

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

GARRIDO AND BAIGORRIA CASE

JUDGMENT OF FEBRUARY 2, 1996

In the Garrido and Baigorria Case,

the Inter-American Court of Human Rights, composed of the following judges:

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice-President
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Oliver H. Jackman, Judge
Alirio Abreu-Burelli, Judge
Antônio A. Cançado Trindade, Judge
Julio A. Barberis, Judge *ad hoc*;

also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

pursuant to Articles 45 and 46 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"),

renders the following judgment in the instant case submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Argentina (hereinafter "the Government" or "Argentina").

I

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court") by the Commission by application dated May 29, 1995, which was accompanied by Report 26/94 of September 20, 1994. It originates in a complaint (No. 11.009) against Argentina which the Commission received on April 29, 1992.

2. In its application, the Commission requested the following:

1 In accordance with the reasoning set forth in the present application, the Commission requests that the Honorable Court, having received ten copies of this application with its respective attachments, and based on the requirements set forth in Article 61 of the Convention and Articles 26 and 28 of the Rules of Procedure of the Court, admit the present application, transmit it to the Illustrious Government of Argentina and in due time render a judgment declaring:

i. That the Argentine Government is responsible for the disappearances of Raúl Baigorria and Adolfo Garrido and that, as a consequence, violations of Articles 4 (right to life); 5 (right to respect for physical, mental, and moral integrity); and 7 (right to personal liberty), all in relation to Article 1(1) of the Convention, are imputed to the Government.

ii. That the Argentine State has violated the right of the victims and of their families to a fair trial. In particular, it has violated the right to a judicial hearing within a reasonable time as recognized by Article 8(1) of the Convention, as well as the right to simple and prompt judicial recourse for protection against acts that violate fundamental rights as provided for in Article 25 of the Convention, both read in relation to Article 1(1) of the Convention.

iii. That the Argentine State as a consequence of the violation of the rights protected by Articles 4, 5, 7, 8, and 25, has also violated Article 1(1) of the Convention, in relation to the obligation to respect the rights and freedoms recognized in the Convention, and the duty to ensure and guarantee the free and full exercise of those rights to all persons subject to the jurisdiction of the Argentine State.

2. That in accordance with the statements of Point 1 of this petition, the Court order the Argentine State to make full reparations to the family of the victims for the grave material and moral injury caused, and, as a consequence, rule that the Argentine State:

i. Undertake a rapid, impartial, and exhaustive investigation into the facts complained of for the purpose of determining the whereabouts of Baigorria and Garrido and establishing the responsibility of the persons who are directly or indirectly involved, so that they receive the legal sanctions due them.

ii. Provide information on the circumstances of the detention of Baigorria and Garrido and the fate of the victims, and locate and turn over their remains to their families.

iii. Grant reparations for the purpose of compensating the families of the victims for the material and moral injuries suffered.

iv. Order any other measures which the Court considers appropriate to remedy the injury caused by the disappearance of Baigorria and Garrido.

3. Order the Argentine State to pay the costs of this proceeding, including the honoraria of the professionals who have served as representatives of the victims both in their efforts before the Commission and in the proceedings before the Court.

3. The Inter-American Commission named Michael Reisman as its Delegate; David Padilla and Isabel Ricupero as Attorneys; and as Assistants, Juan Méndez, José Miguel Vivanco, Viviana Krsticevic, Ariel Dulitzky, Martín Abregú, Diego Lavado, and Carlos Varela-Alvarez. Isabel Ricupero was subsequently replaced by Mario López-Garelli.

4. On June 12, 1995, after the President of the Court (hereinafter "the

President") made the preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified Argentina of the application and informed the State that it had a period of three months to file a written answer [Article 29(1) of the Rules of Procedure] and thirty days following notification of the application to present preliminary objections [Article 31(1) of the Rules of Procedure]. The Secretariat also asked Argentina to appoint its Agent to the Court within a period of two weeks and, if it considered it necessary, also to appoint an Alternate Agent.

The Government received the notification on June 14, 1995.

5. By note dated June 22, 1995, in Buenos Aires, Argentina appointed Ambassador Zelmira Regazzoli and Doctor Mónica Pinto as Agent and Alternate Agent respectively; Doctor Francisco Martínez, Doctor Jorge Cardozo and Secretary Ana María Moglia as Advisors; and Minister Haydée Osuna as Assistant. By note of January 31, 1996, Ambassador Humberto Toledo was appointed Alternate Agent.

6. On July 10, 1995, the Agent of the Government informed the Court that Argentina would not present preliminary objections. By another note of the same date the agent notified the Court that Argentina appointed Julio A. Barberis as Judge *ad hoc*.

7. On September 11, 1995, Argentina answered the application (*infra*, para. 24).

8. By Order of December 9, 1995, the President summoned the parties to a public hearing at the seat of the Court to be held on February 1, 1996. The Commission and the Government, in notes received on January 30 and 31, 1996, respectively, requested postponement of that hearing.

9. On February 1, 1996, the public hearing on the merits was held as planned at the seat of the Court.

There appeared,

for the Government of the Republic of Argentina:

Humberto Toledo, Alternate Agent;

for the Inter-American Commission on Human Rights:

John Donaldson, Delegate
Domingo Acevedo, Attorney
Ariel Dulitzky, Assistant.

II

10. In Section II of its application, the Commission set forth a statement of the facts that gave rise to this case. In this regard, the Commission asserts that, according to the account of eyewitnesses, at approximately 4:00 P.M., on April 28, 1990, Adolfo Argentino Garrido-Calderón and Raúl Baigorria-Balmaceda were detained by uniformed personnel of the Police of Mendoza when they were driving around in a vehicle. This event took place in the General San Martín Park in the City of Mendoza. According to the witnesses, the men were questioned (or detained) by at least four police agents wearing uniforms of the Mobile Division of the Mendoza Police, who were traveling in two cars belonging to that security force.

11. This incident was communicated to the family of Garrido approximately one hour later, by Ramona Fernández, who heard of the occurrence through the account of an eyewitness.

12. The family of Garrido had immediately initiated a search. They were worried because there was a judicial order of detention out against him. The family asked Attorney Mabel Osorio to locate Garrido.

The result of the inquiry was that Mr. Adolfo Garrido was not found to be detained at any police division. Nevertheless, at the Fifth Police Station of Mendoza the family found the vehicle in which Garrido and Baigorria had been traveling at the time of their detention. The police told them that the vehicle had been found in the General San Martín Park as a result of an anonymous call claiming that there was an abandoned car there.

13. On April 30, 1990, Attorney Osorio filed a writ of *habeas corpus* on behalf of Garrido, and on May 3 Attorney Oscar A. Mellado also filed a writ on behalf of Baigorria.

Both writs were processed by the Fourth Court of Investigation of the Mendoza Province and were rejected for failure to prove deprivation of liberty.

14. On May 2, 1990, the family of Garrido filed a formal complaint with the Public Prosecutor on duty, alleging the forced disappearance of both persons. This proceeding took place in the Fourth Court of Investigation of the First Judicial District and was identified as No. 60.099.

When Esteban Garrido, brother of one of the victims, answered the summons to testify, he met a police officer named Geminiani at the Court. Mr. Geminiani acknowledged that a photograph of Adolfo Garrido had been shown by a police agent to the owners of a business that had been held up, and that the police "*were looking for him.*" These statements were recorded in the judicial record.

15. The application provides the names of the eyewitnesses who saw Garrido and Baigorria detained and taken away by police personnel.

16. The families of the disappeared reported the events to the Committee on Rights and Guarantees of the Chamber of Representatives and to the Senators of the Mendoza Legislature on May 2 and 11, 1990, respectively. They did not receive an answer.

17. On September 19, 1991, Esteban Garrido presented a new writ of *habeas corpus* on behalf of both disappeared before the First Court of Investigation of Mendoza. It was rejected. He appealed this decision to the Third Criminal Chamber of Mendoza, which denied the appeal on November 25, 1991.

18. On November 20, 1991, Esteban Garrido became the civil plaintiff in Action No. 60.099, which was brought before the Fourth Court of Investigation of the First Judicial District of Mendoza (*supra*, para. 14).

19. During the five years which have transpired since the disappearance of Garrido and Baigorria, their families have denounced the events at the local level as well as at the national and international levels. They have filed multiple complaints before governmental authorities and have conducted an intense search in judicial, police, and health facilities, all to no avail. The judicial file on this proceeding is still in the initial stage of processing.

III

20. The Inter-American Commission received the complaint in this case on April 29, 1992, and began processing it on May 6, 1992. On September 20, 1994, the Commission adopted Report 26/94, that was transmitted to Argentina on December 1, 1994, requesting that it provide information on the measures adopted within a period of sixty days. The resolutions of the Report were as follows:

50. To declare that responsibility for the disappearances of Raúl Baigorria and Adolfo Garrido is imputed to the State of Argentina in accordance with Article 1(1) of the Convention and that, as a consequence, violations of Articles 4 (right to life), 5 (right to respect of physical, mental, and moral integrity) and 7 (right to personal liberty) of the Convention are attributable to the State.

51. To recommend to the Government of Argentina that it undertake an exhaustive, rapid and impartial investigation into the events denounced for the purpose of determining the whereabouts of Garrido and Baigorria and establishing the responsibility of the persons who are directly or indirectly involved, so that they receive appropriate legal sanctions. Also to recommend that the State pay compensation to the families of the victims.

52. To request that the Government of Argentina inform the Commission, within a period of sixty days, of the measures adopted as a result of the present report.

53. To transmit the present report to the Government of Argentina, which shall not be authorized to publish it.

21. On February 6, 1995, the Commission granted Argentina an extension until February 20, 1995 to submit the information requested.

The Government, in a note dated February 17, 1995, informed the Commission that the Ministry of Justice had initiated measures to give effect to the decisions of the Commission. On March 1, 1995, the Commission granted the Government another period of an additional ninety days to comply with its obligations.

On May 25, 1995, the Government requested that the Commission allow it to continue the actions initiated until the Commission could evaluate the measures adopted at its next session. The Commission decided that the Argentine answer did not demonstrate an advance in compliance with the resolution of Report 26/94. On May 29 it submitted its application to this Court.

IV

22. The application maintains that the events set forth therein describe a case of the forced disappearance of Mr. Raúl Baigorria and Mr. Adolfo Garrido on April 28, 1990, and a resultant denial of justice, which violate numerous articles of the American Convention on Human Rights (hereinafter "the Convention" or "the Inter-American Convention"). In this respect the Commission invokes Articles 1(1) (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 7(5), 7(6), 8, and 9 (Right to a Fair Trial), 8(1) (Judicial Guarantees), and 25 (Judicial Protection), (*supra*, para. 2).

23. In the application the Commission offers the evidence on which it is based.

V

24. The Court considers it pertinent to transcribe the following two paragraphs from Argentina's answer to the application:

The Government of Argentina accepts the facts set forth in Item II of the application in relation to the situation of Mr. Raúl Baigorria and Mr. Adolfo Garrido, facts which substantially coincide with those raised in the presentation before the Illustrious Inter-American Commission on Human Rights that were not questioned at that time.

The Government of the Republic of Argentina accepts the legal consequences to the Government resulting from the facts

referred to in the previous paragraph in light of Article 28(1) and (2) of the American Convention on Human Rights inasmuch as the competent court has not been able to identify the person or persons criminally responsible for the crimes against Raúl Baigorria and Adolfo Garrido and in that way clarify their whereabouts.

25. During the hearing of February 1, 1996, (*supra*, para. 9) the Alternate Agent of Argentina, Ambassador Humberto Toledo, stated that the Government "*totally accept[ed] its international responsibility*" and reiterated "*the acceptance of international responsibility of the Argentine State in a case of this kind.*" At the same hearing the Commission expressed its agreement to the terms of the acceptance of responsibility made by the Alternate Agent of Argentina.

VI

26. The Court has jurisdiction to hear the instant case. Argentina has been a State Party to the American Convention since September 5, 1984, and on that same day accepted the jurisdiction of the Court.

VII

27. On September 11, 1995, Argentina accepted the facts set forth by the Commission in Section II of the application. Those facts are summarized in paragraphs ten through nineteen of the instant judgment.

Argentina also accepted the legal consequences that derive from the facts cited (*supra*, para. 24). Likewise, this State fully accepted its international responsibility in the present case (*supra*, para. 25).

Given the acceptance made by Argentina, the Court determines that there is no controversy between the parties as to the facts that gave rise to the instant case, nor as to international responsibility.

VIII

28. The Court determines that it is now time to decide on the procedures to be followed on the subject of reparations and compensation in the present case. In this regard, the Government has requested of the Court, "*the suspension of the proceedings*" for a period of six months for the purpose of reaching an agreement. The nature of proceedings before a human rights court does not permit the parties to withdraw from the application of set procedural rules, even by mutual agreement, since they are by nature of a public procedural order.

29. Given the current conversations between the Government, the Commission, and the representatives of the victims, to which the interested parties made reference during the hearing of February 1, 1996, and in the briefs submitted to the Court before the hearing, it appears appropriate to grant them a period of six months to reach an agreement on reparations and compensation.

30. The Court must point out the difference between the suspension of a proceeding, which is inadmissible, and the granting of a period to reach an agreement on reparations and compensation, as this Court has done in some earlier cases. The latter is within the jurisdiction of the Tribunal, and, in the present case may be an adequate way to reach an agreement on reparations and compensation.

IX

31. Now, therefore,

THE COURT,

DECIDES:

unanimously

1. To take note of the acceptance made by Argentina of the acts stated in the application.
2. To take note as well of Argentina's acceptance of international re-

sponsibility for those acts.

3. To grant the parties a period of six months from the date of the present judgment to reach an agreement on reparations and compensation.
4. To reserve the authority to examine and approve that agreement and, in the event that the parties do not agree, to continue the proceedings on reparations and compensation.

Done in Spanish and English, the Spanish text being authentic. Read at a public session at the seat of the Court in San José, Costa Rica on February 2, 1996.



Héctor Fix-Zamudio
President



Hernán Salgado-Pesantes



Alejandro Montiel-Argüello



Máximo Pacheco-Gómez



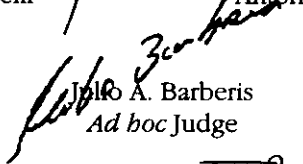
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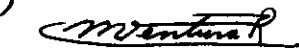
Alirio Abreu-Burelli



Antônio A. Cançado Trindade



Julio A. Barberis
Ad hoc Judge




Manuel E. Ventura-Robles
Secretary

So ordered,



Manuel E. Ventura-Robles
Secretary



Héctor Fix-Zamudio
President