form part of Dominican law. Such treaties are, thus, applicable in the national legal system and it is not necessary to enact specific implementing legislation to that effect.[45]

As we will see below, the Argentinean Supreme Court has adopted a similar course in recent years.

III. THE NEW PARADIGM

Convention integrates the Argentinean legal order simply because the Republic became a party to the Convention through the deposit of the instrument of ratification.[47] The Court explained that this new criterion modified the former doctrine of the tribunal and ruled that the rights and guarantees enshrined in the American Convention could be invoked and exercised by individuals without a legislative act of incorporation.[48]

7KXV WKH &RXUW UXOHG WKDW ³>W@KH 9LHQQD &RQ
to conventional international law over domestic law. . . . The [Vienna C]onvention is a constitutional valid international treaty that assigns priority to international treaties over internal laws within the domestic legal order, that is, a recognition of the primacy of international law over domestic O D´[49] The Argentinean tribunal explained that a law of Congress cannot repeal a treaty because such an abrogation would violate the distribution of FRPSHWHQFLHV DPRQJ WKH GLIIHUHQW VWDWH SRZHUV FRQVWLWXWHV D µIHGHUDO FRPSOH[DFWLRQ ¶ FU\VWDO both the Executive and the Legislative branches act in accordance with their FRQVWLWXWLRQDO PDQGDWHV ´[50]

After the Ekmekdjian decision, the Court gradually began to accept the primacy of international law in general and the decisions of the Inter-American Court in particular. That meant that, in cases where the Inter-American Court found that Argentinean law had breached the Convention, the remedies it ordered were implemented by the Court and the inferior Argentinean courts.[51]

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47. Id. at 1511–13.

48. Id.

49. Id. at 1512.

50. Revol, *supra* note 8, at 466. As I will explain later, I agree with the result of this decision. Nevertheless, I find that the rationale is defective because it is based on Vienna Convention prescriptions which states the superiority of international law over domestic law. That reasoning takes for granted the supremacy of international treaties over national law which was the point ZKLFK KDG WR EH SURYHG E\ WKH &RXUW ,W LV D W\SLFDO ³FLUFXODU U when a premise and conclusion are actually rewordings of the same proposition. In other words, when making the argument, we assume the truth of our conclusion than offering proof for it JUDITH A. BOSS, ETHICS FOR LIFE: A TEXT WITH READINGS 62 (4th illustrated ed. 2007).

51. See Revol, *supra* note 8, at 467–68. The author mentions several decisions of the Court which formulated these principles based upon the Interamerican Court case law. At this point it is necessary to make a distinction which is not always present in the Interamerican Court case law. While it is evident that, according WR $UWLFOH RI WKH &RQYHQWLRQ ³7KH 6WDWH Convention undertake to comply with the judgment of the Court in any case to which they are SDUWLHV ´ WKH GHFLVLRQ RI WKH ,QWHUDPHULFDQ &RXUW LV ELQGLQJ

the Argentinean Supreme Court considered that the Inter-American Court decision was wrong, to avoid international responsibility, it held that the interpretations of the Inter-American Court should be followed in the internal domain.[57]

IV. THE COURT CHANGES COURSE IN *MINISTERIO DE RELACIONES EXTERIORES*

As explained earlier, the Court adopted a notably different stance towards the decisions of the Inter-American Court in *Ministerio de Relaciones Exteriores*. In that case, the majority of the Court stated unequivocally that the Inter-American Court lacked the authority to set aside the decisions of domestic courts.[58] Thus, as Luciano Revol explains, although the Court ruled that American Convention rulings are, in principle, mandatory in all cases to which Argentina is a party, that mandatory character only applies to those cases in which the International Court performs its duties within the framework that are conferred by the Convention.[59] Based upon its literal interpretation of Article 63 of the Convention, the Court maintained that the Inter-American Court exceeded its remedial powers and, thus, acted *ultra vires*, since the American Convention does not grant the International Court the authority to revoke a local judgment.[60]

As part of its reasoning, the Court referred to the subsidiary character of the Inter-American Human Rights System by quoting the Preamble of the American Convention.[61] Therefore, it held that the Inter-American Court was not a tribunal of fourth instance able to review or annul domestic judicial decisions.[62]

The core of the Court's arguments can be summa

Fontevecchia did not deal with a criminal conviction, which implicated the existence of a criminal record, to comply with the Inter-American Court, it was sufficient for the Court to either erase its decision from their webpage or include the Inter-$PHULFDQ &RXUW¶V GHFLVLRQ[73]

In its ruling of December 5, 2017, the Court conceded that the solution proposed by the Inter-American Court ³GLG QRW YLRODWH $UWLFOH $UJHQWLQHDQ)HGHUDO &RQVWLWXWLRQ´[74]

V. THE FLAWS IN THE DECISION OF THE COURT

There are major problems with the aforementioned decision. In the first place, as Victor Abramovich pointed out in a critical article about the &RXUW¶V ruling,[75] the Inter-$PHULFDQ &RXUW GLG QRW FRQWUDYHQH WKH doctrine in *Fontevecchia*,[76] as it did not decide questions of domestic law,

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73. *Id.* ¶ 21.

74. CSJN, 14/2/2017, ³0LQLVWHULR GH 5HODFLRQHV ([WHULRUHV´ *Fallos* (2017-340-47) (Arg.). On the same date, the Court issued a ruling that seems to be more compliant with the Interamerican &RXUW¶V GRFWULQH. *See* Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of -XVWLFH@ ³6DOD 0LODJUR $PDOLD ÈQJHOD S V D DVRFLDFLyQ DGPLQLVWUDFLyQ S~EOLFD´ *Fallos* (2017-340-1756) (Arg.). In the Milágro Salacase, four justices, using different rationales, decided that domestic courts had to comply with the ³SURYLVLRQDO PHDVXUH´ $UWLFOH *Id.* at 1773, adopted by the Inter-American &RXUW RQ 1RYHPEHU from pre-trial detention and its replacement with home detention. *Id.* at 1771; *see also* Corte Suprema de Justicia de la Nación >&6-1@ >1DWLRQDO 6XSUHPH &RXUW RI -XVWLFH@ Sala, Milagro Amalia Ángela / p.s.a. ³ asociación ilícita, fraude D OD DGPLQLVWUDFLyQ S~EOLFD *Fallos* (2017-340-1794) (Arg.) ([WRUVLyQ´)DOORV 1HYHUWKHOHVV LW LV GRXEWIXO ZKHWKHU WKLV GHFLVLRQ LPSOLHV DQ LQ ³0LQLVWHULR GH 5HODFLRQHV ([WHULRUHV´ *Fallos* supra note 70.

75. Víctor Abramovich, *Comentarios sobre "Fontevecchia", la autoridad de las sentencias de la Corte Ineramericana y los principios de derecho público argentino*, 10 PENSAR EN DERECHO 12-13, 22 (2017).

76. ,Q VXPPDUL]LQJ LWV FDVH ODZ RQ WKLV SRLQW WKH Inter-American Court stated:

> [It] cannot act as a higher court or as an appeal court in settling disputes between parties, on some aspects of the assessment of evidence, or of the application of the domestic law to certain matters not directly related to compliance with international human rights REOLJDWLRQV 7KXV WKLV &RXUW KDV KHOG WKDW LQ SULQFLSOH ³W XSRQ WR H[DPLQH WKH IDFWV DQG HYLGHQFH VXEPLWWHG LQ SDUWLF when assessing compliance with certain international obligations, such as ensuring that a detention was lawful, there is an intrinsic interrelationship between the analysis of international law and domestic law.

García v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 220, ¶ 16 (Nov. 26, 2010) (footnote omitted) (quoting *Nogueira de Carvalho v. Brazil*, Preliminary Objection and Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 161, ¶ 80 (Nov. 28, 2006)).

but it limited its ruling to the interpretation of Articles 11 and 13 of the Convention.[77]

Secondly, it was erroneous for the Court to assume that *Fontevecchia* involved just a conflict between national constitutional law and international law. The Convention is part of constitutional law in Argentina because it has been incorporated (among other several international covenants on human ULJKWV LQWR WKH $UJHQWLQHDQ &RQVWLWXWLRQ¶V %L binding, *ipso facto*, and not requiring special agreement, [of] the jurisdiction of the Court on all matters relating to the interpretation or application of th[e] &RQYHQWLRQ´ KDV DOVR LQFRUSRUDWHG LQWR WKH FR[78] Moreover, Argentina included a proviso:

> [That t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.[79]

Lastly, nothing in the text of Article 63.1. of the Convention suggests that the payment of monetary damages is the only remedy provided by that provision for human rights violations.[80] It is clear from the text that damages are just *one* of the remedies provided by that provision.[81]

It is also obvious that most of the domestic court decisions under review by the Inter-American Court are res judicata under national law standards. The examination of Article 46 of the Convention explains why that is so: complaints against a State Party for violations against it must be lodged before the Commission in accordance, *inter alia*, with the following requirements:

> (a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of

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77. American Convention on Human Rights, *supra* note 10, DUW ³(YHU\RQH KDV WKH ULJKW WR KDYH KLV KRQRU UHVSHFWHG DQG KLV GLJQLW\ UHFRJQL]HG ³ arbitrary or abusive interference with his private life, his family, his home, or his correspondence, RU RI XQODZIXO DWWDFNV RQ KLV KRQRU RU UHSXWDWLRQ ³ (YHU\RQH WKH ODZ DJDLQVW VXFK LQWHUIHUHQFH RU DWWDFNV ´ For the text of Article 13, see *id.* art. 13.

78. American Convention on Human Rights, *supra* note 10, art. 62(1).

79. *Id.* art. 67.

80. *Id.* art. 63(1).

81. This provision states:

> If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied *and* that fair compensation be paid to the injured party.

Id. (emphasis added).

> REOLJDWLRQ WR FRPSO\ ZLWK D GHFLVLRQ RI WKH FR
> certain cases, the nature of the violation found may be such as to leave no real choice as to measures required to remedy it and the Court may decide to LQGLFDWH D VSHFLILF PHDVXUH ¶ :LWK W
> argument, the ECtHR has decided on specific measures, such as release from custody as soon as possible, that a state must replace detention on remand with other reasonable and less stringent measure of restraint. The reopening of domestic proceedings has EHFRPH RI IXQGDPHQWDO LPSRUWDQFH IRU WKH H[HFX
> judgments. Indeed, in some cases, this is the only form of restitutio in integrum possible, i.e., the only effective means of redressing the convention. In response to execution problems, caused in certain cases by the lack of appropriate national legislation on the reopening proceedings, the Committee of Ministers adopted a recommendation to member states on the reexamination or reopening of certain cases at the domestic level following judgments of the ECtHR, inviting them to ensure that there existed at national level adequate possibilities for achieving, as possible, restitutio in integrum, including the reopening of proceedings. Building on the practice of the committee, the court itself is more and more deciding on such measures. In Dorigo Paolo, the [Italian] Constitutional Court stated in clear terms that in cases involving violations of Article 6 of the ECtHR, the state had an obligation, pursuant to Article 46, to reopen criminal proceedings, as a form of restitutio in integrum, in accordance with what was affirmed by the Court of Cassation in Somogyi and Dorigo . . . .[93]

,W PXVW EH QRWHG WKDW DW LQWHUQDWLRQDO OHYHO DW V\VWHP SURYLGHV ³DGHTXDWH SRVVLELOLWLHV´ DV PH
Committee of Ministers, for enforcing the Inter-American Court decisions: Article 366(f) of the new Federal Criminal Procedure Code provides, as one[94]

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93. Thordis Ingadottir, Enforcement of Decisions of International Court at the National Level, in INTERNATIONAL LAW IN DOMESTIC COURTS 349, 383-85 (André Nollkaempfer et al. eds, 2018). Nevertheless, the decisions of some European superior courts do not show complete FRPSOLDQFH WR (XURSHDQ &RXUW RI +XPDQ 5LJKWV ¶V UXOLQJV)RU H[D Constitutional Court, after the European Court had decided that the former court had disregarded the prohibition of retroactive criminal legislation (Article 7 of the European Convention on Human Rights), argued nevertheless that the decision of the ECHR GLG QRW ³«UHTXLUH the interpretation of Art. 103. Basic Law [the equivalent provision to Article 7 in German &RQVWLWXWLRQ@ WR EH EURXJKW FRPSOHWHO\ LQWR OLQH ZLWK WKDW 128, 326, decision of May 4, 2011). The decisions of the German Constitutional Court and the European Court of Human Rights are transcribed and commented by MARKUS D. DUBBER & TATJANA HOERNLE, CRIMINAL LAW: A COMPARATIVE APPROACH (2014).

94. ,QW ¶O &RPP ¶Q RI -XULVWV, The Right to a Remedy and Reparation for Gross Human Rights Violations, 165 (Oct. 2018), https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf. The Code is only partially

of the motives for setting aside res judicata criminal decisions, the existence in a particular case of a ruling of the Inter-American Court or a decision of a body charged with the application of an international treaty.[95]

VI. SOME PROBLEMS IN THE INTER-AMERICAN COURT JURISPRUDENCE

7KLV SLHFH KDV GHPRQVWUDWHG WKDW WKH &RXUW¶V *Fontevecchia* was untenable. Nevertheless, the Inter-American Court case law has also shown major problems regarding the protection of due process rights. A typical example of these shortcomings can be found in *Bulacio*, where the Inter-American Court ordered the reopening of criminal proceedings against former police official Esposito.[96] Although the majority of the Court accepted that ruling in *Espósito*,[97] it showed deep misgivings about the implications of enforcing the Inter-$PHULFDQ &RXUW¶V GHFLVLRQ

The main point of disagreement with the Inter-$PHULFDQ &RXUW¶V UXOLQJ ZDV LWV GLVUHJDUG RI (VSRVLWR¶V GXH SURFHVV ULJ Constitution.[98] It was not acceptable for the Court that the Inter-American

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in force now. CÓDIGO PROCESAL PENAL DE LA NACIÓN [CÓD. PEN.], [Criminal Procedure Code] art. 366 (Buenos Aires, 2019) (Arg).

95. , KDYH PDGH WKH FDYHDW ³DW WKH IHGHUDO OHYHO´

> [D]ue to the federal political organization expressed in the National Constitution, Argentinean State possesses a Federal Justice with jurisdiction in the whole country and it may try cases about narcotics, smuggling, tax evasion, money laundry, and other crimes that affect the security of the Nation. Simultaneously, there is a Provincial Justice which has in charge the treatment of the common crimes (also called ordinary justice) whose procedural legislation and the organization of the judicial organs are constitutionally reserved to the government of each one of the twenty-three counties (articles 5, 121, 123 of the National Constitution).

General Brief about Argentinean Justice System and the Fiscal Public Ministry, Secretary of Institutional Coordination, Office of the Attorney General, Section II.2., https://www.mpf.gob.ar/Institucional/Funciones/ING.pdf (last visited Mar. 26, 2021). It must be added, that after the 1994 Constitutional Reform, the Capital City of Buenos Aires enjoys a similar constitutional status.

96. See generally *Bulacio*, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 121.

97. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], ³(VSyVLWR 0LJXHO $QJHO LQFLGHQWH GH SUHVFULSFLyQ GH O SRU VX GHIHQVD´ 327-5668 (2003) (Arg.). There is a dissenting opinion by Justice Fayt who argued that the Interamerican Court lacked in most cases the power to order the reopening of domestic criminal cases. The reasons used on that occasion by Justice Fayt were similar to those HPSOR\HG E\ WKH SOXUDOLW\ LQ ³0´ Ministerio de Relaciones Exteriores... GLVWLQJXLVKHG ³QRUPDO FULPLQDO FDVHV´ OLNH ³(VSyVLWR´ ZKR KDG of the ordinary provisions of the Criminal Code on statutory limitation), from those where the Interamerican Court had invalidated domestic provisions enacted with the specific goal of exculpating the perpetrators of human rights violations. Regarding this latter type of cases, Justice Fayt had no quarrel with the decisions of the Interamerican Court. *Id.* at 5686-95.

98. An earlier example of a conflict between the American Convention and a national FRQVWLWXWLRQ FDQ EH IRXQG LQ WKH &DVH RI ³7KH /DVW 7HPSWDWLRQ

Court assigned responsibility to defendant Espósito for the delay of the criminal proceedings against him. The Inter-American Court stated as follows:

> The Court notes that since May 23, 1996, the date on which the defense counsel was notified of the request by the public prosecutor of a 15 year prison sentence against Police Captain Jorge Espósito for the reiterated crime of aggravated illegal imprisonment, the defense counsel for the accused filed a large number of diverse legal

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Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 73, (Feb. 5, 2001). On that occasion, the Interamerican Court stated the following about this question:

> In the instant case, it has been proved that, in Chile, there is a system of prior censorship for the exhibition and publicity of cinematographic films and that, in principle, the Cinematographic Classification Council prohibited exhibition of the film µ7+(/$67 7(037$7,21 2) &+5,67¶ DQG UHFODVVLI\LQJ LW SHUPL persons over 18 years of age. Subsequently, the Court of Appeal of Santiago decided to annul the November 1996 decision of the Cinematographic Classification Council, owing to a remedy for protection filed by Sergio Garcés Valdés, Vicente Torres Irarrázabal, Francisco Javier Donoso Barriga, Matías Pérez Cruz, Jorge Reyes Zapata, Cristian Heerwagen Guzmán and Joel González Ch. &DVWLOOR ³)RU DQG LQ WKH QDPH RI >ƒ@ -HVX WKH &DWKROLF &KXUFK DQG WKHPVHOYHV´ D GHFLVLRQ WKDW ZDV F Court of Justice of Chile. Therefore, this Court considers that the prohibition of the exhibi WLRQ RI WKH ILOP µ7KH /DVW 7HPSWDWLRQ RI &KULVW¶ constitutes prior censorship in violation of Article 13 of the Convention.
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> This Court understands that the international responsibility of the State may be engaged by acts or omissions of any power or organ of the State, whatsoever its rank, that violate the American Convention. That is, any act or omission that may be attributed to the State, in violation of the norms of international human rights law engages the international responsibility of the State. In this case, it was engaged because article 19(12) of the Constitution establishes prior censorship of cinematographical films, and therefore, determines the acts of the Executive, the Legislature and the Judiciary

Id. ¶¶ 71-72 (emphasis added). For the text

> questions and remedies (requests for postponement, challenges, incidental pleas, objections, motions on lack of jurisdiction, requests for annulment, among others), which have not allowed the proceedings to progress toward their natural culmination, which has given rise to a plea for extinguishment of the criminal action.
>
> This manner of exercising the means that the law makes available to the defense counsel has been tolerated and allowed by the intervening judiciary bodies, forgetting that their function is not exhausted by enabling due process that guarantees defense at a trial, but that they must also ensure, within a reasonable time, the right of the victim or his or her next of kin to learn the truth about what happened and for those responsible to be punished.
>
> The right to effective judicial protection therefore requires that the judges direct the process in such a way that undue delays and hindrances do not lead to impunity, thus frustrating adequate and due protection of human rights.[99]

This line of reasoning was not acceptable for the Court because it put the duty to accelerate the proceedings against defendants on themselves. This task belonged to the trial judges. It was their duty to apply disciplinary measures against (VSRVLWR¶V GHIHQVH ODZ\HU LI WKH\ EHOL employed illegal tactics to delay the procedure.[100]

The Court was wary of the consequences of the Inter-American Court decision. It placed Espósito in jeopardy of being prosecuted twice with the possibility of being convicted for criminal charges for which the national courts had already freed him.[101] Moreover, the Inter-$PHULFDQ &RXUW¶V decision followed from the proceedings where the defendant did not have any chance to defend himself as the only ones in Bulacio ZHUH WKH YLFWLP¶V relatives and the Argentine State.[102]

VII. AN ATTEMPT TO RECONCILE COMPETING INTERESTS

7KH PDMRULW\¶V Ministerio de Relaciones Exteriores regarding the supposed lack of power of the Inter-American Court to revoke decisions of national courts, presented a deep misunderstanding first, of the

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99. Bulacio, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶¶ 111-15 (emphasis added).

100. & 6 - 1 ³ (V S ó V LWR´ 327-5681).

101. $UWLFOH RI WKH $PHULFDQ &RQYHQWLRQ RQ +XPDQ 5LJKWV VWDW acquitted by a nonappealable MXGJPHQW VKDOO QRW EH VXEMHFWHG WR D QHZ WULDO 7KH &RXUW KDV DGRSWHG D EURDGHU QRWLRQ RI WKH ³GRXEOH MHRSDUG that applied by the U.S. Supreme Court. See Corte Suprema de Justicia de la Nación [CSJN] [1DWLRQDO 6XSUHPH &RXUW RI -XVWLFH@ ³6DQGRYDO 'DYLG $Q SRU HQVD[DPLHQ-333:1687) (Arg.).

102. & 6 - 1 ³ (V S ó V LWR´ 327-5683).

Argentinean Constitution and, second, of the interplay between domestic and international human rights law.[103] On the other hand, it could be argued that decisions of the Inter-American Court, like in *Bulacio*, encroach on due process rights of criminal defendants before national courts.[104]

WKH ULJKW WR OLIH DQG µRQ WKH RWKHU VLGH¶ WKH 6WDWH KDV WKH
REOLJDWLRQ ex officio and immediately a genuine, impartial and
HIIHFWLYH LQYHVWLJDWLRQ ¶ .H\ REMHFWLYHV LQFOXGH
ZLWK FULPLQDO UHVSRQVLELOLW\[107] The authors WKH HOXFLGDWL
DGG WKDW ³/DWLQ American experience, there have been many situations of active obstruction of justice. State agents and accomplices have not only manipulated evidence, but also have threatened, killed, or forced into exile petitioners, attorneys, investigators, and judges seeking to hold rights abusers DFFRXQWDEOH ´[108]

That is why it is imperative to give similarly situated individuals the right to intervene in the proceedings before the Inter-American Court affording them the opportunity to argue that their conduct did not violate human rights standards. That is especially important in cases where, as in *Bulacio*, the State accepted its responsibility before the Inter-American System[122] and the domestic court convicted and sentenced Espósito to a prison term as a result.[123] Allowing domestic defendants the right to argue their case before the Inter-American Court would not disturb its procedures and would minimize criticism against it in cases like *Espósito*.

VIII. CONCLUSION

The decision in *Ministerio de Relaciones Exteriores* came as a shock to D J U H D W S D U W R I $ U J H Q W L Q D ¶ V O H J D O F R P P X Q L W \ E H F G H S D U W X U H I U R P W K H & R X U W ¶ V S U H Y L R X V H [H P S O D U \ F the Inter-$ P H U L F D Q 6 \ V W H P ¶ V G H F L V L R Q V S H U W D L Q L Q J W violations.[124] This represents a dangerous example to countries that are considering defying and even leaving the System.[125] Hopefully, the Court will not change its course now, but rather stick to its previous decisions which showed the due respect to the Inter-$ P H U L F D Q decisions. & R X U W ¶ V

That does not mean that the case law of the Inter-American Court. As we saw in *Bulacio*, is without its own problems regarding the due process rights of the accused of committing human rights violations. This problem could be remedied by giving those defendants the right to appear before Inter-American Court and to plead their case.

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122. See *Bulacio v. Argentina*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 100, ¶ 31 (Sept. 18, 2003).

123. Tribunal Oral en lo Criminal y Correccional Nro. 29 de la Capital Federal [Oral Criminal D Q G & R U U H F W L R Q D O & R X U W 1 R RA Asignación Tribunal Oral & D S L W D O @ TOO1 ± Espósito, Miguel Angel / privacion ilegal de libertad, $ U J

124. Raffaela Kunz, *Judging International Judgments Anew? The Human Rights Courts before Domestic Courts*, 30 EURO. J. INT ¶ L. 1129, 1129- ³ , Q W K H $ P N â ®¾ ' a'' y a!! a'' 0 À Espósito,