

Case of Goiburú et al. v. Paraguay

ABSTRACT¹

This case stems from General Alfredo Stroessner's dictatorship in Paraguay and the conspiracy, by several like-minded governments in the region, to suppress political opposition through coordinated covert action, known as Operation Condor. The victims were all persecuted and eventually forcibly disappeared. Eventually, the State admitted responsibility for violation of several articles of the Convention, but implemented only partially and with delay the Court's ruling.

I. FACTS

A. Chronology of Events

1. Events pertaining to Agustín Goiburú Giménez

1954: General Alfredo Stroessner Matiauda's coup d'état establishes a dictatorial rule² in the State that will last until 1989.³ General Stroessner implements martial law, which is renewable every ninety days under the State constitution.⁴ Operating under this "permanent state of siege," he and his followers commit a host of human rights violations, including arbitrary detentions, prolonged imprisonment without trial, political assassination, and torture.⁵

1958: Dr. Agustín Goiburú Giménez, a Paraguayan emergency room surgeon, helps establish the Colorado Popular Movement, a group opposed to General Stroessner.⁶

1. Christopher Peterson, Author; Nathaniel Reinhardt, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 61(1) (Sept. 22, 2006).

3. *Id.* ¶ 40.

4. *Id.* ¶ 61(2).

5. *Id.* ¶¶ 61(2)–61(3).

6. *Id.* ¶ 61(15).

September 1959: Dr. Goiburú Giménez flees to Argentina after being subject to political harassment because of his opposition to Stroessner.⁷

November 1969: Agents of General Stroessner abduct Dr. Goiburú Giménez while he is fishing with his son, Rolando Agustín Goiburú Benítez, in the Paraná River in Argentina.⁸ His captors take him back to Asunción in the State.⁹

December 1970: Dr. Goiburú Giménez escapes from prison, flees to Chile, and eventually moves back to Posadas, Argentina.¹⁰

1970s: In Posadas, Argentina, the Goiburú Benítez family watches over their house every night.¹¹ The family receives constant threats, individuals drive past the house firing weapons, the electricity phone lines are cut, and individuals shout at the family through megaphones urging them to come out of their home.¹² Moreover, the State detains Rosa Mujica Giménez, the pregnant sister of Dr. Goiburú Giménez, forcing her to spend most of her pregnancy in detention.¹³

December 1974: Dr. Goiburú Giménez's family notices individuals photographing their house.¹⁴ For safety reasons, the family moves to Entre Ríos, Argentina.¹⁵

Early 1975: The State, allegedly with the guidance of General Guanes Serrano, hatches a new plan to abduct Dr. Goiburú Giménez.¹⁶ However, the henchmen hired to carry out the plan demand too much money.¹⁷

October 1975: State military officers request Argentina's help in detain-

7. *Id.* In 1958, Dr. Goiburú Giménez forms the Colorado Popular Movement, which opposes Stroessner's regime. The doctor publicly denounces the torture and cruel, degrading treatment committed against Paraguayan citizens by Stroessner's government. *Id.*

8. *Id.* ¶ 61(18).

9. *Id.*

10. *Id.*

11. *Id.* ¶ 99(f).

12. *Id.*

13. *Id.* ¶ 99(e). She is arrested because she is Dr. Goiburú Giménez's sister. *Id.*

14. *Id.* ¶ 61(19).

15. *Id.* ¶ 61(21).

16. *Id.* ¶ 61(20).

17. *Id.*

ing Dr. Goiburú Giménez.¹⁸

December 30, 1975: The State Head of Investigations Department informs General Stroessner of Dr. Goiburú Giménez's whereabouts.¹⁹

Early 1977: The person in charge of kidnapping Dr. Goiburú Giménez sets up a base in the Hotel Guaraní in Asunción, Paraguay.²⁰ A note on this hotel's letterhead references Dr. Goiburú Giménez's name and sketches out a plan to abduct the doctor at the San Martín Hospital, where he works in Argentina, because of the security measures he has implemented around his house.²¹

February 8, 1977: An Argentinian Army Captain writes to the Paraguayan Head of Investigations Department, Pastor Milciades Coronel, informing him that everything is set for the arrest of the "Paraguayan doctor."²²

February 9, 1977: Dr. Goiburú Giménez is working the afternoon shift at San Martín Hospital when a green Ford Falcon crashes into his car parked nearby on Nogoyá Street.²³ He hears the collision and, still wearing his hospital smock, goes outside to investigate.²⁴ When he approaches his car, two men, one armed with a gun, force him inside the Ford Falcon.²⁵ Dr. Goiburú Giménez is then taken to Paraguay. The State publicly accuses Dr. Goiburú Giménez of conspiring to kill General Stroessner but makes no record acknowledging his arrest.²⁶ Although no record exists of Dr. Goiburú Giménez's arrest, some witnesses testify to seeing him in State prisons.²⁷ In fact, Domingo Rolón Centurión, a former prisoner of the "Paraguay Investigations Department," reports seeing Dr. Goiburú Giménez after he had been beaten from head to foot and then immersed in a water tank customized for torture.²⁸

18. *Id.* ¶ 61(25)(a).

19. *Id.* ¶ 61(25)(b).

20. *Id.* ¶ 61(22).

21. *Id.*

22. *Id.* ¶ 61(25)(c).

23. *Id.* ¶ 61(23).

24. *Id.*

25. *Id.*

26. *Id.* ¶ 61(26).

27. *Id.* ¶ 61(27).

28. *Id.*

May 5, 1989: Mrs. Elva Elisa Benítez de Goiburú files a criminal complaint with the Public Prosecutor for the abduction, torture, and murder of her husband.²⁹ The complaint lists the following people who might be aware of the events surrounding his disappearance: General Stroessner, Head of State; Sabino Augusto Montanaro, former Minister of the Interior; Pastor Miliciades Coronel Almada, former Head Investigations for the Asunción Police Department; General Francisco Alcibiades Brítez Borges, former Head of the Asunción Police Department; General Benito Guanes Serrano, former Head of Military Intelligence, and Oscar Gómez, Director of the “Rigoberto Caballero” Police Polyclinic.³⁰

July 2, 1997: After eight years of investigations, Mrs. Benítez de Goiburú files another criminal complaint³¹ naming as defendants General Stroessner, Mr. Coronel Almada, and all the accomplices and accessories that have engaged in, or helped conceal, the regime’s “crimes against humanity.”³²

2. Events pertaining to Carlos José Mancuello Bareiro

November 25, 1974: State customs officials arrest Mr. José Mancuello Bareiro, his pregnant wife, Gladis Ester Ríos de Mancuello, and their eight-month-old daughter, Claudia Anahí Mancuello Ríos.³³ Eventually, prison officials release Claudia to her grandparents without informing Ms. Ríos de Mancuello.³⁴ The State holds Mr. Mancuello Bareiro and his wife in connection with Mr. Mancuello Bareiro’s alleged conspiracy with Dr. Goiburú Giménez to assassinate General Stoessner.³⁵ The couple lives in a small cell in the Police Investigations Department, along with Mr. Mancuello Bareiro’s father, Mario Mancuello, and four other prisoners, including Benjamín Ramírez Villalba and Rodolfo Ramírez Villalba.³⁶ State security agents sexually harass Mr. José Mancuello Bareiro’s mother, Ana Arminda Bereiro de Mancuello, and his sister, Ana Elizabeth Mancuello Bareiro, promising to release Mr. José Man-

29. *Id.* ¶ 61(51).

30. *Id.*

31. *Id.* ¶ 61(52)

32. *Id.* ¶¶ 61(52)–(56); 61(57).

33. *Id.* ¶¶ 61(31)–(32).

34. *Id.* ¶¶ 61(32), 100(b).

35. *Id.* ¶ 61(33).

36. *Id.* ¶ 61(34).

cuello Bareiro, or at least allow a visit, if his sister had sex with them.³⁷

Late 1974 to Early 1975: Prison guards and administrators severely torture Mr. Mancuello Bareiro; his captors beat him, whip him, and force him into a tank where he is immersed almost to the point of drowning in a pool of water, blood, and human excrement.³⁸

1975: Ms. Ríos de Mancuello gives birth to a son, Carlos Marcelo Mancuello Ríos, in prison.³⁹ The State transfers Mr. Mancuello Bareiro to a maximum security prison and then transfers him back to the Police Investigations Department cell.⁴⁰

September 21, 1976: Guards tell Mr. Mancuello Bareiro and three other detainees, Rodolfo Ramírez Villalba, Benjamín Ramírez Villalba, and Almícar Oviedo, that they are to be transferred to another prison.⁴¹ The guards lead them outside the prison and, according to several former police officer witnesses, murder them.⁴² Pastor Milciades Coronel orders the logbook keeper to record that the men escaped.⁴³

November 12, 1977: State officials release Ms. Ríos de Mancuello and her son and expel them from the State.⁴⁴

March 27, 1990: Ms. Ríos de Mancuello files a criminal complaint for the abduction, torture, and murder of her husband.⁴⁵ Named defendants on the complaint include Pastor Milciades Coronel; Camilo Federico Almada Morel, General Stroessner's security guard; Nicolás Lucilo Benítez Santacruz, Mr. Coronel's security guard and escort; Alberto Buenaventura Cantero Cañete, Director of Political Matters for the Investigations Department; and Agustín Belotto Vouga, Reserve Officer for the Asunción Police Department.⁴⁶

37. *Id.* ¶ 100(d).

38. *Id.* ¶ 61(35).

39. *Id.* ¶ 61(32).

40. *Id.* ¶ 61(34).

41. *Id.* ¶ 61(40).

42. *Id.*

43. *Id.* Using a fabricated prison escape to cover up a disappearance is a common practice in the State, knowing colloquially as "the escape law" (*ley de fuga*). *Id.*

44. *Id.* ¶ 61(32).

45. *Id.* ¶ 61(81).

46. *Id.*

April 17, 2000: The First Criminal Tribunal sentences Pastor Milciades Coronel to seventeen years' imprisonment, Mr. Almada Morel to thirteen years and nine months' imprisonment, Mr. Benítez Santacruz to thirteen years and nine months' imprisonment, Mr. Cantero Cañete to fifteen years' imprisonment, and Mr. Belotto Vouga to fifteen years' imprisonment.⁴⁷

3. Events pertaining to Benjamín Ramírez Villalba and Rodolfo Ramírez Villalba.

November 25, 1974: State police apprehend Benjamín, an oil well worker living in Buenos Aires, Argentina, upon returning to the State, and his brother Rodolfo, an accountant living in Asunción.⁴⁸ The State accuses the brothers of belonging to a terrorist group run by Dr. Goiburú Giménez and transfers them to the Investigations Department.⁴⁹

September 21, 1976: The Ramírez brothers disappear with fellow prisoners Mr. Mancuello Bareiro and Mr. Oviedo.⁵⁰ While Mr. Mancuello Bareiro is listed as “escaped” in the log book, the spaces next to Mr. Oviedo and the Ramírez brothers' names are left blank.⁵¹

November 8, 1989: Mr. Julio Darío Ramírez Villalba files a criminal complaint for the abduction, torture, and murder of his brothers, Benjamín and Rodolfo.⁵²

September 1, 1999: The Fourth Criminal Court sentences Pastor Milciades Coronel to twenty-five years' imprisonment.⁵³ The court also sentences Mr. Cantero Cañete, Mr. Almada Morel, Mr. Benítez Santacruz, and Mr. Belotto Vouga to twelve years and six months' imprisonment.⁵⁴ The Fourth Criminal Court extends Pastor Milciades Coronel's sentence and reduces those of the other parties after finding that, as the feared head of the Investigations Department, Pastor Milciades Coronel quali-

47. *Id.* ¶ 61(88).

48. *Id.* ¶¶ 61(45)–(46).

49. *Id.* ¶ 61(47).

50. *Id.* ¶ 61(49).

51. *Id.* ¶ 61(39).

52. *Id.* ¶ 61(92).

53. *Id.* ¶ 61(105).

54. *Id.*

fies as an “instigator” under applicable domestic law.⁵⁵

B. Other Relevant Facts

October 1975: Security professionals hold the “First National Intelligence Working Meeting” in Santiago, Chile.⁵⁶ Representatives from several South American armies agree to work together to target subversives.⁵⁷ The proponents of collaboration propose sharing information and holding periodic meetings.⁵⁸ This evolves into “Operation Condor,” in which member countries Argentina, Bolivia, Paraguay, and Uruguay agree to support each other with security even if it means assassinating dissidents.⁵⁹

November 25, 1977: General Stroessner’s dictatorship collapses.⁶⁰

December 22, 1992: Sources reveal documents from General Stroessner’s dictatorship that provide evidence of arbitrary detentions, torture, extrajudicial executions, and disappearances.⁶¹ The “Documentation Center for the Defense of Human Rights” will compile these into a collection called the “Terror Files.”⁶²

June 20, 1992: The State adopts a new constitution.⁶³

September 12, 1996: The State enacts Act No. 838/96 to provide compensation for victims of human rights abuses from 1954 to 1989.⁶⁴

May 2000: The Third Criminal Tribunal holds General Stroessner and Mr. Augusto Montanaro in contempt of court for failing to answer the charges against them.⁶⁵

55. *Id.*

56. *Id.* ¶ 61(7).

57. *Id.* ¶¶ 61(6)–(7).

58. *Id.* ¶ 61(7).

59. *Id.* ¶ 61(8).

60. *Id.* ¶ 61(32).

61. *Id.* ¶ 61(121).

62. *Id.*

63. *Id.* ¶ 61(122).

64. *Id.* ¶ 61(123).

65. *Id.* ¶ 61(75).

December 2000: The Third Criminal Tribunal orders General Stroessner extradited from Brazil and Mr. Augusto Montanaro extradited from Honduras.⁶⁶

October 6, 2003: The State enacts Act No. 2225 to create the Truth and Justice Commission, an agency to investigate the human rights violations the State committed from 1954 until the passage of the act.⁶⁷

August 16, 2006: General Stroessner, having never returned to the State, dies in Brasilia, Brazil.⁶⁸

II. PROCEDURAL HISTORY

A. Before the Commission

December 6, 1995: Global Rights Partners for Justice and the Church Committee for Emergency Aid (*Comité de Iglesias para Ayudas de Emergencia*, “CIPAE”) submit a petition to the Inter-American Commission on Human Rights regarding the detention, torture, and disappearance of Dr. Goiburú Giménez.⁶⁹

July 31, 1996: Global Rights Partners for Justice and the Church Committee for Emergency Aid (*Comité de Iglesias para Ayudas de Emergencia*) submit petitions regarding the detention, torture, and disappearance of Mr. Mancuello Bareiro and the Ramirez Villalba brothers.⁷⁰

October 19, 2004: The Commission adopts Admissibility and Merits Report No. 75/04.⁷¹ The report determines that the illegal and arbitrary detentions, the forced disappearances, torture, the State’s failure to investigate, and the State’s failure to implement reparations for the victims’ next of kin violated Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial) and Article 25 (Judicial Protection).⁷² The Com-

66. *Id.* ¶¶ 61(75)–(76).

67. *Id.* ¶ 61(124).

68. *Id.* ¶ 61(80).

69. *Id.* ¶ 6.

70. *Id.* ¶¶ 7–8.

71. *Id.* ¶ 10.

72. *Id.*

mission recommends that the State publicly acknowledge responsibility; find and locate the remains of Agustín Goiburú, Carlos José Mancuello, Rodolfo Ramírez Villalba, and Benjamín Ramírez Villalba; conduct an investigation and punish those individuals found responsible; adequately compensate the families of the deceased; and pay the legal costs incurred by the victims' families.⁷³

B. Before the Court

June 7, 2005: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁷⁴

1. Violations Alleged by Commission⁷⁵

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 5(2) (Prohibition of Torture and Cruel, Inhumane, or Degrading Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁷⁶

Same Violations Alleged by Commission.

73. Goiburú et al. v. Paraguay, Application to the Court, Inter-Am. Comm'n H.R., Case Nos.11.560, 11.665, 11.667, ¶¶ 8(a)–(e), (June 8, 2005).

74. Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 13.

75. *Id.* ¶ 10.

76. Global Rights Partners for Justice and the Church Committee for Emergency Aid (*Comité de Iglesias para Ayudas de Emergencia*) served as representatives in relation to the detention, torture, and disappearance of Mr. Mancuello and the Ramirez brothers. *Id.* ¶¶ 7–8, 22.

III. MERITS

A. *Composition of the Court*⁷⁷

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice President
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

September 22, 2006: The Court issues its Judgment on Merits, Reparations, and Costs.⁷⁸

The Court found unanimously that Paraguay had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 1(1) of the Convention, to the detriment of Dr. Goiburú Giménez, Mr. Mancuello Bareiro, Mr. Benjamín Ramírez Villalba, and Mr. Rodolfo Ramírez Villalba,⁷⁹ because:

The State admitted responsibility for violations of Article 4 (Right to Life) to the detriment of Dr. Goiburú Giménez, Mr. Nacuello Bareiro, and the Ramírez Villalba brothers.⁸⁰ The State admitted to subjecting the victims to “arbitrary and illegal detention and torture” that eventually led to forced disappearances.⁸¹ As a result, the Court found the state violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the American Convention.⁸²

77. Due to circumstances beyond his control, Judge Oliver Jackman advised the Court that he would be unable to attend the seventy-second regular session and, as a result, he could not participate in the discussion and signature of the Judgment. *Id.* n.**.

78. Goiburú et al. v. Paraguay, Merits, Reparations, and Costs.

79. *Id.* ¶ 94.

80. *Id.* ¶¶ 41, 48.

81. *Id.* ¶¶ 48, 95.

82. *Id.* ¶¶ 41, 48.

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture and Cruel, Inhumane, or Degrading Treatment) in relation to Article 1(1) of the Convention, to the detriment of Dr. Goiburú Giménez, Mr. Mancuello Bareiro, Mr. Benjamín Ramírez Villalba, and Mr. Rodolfo Ramírez Villalba,⁸³ because:

The State admitted responsibility for violations of Article 5 (Right to Humane Treatment) to the detriment of Dr. Goiburú Giménez, Mr. Nacuello Bareiro, and the Ramírez Villalba brothers.⁸⁴ As a result, the Court found the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture and Cruel, Inhumane, or Degrading Treatment) of the American Convention.⁸⁵

Article 7 (Right to Personal Liberty) in relation to Article 1(1) of the Convention, to the detriment of Dr. Goiburú Giménez, Mr. Mancuello Bareiro, Mr. Benjamín Ramírez Villalba, and Mr. Rodolfo Ramírez Villalba,⁸⁶ because:

The State admitted responsibility for Article 7 (Right to Personal Liberty) as to Dr. Goiburú Giménez, Mr. Nacuello Bareiro, and the Ramírez Villalba brothers.⁸⁷ As a result, the Court found the State violated Article 7 (Right to Personal Liberty) of the American Convention.⁸⁸

However, the Court went beyond merely accepting the State's admission of responsibility on three counts.⁸⁹ First, the Court emphasized that disappearances are a continuing offense as long as the facts surrounding the disappearances are kept secret.⁹⁰ The Court held that forced disappearances create multiple violations of rights that compound over time.⁹¹ As long as the State continues to conceal the whereabouts of the victim, the disappearance should be considered a "continuing of-

83. *Id.* ¶ 94.

84. *Id.* ¶ 95

85. *Id.*

86. *Id.*

87. *Id.* ¶¶ 41, 48.

88. *Id.*

89. *Id.* ¶¶ 84–85.

90. *Id.* ¶ 83.

91. *Id.* ¶ 82.

fence.”⁹²

Second, the Court explained how a state’s international responsibility for forced disappearances increases when it is part of “a systematic pattern” that deprives citizens of their rights.⁹³ This heightened culpability applies whether the state is the actor or passively allows the violations to occur.⁹⁴ Dr. Goiburú Giménez’s disappearance involved senior officials in both the Paraguayan and Argentine governments, presenting an example of Operation Condor in action.⁹⁵ The close collaboration with the Argentine authorities highlighted the level of impunity the State actors enjoyed as they perpetrated grave human rights violations.⁹⁶

Finally, the Court pointed out that the criminal investigations of the perpetrators fell below the requisite level of investigation.⁹⁷ The State defined “forced disappearance” in a narrower manner than those found in international law.⁹⁸ The Court concluded that forced disappearances like these should be considered crimes against humanity, and a rejection of the principles at the heart of the Inter-American system.⁹⁹

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Elva Elisa Benítez Feliú de Goiburú; Rogelio Agustín Goiburú Benítez, Rolando Agustín Goiburú Benítez, Patricia Jazmín Goiburú Benítez, Rosa Mujica Giménez, Gladis Ester Ríos de Mancuello, Claudia Anahí Mancuello Ríos, Carlos Marcelo Mancuello Ríos, Ana Arminda Bareiro de Mancuello, Mario Mancuello, Ana Elizabeth Mancuello Bareiro, Hugo Alberto Mancuello Bareiro, Mario Andrés Mancuello Bareiro, Emilio Raúl Mancuello Bareiro, Fabriciana Villalba de Ramírez, Lucrecia Ramírez de Borba, Eugenia Adolfina Ramírez de Espinoza, Sotera Ramírez de Arce, Sara Diodora Ramírez Villalba, Mario Artemio Ramírez Villalba, Herminio Arnoldo Ramírez Villalba, Julio Darío Ramírez Villalba, and María Magdalena Galeano,¹⁰⁰ because:

92. *Id.* ¶ 83.

93. *Id.* ¶ 82.

94. *Id.*

95. *Id.* ¶ 87.

96. *Id.* ¶¶ 87–88.

97. *Id.* ¶ 92.

98. *Id.*

99. *Id.* ¶ 82.

100. *Id.* ¶¶ 97–104.

The Court found that the next of kin of Dr. Goiburú Giménez, Mr. Nacuello Bareiro, and the Ramírez Villalba brothers, endured physical and psychological hardships.¹⁰¹ In all cases of forced disappearance, the state action directly violates the victim's family's right to mental and moral integrity.¹⁰² This violation increases with the amount of time the victim's whereabouts remain unknown and State authorities refuse to conduct a proper investigation.¹⁰³

In this case, the Court highlighted how State action affected the victims' families before, during, and after the State detained, tortured, and disappeared the victims.¹⁰⁴ The record showed that leading up to Dr. Goiburú's disappearance, he and his family endured a long exile during which they moved as many as fifteen times over a period of ten years.¹⁰⁵ These moves happened as a result of the drive-by shootings, shining lights at the family's house, taunting the family through megaphones, and cutting off the house's electricity and telephone services.¹⁰⁶ In addition, the State harassed the family: it attempted to discredit Mrs. Goiburú as a terrorist; it engineered the kidnapping of Dr. Goiburú Giménez and his son while they were fishing; it attempted to kidnap the couple's youngest son from the family's home in Posadas; and it imprisoned Dr. Goiburú Giménez's pregnant sister Rosa Mujica Giménez in 1970.¹⁰⁷

Throughout the detentions and disappearances, the Investigations Department ejected Mr. Mancuello's mother, Ana Arminda Bereiro de Mancuello, on several occasions.¹⁰⁸ Eventually one month later, the Investigations Department informed Mr. Mancuello's mother of the imprisonment of her son, daughter-in-law, and granddaughter.¹⁰⁹ After learning of the detentions, she attempted to remove baby granddaughter from custody.¹¹⁰

101. *Id.* ¶ 97.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* ¶ 99(c).

106. *Id.* ¶ 99(f).

107. *Id.* ¶¶ 99(b)–(f).

108. *Id.* ¶ 100(c).

109. *Id.*

110. *Id.*

Following the disappearances, the wives and children of Dr. Goiburú Giménez and Mr. Mancuello Bareiro were exiled until the end of General Stroessner's dictatorship.¹¹¹ None of the victims' families had any real legal recourse until the dictatorship fell, which the Court considered to be an additional source of suffering.¹¹² Finally, the concealment of the facts deprived the families of proper mourning.¹¹³

Ultimately, the victims' families were subjected to cruel, inhumane, and degrading treatment.¹¹⁴ This treatment violated the families' personal integrity and had persisting effects on the family members' ability to work or have meaningful connections with others.¹¹⁵ Thus, the Court concluded that the State subjected the victims' families to conditions that gave rise to independent human rights violations, namely the denial of the right to physical, mental, and moral integrity.¹¹⁶

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of Dr. Goiburú Giménez, Mr. Mancuello Bareiro, Mr. Benjamín Ramírez Villalba, and Mr. Rodolfo Ramírez Villalba,¹¹⁷ because:

In three separate areas, the State fell short of its obligation to provide effective judicial remedies that comply with due process of law and ensure the exercise of the rights established by the Convention.¹¹⁸ First, the State remarkably failed to comply with due process of law during the dictatorship.¹¹⁹ Second, the State failed to provide effective judicial remedies during the post-dictatorship period.¹²⁰ Third, the State's inept use of extradition deprived the victims of their exercise of Convention-protected rights.¹²¹

111. *Id.* ¶ 101(a).

112. *Id.* ¶ 101(d).

113. *Id.* ¶ 101(e).

114. *Id.*

115. *Id.* ¶ 103.

116. *Id.* ¶ 104.

117. *Id.* ¶¶ 110–128.

118. *Id.* ¶ 110.

119. *Id.*

120. *Id.*

121. *Id.*

The Court held that the “permanent state of siege” under which General Stroessner ruled gave him power that effectively precluded any kind of judicial remedy for the illegal detentions and disappearances the State engineered.¹²² The Court reasoned that the victims’ inability to obtain judicial protection under domestic remedies is irrelevant because, while the dictatorship was in operation, any State judicial protection was illusory.¹²³

After the dictatorship fell, the victims’ family members filed criminal complaints against those responsible for the disappearances.¹²⁴ Seventeen years later, only two of those charged had received final criminal judgments.¹²⁵ Of the remaining suspects, most had died while the prolonged State criminal investigations were underway, and those still alive were pursuing open appeals of their convictions.¹²⁶ The Court held, and the State acknowledged, that the lack of closure in the criminal proceedings after nearly two decades constituted a serious judicial delay.¹²⁷

However, the State argued that the delays stemmed from deficiencies in the dictatorship-era penal system, a system that the State had been busy reforming.¹²⁸ Unconvinced, the Court stated that the appropriate standard is how effective the criminal procedures are to the victims in this particular case, not in the abstract.¹²⁹ When State actors commit forced disappearances, the criminal procedures must: (1) involve all the State’s available legal means to determine the truth, capture those responsible, and provide appropriate compensation; (2) give the victims and their families an opportunity to participate and be heard; and (3) be pursued by a proactive State motivated by its legal obligations.¹³⁰ Here, the State did not take the initiative in pursuing the disappearances but waited for the victims’ families to file criminal complaints.¹³¹ The Court found no evidence that the State undertook efforts to locate the

122. *Id.* ¶ 112.

123. *Id.*

124. *Id.* ¶¶ 113(a)–(c).

125. *Id.* ¶¶ 113(a)–(c), 114.

126. *Id.* ¶¶ 113(a)–(c).

127. *Id.* ¶ 114.

128. *Id.* ¶ 115.

129. *Id.* ¶¶ 115–116.

130. *Id.* ¶ 117.

131. *Id.* ¶ 118.

victims.¹³² While the State argued that it had opened investigations into senior members of the government, the Court underscored the incredible delays in the investigations and the fact that only five of the defendants were convicted.¹³³

The Court refused to annul or diminish the reparations based on the State's adoption of Act 868/96, which allows victims to seek compensation for damages the State caused during the dictatorship.¹³⁴ Violations of rights protected by the Convention cannot be reduced to the payment of compensation, and the onus is on the State to repair the damage.¹³⁵ Therefore, the fact that the victims' families did not pursue compensation under Act 868/96 had no effect on how the Court assessed reparations.¹³⁶

Finally, the Court criticized the State's delayed pursuit of the extradition of General Stroessner and Mr. Augusto Montanaro.¹³⁷ Justice in this type of case required requests for extradition to be processed promptly and pursued with due diligence.¹³⁸ Eleven years after the commencement of the proceeding, the State finally held the defendants in contempt of court and issued orders for their preventive detention.¹³⁹ Because the inexistence of an extradition treaty does not absolve the state from pursuing an extradition from another state, the State's lack of such a treaty with Honduras did not absolve it from pursuing Mr. Augusto Montanaro.¹⁴⁰ In sum, the inexcusable delay as well as the inexplicable failure to extradite General Stroessner from Brazil, a country with which the State had an extradition treaty, demonstrate that the proceedings were ineffectual and helped establish the impunity of those accused of violating international law.¹⁴¹

132. *Id.*

133. *Id.* ¶ 119.

134. *Id.* ¶ 122.

135. *Id.*

136. *Id.*

137. *Id.* ¶ 130.

138. *Id.*

139. *Id.* ¶ 124.

140. *Id.* ¶ 130.

141. *Id.* ¶¶ 127–28.

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez pointed out two areas in which he disagreed with the wording of the Court's opinion.¹⁴² First, he objected to the State's "aggravated responsibility," reasoning that the responsibility of the State is absolute.¹⁴³ The facts can be graver or less severe in a particular case, but the State's responsibility for them does not vary.¹⁴⁴ Secondly, he took issue with "State terrorism," which he would replace with "terrorism originating from the State."¹⁴⁵ Taking "State terrorism" rather literally, Judge García Ramírez reasoned that a state is not a person and is therefore incapable of committing any type of crime.¹⁴⁶ Further, he observed that referring to individual action as "State terrorism" could dilute the responsibility of the individuals.¹⁴⁷

2. Separate Opinion of Judge A. A. Cançado Trindade

In a separate opinion, Judge Cançado Trindade emphasized how important it is to keep "Operation Condor" in mind when assessing the merits of this case.¹⁴⁸ That is, the facts of the case happened in the context of brutal interstate repression.¹⁴⁹ Judge Cançado Trindade stressed the importance of being vigilant against a similar plan being resurrected today.¹⁵⁰ In addition, Judge Cançado Trindade listed three benefits that would have been realized had the Court held a public hearing: (1) it would have enriched the case file; (2) it would have given all parties and sides a chance to express their views; and (3) it would have served as a form of reparation.¹⁵¹

142. Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, Judgment, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 1 (Sept. 22, 2006).

143. *Id.* ¶ 3.

144. *Id.* ¶ 8.

145. *Id.* ¶ 23.

146. *Id.* ¶ 20.

147. *Id.* ¶ 29.

148. Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, Judgment, Separate Opinion of A. A. Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 3 (Sept. 22, 2006).

149. *Id.* ¶¶ 3, 18.

150. *Id.* ¶¶ 54–61.

151. *Id.* ¶ 22.

IV. REPARATIONS

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

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

1. Investigate the Crimes and Punish Those Responsible

The State must combat the impunity largely enjoyed by the State actors in this case by conducting a thorough investigation into what happened and who was responsible for the various human rights violations.¹⁵² The State must remove all the impediments to a quick resolution of the open cases.¹⁵³

2. Find the Remains of the Victims

The State must search for the victims' remains and return them to the victims' families once DNA testing has verified the identities.¹⁵⁴

3. Issue a Public Apology and Acknowledge Responsibility

The State must issue a public apology for the forced disappearances of the victims in the presence of the victims' families and senior state officials.¹⁵⁵

4. Publish the Judgment

The State must publish in the Official Gazette and in a newspaper with widespread circulation key parts of the Judgment that establish the State's responsibility for the human rights violations.¹⁵⁶

152. Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, ¶ 165.

153. *Id.*

154. *Id.* ¶ 171.

155. *Id.* ¶ 173.

156. *Id.* ¶ 175.

5. Provide Mental Health Services

The State must provide psychological treatment, as required, to the victims' families for free and whenever they need it.¹⁵⁷

6. Construct a Monument to the Victims

The State must construct a monument to the victims located in a central part of Asunción.¹⁵⁸ The monument shall include a plaque listing the names of the victims and describing the forced disappearances that were part of Operation Condor.¹⁵⁹

7. Provide Human Rights Training

The State must provide its police forces with training on how to protect human rights.¹⁶⁰ This permanent training program shall specifically mention the Judgment and international human rights doctrine on forced disappearances and torture.¹⁶¹

8. Modify Domestic Law to Comport with International Human Rights Law

The State must adapt its statutory definitions of "forced disappearance" and "torture" to comply with international human rights law.¹⁶²

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

With a lack of clear evidence establishing the victims' respective salaries, the Court awarded, based on equity and in order to compensate the victims' families for expenses and lost income: \$100,000 to the next

157. *Id.* ¶ 176.

158. *Id.* ¶ 177.

159. *Id.*

160. *Id.* ¶ 178.

161. *Id.*

162. *Id.* ¶ 179.

of kin of Dr. Goiburú Giménez, a 46-year-old surgeon; \$50,000 to the next of kin of Mr. Mancuello Bareiro, a 25-year-old Mercedes Benz representative and engineering student; \$50,000 to the next of kin of Mr. Benjamín Ramírez Villalba, a 26-year-old public accountant; and \$35,000 to the next of kin of Mr. Rodolfo Ramírez Villalba, a 36-year-old oil well technician.¹⁶³

2. Non-Pecuniary Damages

To compensate the victims and their families for their suffering and hardship, the Court awarded \$176,000 to Dr. Goiburú Giménez's family; \$243,000 to Mr. Mancuello Bareiro's family; \$50,000 to Mr. Rodolfo Ramírez Villalba's family; and \$181,000 to Mr. Benjamín Ramírez Villalba's family.¹⁶⁴

3. Costs and Expenses

To compensate the representatives of the victims, the Court ordered the State to reimburse Mrs. Goiburú Giménez, Mrs. Mancuello Bareiro, Mrs. Ramírez Villalba, and Mr. Ramírez Villalba (Rodolfo Ramírez Villalba's brother) \$10,000 each.¹⁶⁵ They shall in turn give \$8,000 to the Comité de Ingresas para Ayudas de Emergencias, and \$2,000 to Global Rights.¹⁶⁶

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

\$ 925,000

C. Deadlines

The State must erect the monument in memory of the victims within one year of notification of the Judgment.¹⁶⁷ Additionally, the compensation paid to the victims' families and the reimbursement of costs must be delivered within one year of notification of the Judgment.¹⁶⁸

163. *Id.* ¶¶ 152–55.

164. *Id.* ¶ 161.

165. *Id.* ¶¶ 180, 183.

166. *Id.* ¶ 183.

167. *Id.* ¶ 184.

168. *Id.*

The State must issue an apology and publicly recognize its responsibility within six months of notification of the Judgment.¹⁶⁹

The State must immediately make psychological services available to the victims' families.¹⁷⁰

The State must complete investigations to identify those responsible for the disappearances and bring them to justice within a reasonable time.¹⁷¹ The State shall report to the Court on steps taken and results obtained every six months.¹⁷²

The search for the remains of the victims must begin immediately.¹⁷³

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

August 6, 2008: Regarding the State's obligation to provide a human rights training program to the police, the Court found that while the State claimed full compliance with the obligation, it did not present enough evidence to establish compliance.¹⁷⁴ Further, the Court suggested that the State should have the armed forces participate in the training as well.¹⁷⁵

Additionally, the Court found the State's obligation to publish the Judgment had been partially satisfied.¹⁷⁶ The State published part of the Judgment but did not include the section on the State's international responsibility.¹⁷⁷

Aside from requesting that the State's treasury department set aside the amount needed to pay the victims' compensation and costs, the Court found the State did not comply with its remaining obligations.¹⁷⁸

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. Goiburú et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 34 (Aug. 6, 2008).

175. *Id.* ¶ 33

176. *Id.* ¶ 25.

177. *Id.*

178. *Id.* ¶¶ 7–41.

August 7, 2009: The Court was encouraged that Asunción officials identified two possible sites for the monument.¹⁷⁹ While it still needed to publish the Judgment in a national newspaper, the State had published the complete Judgment in its Official Gazette.¹⁸⁰ Thus, the State partially complied with its obligation to publish the Judgment.¹⁸¹ In addition, the State partially complied with its obligation to compensate the victims because it approved the allocation of funds for compensation in its 2009 budget. The State partially complied with its obligation to set up a task force for locating the victims. Finally, the State partially complied with its obligation to hold a public announcement and ceremony.¹⁸²

November 19, 2009: The Court found that the State fully complied with its obligations to publish the Judgment, grant the victims' families access to mental health care, provide human rights training, and pay the costs and expenses of the trial.¹⁸³ The State did not comply with its obligations to complete the investigations, hold a public ceremony, erect the monument to the victims, revise domestic penal code definitions of "torture" and "forced disappearance," and pay compensation to the victims' families.¹⁸⁴

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, Judgment,](#)

179. Goiburú et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 16 (Aug. 7, 2009) (Available only in Spanish).

180. *Id.* ¶ 12.

181. *Id.*

182. *Id.* ¶¶ 8, 10, 25.

183. Goiburú et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶¶ 37, 41, 46, 60 (Nov. 19, 2009).

184. Goiburú et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, "Declares" ¶¶ 2(a)–(g) (Nov. 19, 2009).

[Inter-Am. Ct. H.R. \(ser. C\) No. 153 \(Sept. 22, 2006\).](#)

[Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, Judgment, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 153 \(Sept. 22, 2006\).](#)

[Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, Judgment, Separate Opinion of A.A. Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 153 \(Sept. 22, 2006\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Goiburú et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 6, 2008\).](#)

[Goiburú et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 7, 2009\) \(Available only in Spanish\).](#)

[Goiburú et al. v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 19, 2009\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Goiburú et al. v. Paraguay, Petition Nos. 11,560; 11,665; 11,667, Inter-Am. Comm'n H.R. (Dec. 6, 1995 and July 31, 1996).

2. Report on Admissibility

Goiburú, et al. v. Paraguay, Admissibility and Merits Report No. 75/04,

Inter-Am. Comm'n H.R., Case Nos. 11.560, 11.665, 11.667 (Oct. 19, 2004).

3. Provisional Measures

[None]

4. Report on Merits

Goiburú, et al. v. Paraguay, Admissibility and Merits Report No. 75/04, Inter-Am. Comm'n H.R., Case Nos. 11.560, 11.665, 11.667 (Oct. 19, 2004).

5. Application to the Court

[Goiburú et al. v. Paraguay, Application to the Court, Inter-Am. Comm'n H.R., Case Nos. 11.560, 11.665, 11.667 \(June 8, 2005\) \(Available only in Spanish\).](#)

VIII. BIBLIOGRAPHY

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Ruti Teitel, *Transnational Justice and Judicial Activism: A Right to Accountability?*, 48 CORNELL INT'L L.J. 385 (2015).