

Barreto Leiva v. Venezuela

ABSTRACT¹

This is an unusual case for the Court as it deals with the prosecution and trial of a high level State official, who had been accused, together with the President of Venezuela, of embezzlement. In the judgment on the merits the Court discussed at length the scope of due process rights. It eventually found violation of some rights protected by the American Convention on Human Rights, but all those the Commission claimed to have been violated.

I. FACTS

A. Chronology of Events

February 22, 1989: Mr. Oscar Enrique Barreto Leiva, the Director General of the Department of Administration and Services of the Ministry of the Secretary of the Presidency of the Republic of Venezuela, attends a meeting with the Council of Ministers.² At the meeting, the President of Venezuela, Mr. Carlos Andrés Pérez Rodríguez, creates a 250 million Venezuelan Bolivares (approximately \$17.8 million U.S.D.) fund for the Ministry of Foreign Affairs.³ Large amounts of the fund are spent to provide protection for the President of Nicaragua, Ms. Violeta Barrios de Chamorro, and several of her ministers.⁴

Ms. Barrios de Chamorro is the widow of Mr. Pedro Joaquin Chamorro, an opponent of the Nicaraguan totalitarian government and close friend of President Pérez Rodríguez.⁵ After the Nicaraguan government assassinated President Chamorro, President Carlos Andrés

1. Amy Choe, Author; Grace Kim, Sascha Meisel, and Elise Cossart-Daly, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 206, ¶¶ 20, 21 (Nov. 31, 2009).

3. *Id.* ¶ 21.

4. *Id.*

5. *Carlos Andrés Pérez y Nicaragua [Carlos Andrés Pérez and Nicaragua]*, LA PRENSA, Feb. 18, 2011, <http://www.laprensa.com.ni/2011/02/18/opinion/52479/imprimir>.

Pérez began providing support to Ms. Barrios de Chamorro to fuel a democratic revolution in Nicaragua.⁶

February 4, 1993: The Superior Court for Safeguarding Public Assets summons Mr. Barreto Leiva to testify in an investigation phase during a summary proceeding for criminal charges against the President Carlos Andrés Pérez for misappropriating public funds.⁷ The Superior Court warns Mr. Barreto Leiva that he will face criminal sanctions if he fails to appear, but the court does not specify whether he is testifying as a witness or a suspect.⁸

February 10, 1993: After the Superior Court advises Mr. Barreto Leiva of his constitutional right to refuse making self-incriminating statements while testifying, Mr. Barreto Leiva starts testifying without being sworn in.⁹ At three different times during the testimony, three prosecutors from the Public Ministry enter the courtroom.¹⁰

March 11, 1993: The Prosecutor General requests that the Supreme Court of Justice grant a preliminary hearing against President Carlos Andrés Pérez, Senator Alejandro Izaguirre Angeli and Representative Reinaldo Figueredo Planchart for embezzlement and misappropriation of public funds.¹¹

March 30, 1993: The Superior Court for Safeguarding Public Assets submits its indictments of Mr. Barreto Leiva for embezzlement and misappropriation of public funds to the Supreme Court of Justice.¹²

May 26, 1993: The Supreme Court of Justice agrees to take the case against President Carlos Andrés Pérez after receiving approval from the Senate¹³ and decides that the case is meritorious.¹⁴ Eight months before

6. *Id.*

7. Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment, ¶ 2; Barreto Leiva v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.663, ¶ 40 (Oct. 31, 2008).

8. *Id.* ¶¶ 40, 67.

9. *Id.* ¶ 41.

10. *Id.*

11. *Id.* ¶ 42.

12. *Id.* ¶ 43.

13. Article 215 of Venezuela's Constitution requires the Senate to authorize the Supreme Court's hearing of charges against the President and allows the Supreme Court to determine whether there are grounds to try the President.

14. *Id.* ¶ 44.

his presidency ends, President Carlos Andrés Pérez is impeached.¹⁵ He is the first president in Venezuelan history to be impeached.¹⁶

October 5, 1993: After the Substantiation Court of the Supreme Court of Justice informs Mr. Barreto Leiva of the grounds of his summons and his right not to make self-incriminating statements, Mr. Barreto Leiva testifies without defense counsel and without being sworn in.¹⁷ Two prosecutors from the Public Ministry are also present.¹⁸

December 15, 1993: Mr. Barreto Leiva testifies again before the Substantiation Court of the Supreme Court of Justice without being sworn in and without defense counsel.¹⁹ As he begins testifying, he states that he is determined to relay only the truth without incriminating himself and that he is frustrated for testifying as a suspect.²⁰ In his testimony, he repeats the testimonies he gave on October 5, 1993 and February 10, 1993.²¹

May 18, 1994: The Supreme Court of Justice issues arrest warrants for President Carlos Andrés Pérez, Mr. Alejandro Izaguirre and Mr. Reinaldo Figueredo Planchart for embezzlement and misappropriation of public funds.²² The Supreme Court also issues arrest warrants for Mr. Carlos Jesus Vera Aristiguieta and Mr. Barreto Leiva for being complicit in misappropriating the funds.²³

May 25, 1994: Mr. Barreto Leiva is detained at the El Junquito jail.²⁴

July 13, 1994: Mr. Barreto Leiva testifies before the Substantiation Court of the Supreme Court of Justice and is represented by his defense counsel.²⁵

May 30, 1996: The Supreme Court of Justice finds Mr. Barreto Leiva

15. JAMES S. HENRY, *THE BLOOD BANKERS: TALES FROM THE GLOBAL UNDERGROUND ECONOMY*, 110 (2005).

16. *Id.*

17. *Barreto Leiva v. Venezuela*, Petition to the Court, ¶ 47.

18. *Id.* ¶ 49.

19. *Id.*

20. *Id.* ¶ 50.

21. *Id.*

22. *Id.* ¶ 51.

23. *Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, ¶ 113.

24. *Barreto Leiva v. Venezuela*, Petition to the Court, ¶ 52.

25. *Id.* ¶ 55.

guilty of being an accomplice to the crime of Aggravated Generic Misappropriation of Funds and sentences him to one year and two months in prison.²⁶ The Supreme Court of Justice bars Mr. Barreto Leiva from engaging in political activity during the sentence and orders him to pay the trial costs and restitution for misappropriating funds.²⁷

June 13, 1996: Mr. Barreto Leiva is released from jail sixteen days after his sentence is supposed to end.²⁸

June 14, 1996: A Venezuelan newspaper, *El Nuevo Pais*, reports that a Senator and former President Carlos Andrés Pérez discussed with a judge of the Supreme Court of Justice about introducing mitigating circumstances into the court's judgment.²⁹

September 3, 1997: The Venezuelan newspaper *El Nacional* reports that, even though the five judges of the Supreme Court of Justice have not been newly elected despite their terms having elapsed, they can retain their seats because a new election would alter the political balance of the court and affect the trial on President Pérez Rodríguez's misappropriation charge.³⁰

B. Other Relevant Facts

In the 1970s, Venezuela enjoyed prosperity due to an oil boom.³¹ President Pérez Rodríguez, commencing his first presidency in 1974, used the oil money to expand the public sector and social welfare.³² However, Venezuela's economy suffered after oil prices dropped and President Pérez Rodríguez failed to get reelected in the subsequent presidential election.³³ In 1988, President Pérez Rodríguez is elected to serve a second term, largely due to the public's nostalgia for the years of oil boom prosperity.³⁴ He promised to increase workers' wages and

26. *Id.* ¶ 61.

27. *Id.*

28. *Id.* ¶ 62.

29. *Id.* ¶ 63.

30. *Id.* ¶ 64.

31. Charles H. Blake, *The Dynamics of Economic Integration in Venezuela and Their Implications for the FTAA Process*, 15 L. & BUS. REV. AM. 81, 85.

32. *Id.*

33. *Id.* at 86.

34. *Id.* at 87.

expand the public sector, as he did during his first presidency.³⁵

Contrary to the public's expectations, however, President Pérez Rodríguez introduced market-oriented changes in the Venezuelan society, such as ending price controls and government subsidies in order to revive the country's struggling economy.³⁶ These drastic changes mobilized anti-governmental forces, spearheaded by future president Hugo Chavez, and the President's approval ratings dropped rapidly.³⁷ When allegations of the President's public funds embezzlement arose, Venezuela quickly prosecuted and convicted the President.³⁸

II. PROCEDURAL HISTORY

A. Before the Commission

October 9, 1996: Mr. Barreto Leiva submits an initial petition the Commission.³⁹

July 17, 2008: The Commission approves the Report on Admissibility and Merits No. 31/08.⁴⁰

The Commission finds that the State violated:

Articles 7(1) (Right to Personal Liberty and Security) and 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) of the Convention with regard to Article 1(1) (Obligation to Respect Rights) because the State imposed pretrial imprisonment on Mr. Barreto Leiva with no possibility of bail and without legitimate reasons for the imprisonment.⁴¹

Articles 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) and 8(2) (Right to be Presumed Innocent) of the Convention with regard to Article 1(1) (Obligation to Respect Rights), for imposing pretrial detention on Mr. Barreto Leiva for sixteen days longer than the possible penalty established by law.⁴²

Article 8(1) (Right to a Hearing Within Reasonable Time by

35. *Id.*

36. *Id.* at 87-88.

37. *Id.* at 89.

38. *Id.* at 89-90.

39. Barreto Leiva v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.663, ¶ 10 (Oct. 31, 2008).

40. *Id.* ¶ 32.

41. *Id.* ¶ 144.

42. *Id.* ¶ 145.

Competent and Independent Tribunal) of the Convention because Mr. Barreto Leiva was tried at the State's highest court in the first instance (highest court of appeal) instead of an ordinary court (trial court).⁴³

Article 8(2)(b) (Right to Have Prior Notification of Charges) of the Convention because the State did not notify Mr. Barreto Leiva of the charges pressed against him and the reasons for those charges.⁴⁴

Articles 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), (d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) and (f) (Right to Defense to Obtain the Appearance of Witnesses and Examine Them) of the Convention because Mr. Barreto Leiva was not assisted by counsel when he testified as an accused person and when he was cross-examining witnesses.⁴⁵

Article 8(2)(h) (Right to Appeal) of the Convention because Mr. Barreto Leiva could not appeal, as he was tried in the State's highest court before being tried in a lower court.⁴⁶ In relation to the State's violation of Article 8(2)(h) (Right to Appeal), the Commission found that the State also violated Article 25(1) (Right of Recourse Before a Competent Court) of the Convention with regard to Article 1(1) (Obligation to Respect Rights) because Mr. Barreto Leiva was not given any judicial protection when he could not appeal.⁴⁷

Article 2 of the Convention (Obligation to Give Domestic Legal Effects to Rights) because the State's Constitution and the Code of Criminal Procedure at that time violated several provisions of the Convention.⁴⁸

Consequently, the Commission recommends the State to provide timely remedies to Mr. Barreto Leiva and to announce its international liability regarding Mr. Barreto Leiva's case.⁴⁹ The Commission gives the State two months to implement those recommendations.⁵⁰ The State, however, does not take any actions within the two-month period.⁵¹

B. Before the Court

October 31, 2008: The Commission submits the case to the Court after

43. *Id.* ¶ 118.

44. *Id.* ¶ 82.

45. *Id.* ¶¶ 92-94.

46. *Id.* ¶¶ 119, 123.

47. *Id.* ¶ 124.

48. *Id.* ¶ 151.

49. *Id.* ¶ 33.

50. *Id.* ¶ 34.

51. *Id.* ¶ 37.

the State failed to adopt its recommendations.⁵²

1. Violations Alleged by Commission⁵³

Article 7(1) (Right to Personal Liberty and Security)

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)

Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal)

Article 8(2)(b) (Right to Have Prior Notification of Charges)

Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense)

Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel)

Article 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them)

Article 8(2)(h) (Right to Appeal)

all in relation to:

Article 25(1) (Right of Recourse Before a Competent Court)

Article 2 (Obligation to Give Domestic Legal Effects to Rights)

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

2. Violations Alleged by Representatives of the Victims⁵⁴

Same Violations Alleged by Commission.

July 1, 2009: *Círculo Bolivariano Yamileth López* (Yamileth López Bolivarian Circle) submits an *amicus curiae* brief to the Court.⁵⁵

52. *Id.* ¶ 182.

53. *Id.* ¶ 181.

54. *Id.* ¶ 186. Carlos Armando Figueredo Planchart served as representatives of Mr. Barreto Leiva.

55. *Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 206, ¶¶ 8, 20, 21 (Nov. 31, 2009).*

III. MERITS

A. *Composition of the Court*⁵⁶

Diego García Sayán, President
Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu-Blondet, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 17, 2009: The Court issued its Judgment on Barreto Leiva v. Venezuela.⁵⁷

The Court found unanimously that the State had violated:

Article 8(2)(b) (Right to Have Prior Notification of Charges), in relation to Article 1(1) of the Convention, to the detriment of Mr. Barreto Leiva,⁵⁸ because:

The State did not notify Mr. Barreto Leiva about the charges against him and reason for those charges.⁵⁹ The Court reasoned that the right to defense must apply from the moment a person is accused.⁶⁰ Furthermore, in order for the accused to fully benefit from her right to defense, the State must notify the accused person about the charges even before her first statement.⁶¹

The Court also considered whether Mr. Barreto Leiva was a witness or a suspect when he made the three statements at issue.⁶² The State argued that Mr. Barreto Leiva testified as a witness and not a suspect

56. Due to reasons *force majeure*, Judge Cecilia Medina Quiroga and Judge Leonardo A. Franco did not participate in the deliberation and delivery of the Judgment.

57. Barreto Leiva v. Venezuela, Merits, Reparations and Costs. *Id.* at n.1.

58. *Id.* "Declares" ¶ 1.

59. *Id.* ¶ 48.

60. *Id.* ¶ 29.

61. *Id.* ¶ 30.

62. *Id.* ¶ 32.

when he made the statements.⁶³ But the Court ruled that Mr. Barreto Leiva testified as a suspect in two testimonies, as he was not sworn in and he was informed about his right not to make self-incriminating statements.⁶⁴ If Mr. Barreto Leiva was testifying as a witness, he would have been sworn in and he would not have been notified about his right not to incriminate himself.⁶⁵

Because the State did not notify Mr. Barreto Leiva of his charges before he testified, the Court ruled that the State violated Article 8(2)(b)(Right to Have Prior Notification of Charges).⁶⁶

Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) and Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Barreto Leiva,⁶⁷ because:

*The State did not give Mr. Barreto Leiva access to the records about his case.*⁶⁸ *The Court reasoned that the State's violation of Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense) stemmed from the State's domestic laws.*⁶⁹ *Article 60 of the State's Constitution mandates the State to provide "all evidentiary material" and "all means of defense provided by law" to the defendant as soon as a warrant is executed.*⁷⁰ *On the other hand, Article 73 of the State's Code of Criminal Procedure requires investigation proceedings to remain secret until the investigation is completed and an arrest warrant is issued.*⁷¹

*While the State should investigate in a manner that would maximize the chance of successfully convicting guilty people, respect for an individual's right to have access to her case should also be considered.*⁷² *Moreover, the State should not circumscribe that right*

63. *Id.*

64. *Id.* ¶ 38.

65. *Id.*

66. *Id.* ¶ 48.

67. *Id.* "Declares" ¶ 2.

68. *Id.* ¶¶ 49, 57.

69. *Id.* ¶ 57.

70. *Id.* ¶ 51.

71. *Id.* ¶ 52.

72. *Id.* ¶¶ 57, 58.

unless there is a legitimate reason for doing so.⁷³ Since the State did not give Mr. Barreto Leiva access to evidentiary records before his arrest, the Court ruled that this violated Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense).⁷⁴ Furthermore, since the State's laws domestic laws at the time deprived everyone from right to access her evidentiary records, the State also violated Article 2 (Obligation to Give Domestic Legal Effects to Rights) and consequently Article 1(1) (Obligation to Respect Rights of the American Convention) of the Convention.⁷⁵

Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) of the Convention, to the detriment of Mr. Barreto Leiva,⁷⁶ because:

Mr. Barreto Leiva was not assisted by counsel when he testified three times.⁷⁷ The Court rejected the State's argument that they provided counsel since a Public Prosecutor was present at the courtroom each time Mr. Barreto Leiva testified.⁷⁸ The Court held that the right to representation is not fulfilled when the prosecution represents the accused person, as the defense counsel and prosecution are "naturally opposed forces."⁷⁹

Article 8(2)(h) (Right to Appeal), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) and Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Barreto Leiva,⁸⁰ because:

Mr. Barreto Leiva was tried by the State's highest court in the first instance and did not have the right to appeal.⁸¹ The State cited two cases from the United States Human Rights Committee ("Committee") to argue that there was no violation.⁸² In response, the Court mentioned

73. *Id.* ¶ 55.

74. *Id.* ¶ 57.

75. *Id.* ¶¶ 56, 57.

76. *Id.* "Declares" ¶ 3.

77. *Id.* ¶ 64.

78. *Id.* ¶ 59.

79. *Id.* ¶ 63.

80. *Id.* "Declares" ¶ 6.

81. *Id.* ¶ 91.

82. *Id.* ¶¶ 84, 85.

the Committee's comment on an individual's right to appeal, which states that the right to appeal, as appeared in the International Covenant on Civil and Political Rights is violated when the highest court of the country tries an individual for the first and only instance.⁸³ The only exception to this rule occurs when the State specifically makes a reservation on the right to appeal in the Covenant.⁸⁴ Therefore, the Court concluded that the cases cited to by the State do not apply to the present case.⁸⁵

Moreover, the Court mentioned that the State has a duty to protect both an individual's right to be free from erroneous judgments and the State's credibility in rendering judgments by safeguarding the right to appeal.⁸⁶ Therefore, the State does not have discretion to undercut those very principles behind the right to appeal, while they do have some amount of discretion in ordering remedies.⁸⁷

Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Barreto Leiva,⁸⁸ because:

The State's domestic legal proceeding failed to provide an individual's right to appeal and right to access records of the proceeding within a proper time frame, such as when Mr. Barreto Leiva was prevented from obtaining access to the records of the proceeding before being arrested.⁸⁹ The Court held that the State should have adapted its domestic laws to the Convention and rejected the State's argument that incorporating the Convention is a progressive process that requires time.⁹⁰ Further, the Court ruled that taking sixteen years after ratification to adapt the Convention is beyond the appropriate time frame.⁹¹

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) and Article 2 (Obligation to Give Domestic Legal Effects

83. *Id.* ¶ 86.

84. *Id.*

85. *Id.* ¶ 87.

86. *Id.* ¶¶ 88, 89.

87. *Id.* ¶ 90.

88. *Id.* ¶¶ 104, 109.

89. *Id.*

90. *Id.* ¶¶ 105, 106.

91. *Id.* ¶ 109.

to Rights) of the Convention, to the detriment of Mr. Barreto Leiva,⁹² because:

The State's violations were two-fold.⁹³ First, the State did not prove that Mr. Barreto Leiva's pretrial detention had a legitimate purpose and thereby violated Mr. Barreto Leiva's right not to be subject to arbitrary detention.⁹⁴ Second, the State's domestic laws violated Article 2 (Obligation to Give Domestic Legal Effects to Rights) because it failed to incorporate in its domestic laws the requirement to order pretrial detention only when it would serve a legitimate purpose.⁹⁵

As for the first violation, the State based its arrest warrant against Mr. Barreto Leiva on factual and legal grounds of being complicit in misappropriating public funds.⁹⁶ However, the State did not show that detaining Mr. Barreto Leiva served a legitimate purpose because there was no evidence that Mr. Barreto Leiva would elude justice.⁹⁷

As for the second violation, the State's domestic law did not even require a showing of legitimate purpose for pretrial detention.⁹⁸ The domestic law only requires the lower standard of "well-founded indications of criminal responsibility" rather than sufficient circumstantial evidence that would allow a reasonable person to conclude that the suspect will impede proceedings or elude justice.⁹⁹

Article 7(1) (Right to Personal Liberty and Security), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) and Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Barreto Leiva,¹⁰⁰ because:

The State detained Mr. Barreto Leiva for sixteen days more than the duration of the sentence and exceeded the reasonable and temporal

92. *Id.* "Declares" ¶ 9.

93. *Id.*

94. *Id.* ¶ 116.

95. *Id.*

96. *Id.* ¶¶ 114-115.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* "Declares" ¶ 9.

limits of pretrial detention.¹⁰¹ Accordingly, the State also violated Mr. Barreto Leiva's right to personal liberty.¹⁰²

Furthermore, the Court held that the State automatically violated Article 7(1) (Right to Personal Liberty and Security), as it violated Articles 7(2)-(7).¹⁰³

Articles 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) and 8(2) (Right to be Presumed Innocent), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) of the Convention, to the detriment of Mr. Barreto Leiva,¹⁰⁴ because:

Mr. Barreto Leiva was subject to pretrial detention sixteen days longer than the actual sentence for his charge.¹⁰⁵ The Court found that this violated the principle of proportionality, which ensures that a person presumed innocent does not be treated equal or worse than a convicted person.¹⁰⁶

The Court found unanimously that the State had not violated:

Article 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) and Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Barreto Leiva,¹⁰⁷ because:

The Commission and the representatives did not present information about witnesses Mr. Barreto Leiva could not examine and thereby failed to prove their claim.¹⁰⁸

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) and Article

101. *Id.* ¶¶ 118, 123.

102. *Id.*

103. *Id.* ¶ 116.

104. *Id.* "Declares" ¶ 10.

105. *Id.* ¶¶ 117-118.

106. *Id.* ¶ 122.

107. *Id.* ¶¶ 65-66.

108. *Id.*

2 (Obligation to Give Domestic Legal Effects to Rights) of the Convention, to the detriment of Mr. Barreto Leiva,¹⁰⁹ because:

*The Supreme Court of Justice was competent to try the State's President, members of the Congress, and Mr. Barreto Leiva in one combined case at the Supreme Court of Justice.*¹¹⁰

*Article 215 of the State's Constitution confers privilege to the President to be tried by the State's highest court in the first instance.*¹¹¹ *Meanwhile, Article 82 of the State's Organic Law for Safeguarding of Public Assets gives the Superior Court for Safeguarding Public Assets jurisdiction to try members of the Congress for crimes under Article 82.*¹¹² *As Mr. Barreto Leiva did not enjoy privileges in either category, the first issue here was whether the Supreme Court of Justice could try Mr. Barreto Leiva at the first instance.*¹¹³ *The second issue was whether it was proper to try Mr. Barreto Leiva with the President and members of the Congress in the Supreme Court of Justice.*¹¹⁴

*On the first issue, the Court ruled that trying Mr. Barreto Leiva at the Supreme Court of Justice did not violate the principles behind conferring privilege to the President and members of the Congress.*¹¹⁵ *The Legislature provided privilege to serve the public interest, and, while the Supreme Court of Justice trying Mr. Barreto Leiva does not necessarily conflict with public interest, a lower court trying the President could do so, because it might "[alter] the normal conduct of the public service."*¹¹⁶

*For the second issue, the Court ruled that Mr. Barreto Leiva must have been tried at the Supreme Court of Justice at the first instance with the President and Congress members.*¹¹⁷ *Article 9 of the State's Code of Criminal Procedure requires that a sole competent court should hear cases of related crimes in one case to ensure consistency in its*

109. *Id.* ¶¶ 80-81.

110. *Id.*

111. *Id.* ¶ 69.

112. *Id.* ¶ 70.

113. *Id.* ¶ 80.

114. *Id.*

115. *Id.*

116. *Id.* ¶¶ 74, 77.

117. *Id.* ¶¶ 80-81.

judgments.¹¹⁸ Therefore, the Court ruled that the Supreme Court of Justice, which is competent to hear all cases, properly took on Mr. Barreto Leiva, the State's former President, and Congress members' charges in one single case.¹¹⁹

*In sum, the Court held that trying Mr. Barreto Leiva, the President, and Congress members in a single case at the Supreme Court of Justice for a first instance case abides by the principles behind privilege and the State's Code of Criminal Procedure.*¹²⁰

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) of the Convention, to the detriment of Mr. Barreto Leiva,¹²¹ because:

*The Commission failed to prove that the domestic court, which tried Mr. Barreto Leiva's case was not impartial.*¹²² *The representatives only presented press releases implying that there were political pressures on the Supreme Court of Justice decision and no explanation why this would violate the law.*¹²³ *To prove that a court is biased, a party must successfully challenge the presumption that a court is impartial by proving that the court was both subjectively and objectively biased.*¹²⁴ *The Court held that neither the Commission nor the representatives proved bias and thus no violation occurred.*¹²⁵

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation to Respect Rights of the American Convention) of the Convention, to the detriment of Mr. Barreto Leiva,¹²⁶ because:

The Court held that Mr. Barreto Leiva was denied the right to appeal, which is a specific type of remedy governed under Article 8(2)(h), while Article 25(1) pertains to the general obligation of State to provide legal

118. *Id.* ¶ 72.

119. *Id.*, ¶¶ 73, 80.

120. *Id.* ¶¶ 80-81.

121. *Id.* ¶ 99.

122. *Id.* ¶¶ 96, 99.

123. *Id.* ¶ 96.

124. *Id.* ¶ 98.

125. *Id.* ¶ 99.

126. *Id.* ¶¶ 101-102.

*recourse to recover for violation of fundamental rights.*¹²⁷

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Review the Domestic Judgment

The Court ordered the State to grant Mr. Barreto Leiva the right to appeal.¹²⁸ The Court also stated that if the appellate court affirms Mr. Barreto Leiva's criminal charges, there will be no more additional punishment for Mr. Barreto Leiva because he already served his sentence.¹²⁹ But if the appellate court reverses Mr. Barreto Leiva's charges, the State's domestic court must provide reparation for Mr. Barreto Leiva's deprivation of liberty and pecuniary and non-pecuniary damages.¹³⁰

2. Domestic Legal Effects

The State must adopt legislation that would allow every person to appeal, even if a person had the privilege to be tried by the highest court in the first instance.¹³¹ The Court did not order the State to adopt a new legislation to remove domestic laws that prevented an accused person from accessing information about the investigative proceedings and allowed arrest without probable cause because the State modified its domestic rules to comply with the Convention.¹³²

127. *Id.*

128. *Id.* ¶ 130.

129. *Id.*

130. *Id.*

131. *Id.* ¶ 134.

132. *Id.* ¶ 135.

3. Publication of the Judgment

The Court ordered the State to publish specific paragraphs of the present Judgment within six months from notice of the Judgment.¹³³

4. Public Apologies

The Court did not separately order the State to publicly apologize to Mr. Barreto Leiva.¹³⁴ Instead, the Court stated that publishing the Judgment, making it possible to appeal charges and awarding pecuniary and non-pecuniary damages would sufficiently compensate for Mr. Barreto Leiva's damages.¹³⁵

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court did not accept Mr. Barreto Leiva's claims for pecuniary and non-pecuniary damages on their own terms and instead awarded a non-pecuniary damage of \$15,000 to Mr. Barreto Leiva as compensation for the human rights violation he suffered.¹³⁶ The Court reasoned that Mr. Barreto Leiva's request for compensation of lost wages, medical expenses, effects on social life, among other claimed damages, should be dealt with in the State's domestic court, because the Court cannot make judgments on Mr. Barreto Leiva's guilt or innocence.¹³⁷

133. *Id.* ¶ 137.

134. *Id.* ¶ 141.

135. *Id.*

136. *Id.* ¶ 148.

137. *Id.* ¶¶ 141-147.

3. Costs and Expenses

The Court awarded \$10,000 to Mr. Barreto Leiva for the expenses he incurred during the twelve years the Commission and the Court handled his case.¹³⁸ The Court also ordered Mr. Barreto Leiva to use the \$10,000 to compensate people who have represented him throughout the Commission and the Court proceedings.¹³⁹

4. Total Compensation (including Costs and Expenses ordered):

\$ 25,000

C. Deadlines

The Court ordered the State to deliver the pecuniary and non-pecuniary damages to Mr. Barreto Leiva within one year of notice of the judgment;¹⁴⁰ grant Mr. Barreto Leiva the right to appeal and allow a higher court to render a judgment within a reasonable time;¹⁴¹ modify its domestic law to incorporate the concepts of Article 8(2)(h) of the Convention within a reasonable time;¹⁴² publish sections of the Judgment in the Official Gazette and another Venezuelan newspaper with a wide readership at least once within six months of notice of the Judgment;¹⁴³ and fully comply with the Court's orders and submit a report on the adopted measures to the Court within a year of notice of the Judgment.¹⁴⁴

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

138. *Id.* ¶ 153.

139. *Id.*

140. *Id.* ¶ 154.

141. Barreto Leiva v. Venezuela, Merits, Reparations and Costs, "Orders" ¶ 12.

142. *Id.* ¶ 13.

143. *Id.* ¶ 14.

144. *Id.* ¶ 16.

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 206 \(Nov. 17, 2009\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

[Barreto Leiva v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.663 \(Oct. 31, 2008\).](#)

VIII. BIBLIOGRAPHY

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JAMES S. HENRY, *THE BLOOD BANKERS: TALES FROM THE GLOBAL UNDERGROUND ECONOMY* (2005).

Charles H. Blake, *The Dynamics of Economic Integration in Venezuela and Their Implications for the FTAA Process*, 15 L. & BUS. REV. AM. 81.