

Garibaldi v. Brazil

ABSTRACT¹

This case stems from the botched prosecution of the assassins of a member of the Landless Workers' Movement, a movement, of rural workers, who have been fighting for land reform and against social inequality in rural areas in Brazil for decades. Because some of the events took place before December 10, 1998, when the State accepted compulsory jurisdiction of the Court, the Court eventually found only violation of the right to a hearing and the right of recourse before a competent court.

I. FACTS

A. Chronology of Events

November 1998: About fifty rural families associated with the Landless Workers' Movement (Movimento dos Trabalhadores Rurais Sem Terra, "MST") occupy Hacienda São Francisco ("the Hacienda"), a large ranch estate located in Querencia del Norte, in the State of Paraná.²

November 27, 1998: A group of landowners hire an armed civilian group to evict families of the rural workers living in the Hacienda.³ Around twenty armed and hooded individuals approach the Hacienda in the early morning hours in two trucks and a van, carrying rifles and shotguns.⁴ The group forces the rural workers out of their shacks and

1. Sandra Acosta Tello, Author; Dale Ogden, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (sec. C) No. 203, ¶¶ 1–2, 73 (Sept. 23, 2009); Garibaldi v. Brazil, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.478, ¶¶ 37, 52 (Dec. 24, 2007) (Available only in Spanish).

3. Garibaldi v. Brazil, Petition to the Court, ¶ 53.

4. *Id.* ¶ 56; Press Release, Inter-Am. Comm'n H.R., IACHR Takes Case Against Brazil to the Inter-American Court (Jan. 4, 2008); Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

orders them to lie down in the middle of the camp.⁵ While this is happening, Mr. Sétimo Garibaldi, a 52-year-old farmer, is shot in his left leg and dies due to excessive bleeding.⁶ The armed group withdraws without finishing the eviction.⁷ Mr. Ailton Lobato, the administrator of the Hacienda, is alleged to be one of the armed civilians.⁸

Mr. Garibaldi's murder is reported at 6:00 a.m., prompting the Military Police of the State of Paraná to open police investigation No. 179/98.⁹ Later in the day, military police agents and police clerk Cezar Napoleão Casimir Ribeiro arrest Mr. Lobato at another hacienda for illegally possessing an unregistered rifle.¹⁰

December 2, 1998: A witness named Edvaldo Rodrigues Francisco delivers to the police two bushings from the .38 caliber used during the eviction.¹¹

December 9, 1998: After receiving reports from the police describing testimony that identified some of the armed individuals, Prosecutor Nayani Kelly Garcia requests the pre-trial detention of Mr. Morival Favoreto, the owner of the Hacienda, and requests certain investigatory measures be taken.¹² These identifications are possible because Mr. Favoreto, along with Mr. Lobato, briefly show their faces to other rural workers during the operation, and the workers identify the cars used as belonging to Mr. Favoreto and Mr. Lobato.¹³

December 14, 1998: The permanent judge at the local court in Loanda, Judge Elisabeth Khater, does not grant the pre-trial detention of Mr. Favoreto due to discrepancies in the witness testimonies.¹⁴ Judge Khater also orders compliance with Prosecutor Garcia's requested investigatory measures, including: (1) identifying the vehicles used during the incident; (2) comparing ballistics between the crime scene and Mr. Lobato's gun; (3) placing the Hacienda's title deeds in the case file; (4) taking the

5. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 2, 73.

6. Garibaldi v. Brazil, Petition to the Court, ¶ 32.

7. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

8. *Id.* ¶ 74.

9. Garibaldi v. Brazil, Petition to the Court, ¶ 59.

10. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 74.

11. Garibaldi v. Brazil, Petition to the Court, ¶ 64.

12. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 76. The Commission and the Court vary in the spelling of Mr. Favoreto's last name (Favoretto and Favoreto).

13. *Id.*

14. *Id.* ¶ 77.

testimony of other witnesses and potential suspects; and (5) investigating whether similar events had occurred in the area.¹⁵

December 15, 1998: Judge Khater orders that Mr. Favoreto be questioned within ten days at the Sertanópolis Police Headquarters.¹⁶

January 20, 1999: Police Chief Arildo Fulgêncio de Almeida requests an extension for the police investigation.¹⁷

March 9, 1999: Mr. Favoreto testifies that he was in São Paulo at the time of the incident at a doctor's appointment for his brother and stayed with his cousin "Eduardo."¹⁸ He claims he previously owned a black F1000 pickup truck but had sold it before the incident occurred.¹⁹ Mr. Favoreto states he does not know who fired the shot that killed Mr. Garibaldi.²⁰ Finally, Mr. Favoreto testifies that after rural workers threatened his life, he has not been at his hacienda since August 1998.²¹

February 11, 2000: The Loanda court grants an extension of the police investigation.²²

March 24, 2000: Mr. Favoreto delivers his second statement at the Police Headquarters and reiterates that he had not been at the Hacienda.²³ Mr. Favoreto again testifies that his F1000 truck, like the one seen by the rural workers, was sold to Mr. Clidenor Guedes de Melo, but the police do not confirm this statement.²⁴ Finally, Mr. Favoreto describes that on the date of the incident he was with his cousin, Mr. Eduardo Minutoli.²⁵

May 15, 2000: Prosecutor Garcia authorizes another extension to complete the investigation.²⁶

15. *Id.* ¶ 76, n.66.

16. *Id.* ¶ 78.

17. *Id.* ¶¶ 45, 79, 81.

18. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 82.

19. *Id.*

20. *Id.*

21. Garibaldi v. Brazil, Petition to the Court, ¶ 71.

22. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 84.

23. Garibaldi v. Brazil, Petition to the Court, ¶ 72.

24. *Id.*

25. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 87.

26. *Id.* ¶ 86.

June 1, 2000: A weapons expert reports that the rifle confiscated from Mr. Lobato had its serial number altered and therefore cannot be identified.²⁷ Consequently, because of the rifle's condition, the expert abstains from giving an opinion about the time and date the rifle was last used.²⁸

September 28, 2000: Mr. Minutoli confirms Mr. Favoreto's alibi but does not specify the date that Mr. Favoreto stayed with him.²⁹

July 5, 2001: Mr. Minutoli gives a statement to the Civil Police of São José dos Campos, again explaining that his cousin Mr. Favoreto had visited his house, but Mr. Minutoli fails to specify a date.³⁰

July 11, 2001 to September 11, 2002: No meaningful measures are taken to further the Investigation, and four different extensions of up to 90 days are requested and granted during this period.³¹

September 12, 2002: The police request that the Loanda Court deliver the rifle confiscated from Mr. Lobato in order to send it to the Institute of Forensic Science.³²

September 13, 2002: The doctor of Mr. Favoreto's brother testifies that Mr. Favoreto's brother had been in his office the day of the incident with his wife and another family member, but is unable to confirm that the other family member was Mr. Favoreto.³³

March 25, 2004: In response to Judge Khater's request, the Loanda court clerk notes that the confiscated rifle is no longer in the courthouse, and therefore the court cannot complete the police officer's request.³⁴

May 12, 2004: Prosecutor Edmarcio Real requests to close the case due to: (1) discrepancies in MST members' testimony regarding whether they saw Mr. Favoreto and Mr. Lobato at the hacienda; (2) Mr. Lobato's alibi; (3) the suspects' denial of involvement; (4) a failure to identify the individual who fired the rifle and to prove an intent to kill; and (5) an

27. *Id.*

28. *Id.*

29. Garibaldi v. Brazil, Petition to the Court, ¶ 73.

30. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 91.

31. *Id.* ¶ 92.

32. *Id.* ¶ 93.

33. *Id.* ¶ 94.

34. *Id.* ¶ 96.

inability to show proof of ownership of the involved vehicles.³⁵

May 18, 2004: Judge Khater adopts the Prosecutor Real's opinion and closes the case.³⁶

September 16, 2004: Mrs. Iracema Garibaldi, the victim's widow, files a *mandado de segurança*³⁷ and requests that the investigation be re-opened because the order closing the case violated the State Federal Constitution's requirement that judicial trials be public.³⁸

September 17, 2004: The Court of Justice of Paraná rejects Ms. Garibaldi's *mandado de segurança* application on the grounds that "there is no specific or evident right in favor of the applicant."³⁹

April 20, 2009: Prosecutor Vera de Freitas Mendonça requests the Loanda Court to re-open the case based on new evidence, including the testimonies of Mr. Vanderlei Garibaldi and Mr. Giovanni Braun, who were both present during the murder.⁴⁰ The Loanda Court re-opens the case.⁴¹

B. Other Relevant Facts

The State economic model of favoring large private property rights has caused a history of conflict over land, housing, employment and food, particularly for rural workers.⁴² Approximately one percent of the Brazilian population owns forty-six percent of the land.⁴³ Furthermore, over one hundred million hectares of land sit idle in the State out of six hundred million arable hectares of land.⁴⁴ There are about five million agrarian families that do not own land, and another five million properties are too small to be productive.⁴⁵

The Landless Workers' Movement (MST) arises in 1979 to ad-

35. *Id.* ¶ 97.

36. *Id.* ¶ 98.

37. A *mandado de segurança* is an injunction. See "Mandado de Segurança," DIREITONET (Nov. 24, 2014), <http://www.direitonet.com.br/dicionario/exibir/215/Mandado-de-seguranca>.

38. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 99.

39. *Id.*

40. *Id.* ¶ 100.

41. *Id.*

42. Garibaldi v. Brazil, Petition to the Court, ¶ 33.

43. *Id.* ¶ 34.

44. *Id.* ¶¶ 34, 36.

45. *Id.* ¶ 36.

dress this disparity and the workers' living conditions.⁴⁶ Farmers collectively gather together to defend their rights concerning land and to advocate for agrarian reform that would provide social welfare, employment, health services, education and other related matters for the impoverished.⁴⁷ The MST movement implements land occupation as a strategy to negotiate with authorities and places around 350,000 families in unoccupied land.⁴⁸ However, the land occupation by its members is repeatedly subjected to violence by landowners, private militias, and police.⁴⁹

The State of Paraná in particular is known to be an area of high human rights violations against rural workers.⁵⁰ Between 1995 and 2002, the State of Paraná carries out systematic evictions contrary to the State policy of dealing with the land disputes without force.⁵¹ The State largely ignores this situation in Paraná.⁵²

II. PROCEDURAL HISTORY

A. Before the Commission

May 6, 2003: Global Justice (*Justiça Global*), National Network of Lawyers (*Rede Nacional de Advogados e Advogadas Populares*, “RENAP”), and MST (collectively “Petitioners”) file a petition on behalf of Mr. Garibaldi with the Inter-American Commission on Human Rights.⁵³

June 6, 2006: After a three-year delay, the State finally responds and alleges that the Petitioners failed to exhaust domestic remedies.⁵⁴

March 27, 2007: The Commission adopts Report on Admissibility and Merits No. 13/07.⁵⁵ The Commission finds that the State violated Articles 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 28 (Federal States).⁵⁶ The Commission recommends that the State: (1) con-

46. *Id.* ¶¶ 37–38.

47. *Id.* ¶ 38.

48. Garibaldi v. Brazil, Petition to the Court, ¶ 39.

49. *Id.* ¶ 40.

50. *Id.* ¶ 42.

51. *Id.* ¶¶ 42–43.

52. *Id.* ¶ 46.

53. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

54. Garibaldi v. Brazil, Petition to the Court, ¶ 19.

55. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

56. *Id.* ¶ 3.

duct a thorough investigation concerning the murder of Mr. Garibaldi and hold accountable those responsible; (2) compensate the Garibaldi family; (3) enforce Article 10 of the State Code of Criminal Procedure that sets out the parameters and deadlines for appropriate police investigation; (4) observe and take measures against human rights violations in forced evictions of landless workers; (5) and avoid having armed groups carry out forced evictions.⁵⁷

B. Before the Court

December 24, 2007: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁵⁸

1. Violations Alleged by Commission⁵⁹

Article 8 (Right to Fair Trial)

Article 25 (Right to Judicial Protection)

Article 28 (Federal States)

all in relation to:

Article 1(1) (Obligation to Respect Rights) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention

2. Violations Alleged by Representatives of the Victim⁶⁰

Same Violations Alleged by Commission, plus:

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment) of the American Convention

March 24, 2008: The State appoints Roberto de Figueiredo Caldas as judge *ad hoc*.⁶¹

July 11, 2008: The State presents its brief and files four preliminary ob-

57. Garibaldi v. Brazil, Petition to the Court, ¶ 24.

58. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

59. *Id.* ¶ 3.

60. *Id.* ¶ 4. *Justiça Global*, RENAP, *Terra de Direitos*, *Comissão Pastoral da Terra* (“CPT”), and MST served as representatives of Mr. Garibaldi, Mrs. Garibaldi and her six children.

61. *Id.* n.2.

jections.⁶² First, the State objects to the Court's jurisdiction because the events took place before the State accepted compulsory jurisdiction in December 1998.⁶³ Second, it objects on the grounds that representative's claims are time-barred.⁶⁴ Third, the State asks the Court to exclude the State's failure to comply with Article 28 (Federal States) from the merits analysis.⁶⁵ Lastly, the State argued that petitioners failed to exhaust domestic remedies.⁶⁶

March 15, 2009: The Human Rights Clinic of the Legal Practice Unit of the Law School of the Getulio Vargas Foundation of R o de Janeiro submits an *amicus curiae* brief.⁶⁷

September 23, 2009: The Court responds to the State's four preliminary objections.⁶⁸ First, the Court notes that it has limited jurisdiction and can only review the facts that arose after the State accepted the Court's jurisdiction on December 10, 1998.⁶⁹ As to the investigations took place after December 1998, however, the Court determines it has grounds to analyze the State's investigation of Mr. Garibaldi's murder.⁷⁰ Moreover, the State ratified the American Convention in 1992, six years before the events of the case.⁷¹ While the Court did not have jurisdiction over the claims before December 1998, the State's ratification of the American Convention required it to comply with guarantees of the Convention.⁷²

Second, the Court states that the failure to timely submit briefs is not a challenge to the petition's admissibility and therefore does not bar the Court from analyzing the merits of the application.⁷³

Third, there is no requirement that petitioners specify which articles they allege were violated.⁷⁴ As such, the Commission's consideration of Article 28, although not specified by the petitioners in their peti-

62. *Id.* ¶ 5.

63. *Id.* ¶¶ 5, 20.

64. *Id.* ¶ 5.

65. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 5. Article 28 requires a state that has a federal government to enforce and carry out the provisions set forth in the American Convention. *Id.* ¶ 142, n.130.

66. *Id.* ¶ 5.

67. *Id.* ¶ 10.

68. *Id.* ¶ 11.

69. *Id.* ¶ 20.

70. *Id.* ¶ 23.

71. *Id.*

72. *Id.*

73. *Id.* ¶ 29.

74. *Id.* ¶¶ 38–39.

tion, is not contrary to the provisions of the Convention.⁷⁵

Lastly, the issues of effective police investigation and unjustified delay are allegations of ineffective domestic remedies under Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection).⁷⁶ Therefore, the Court will consider the alleged unjustifiable delay in the merits of the case.⁷⁷

III. MERITS

A. *Composition of the Court*

Cecilia Medina Quiroga, President
Diego García-Sayán, Vice President
Sergio García Ramírez, Judge
Manuel Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Roberto de Figueiredo Caldas, Judge *Ad Hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

September 23, 2009: The Court issues its Judgment on Merits, Reparations, and Costs.⁷⁸

The Court found unanimously that Brazil had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mrs. Iracema Garibaldi, Ms. Darsônia Garibaldi, Mr. Vanderlei Garibaldi, Mr. Fernando Garibaldi, Mr. Itamar Garibaldi, Mr. Itacir Garibaldi and Mr. Alexandre Garibaldi,⁷⁹ because:

75. *Id.*

76. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 50.

77. *Id.*

78. *Id.* ¶ 1.

79. *Id.* ¶ 140.

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) establishes that each person has “a right to a hearing, with due guarantees and within a reasonable time.”*⁸⁰ *The Court takes into account the following factors to gauge the reasonableness of time: (1) the complexity of the matter, (2) the procedural activity of the relevant actors, (3) the actions taken by the judiciary, and (4) the effect of the legal proceeding on the victims.*⁸¹ *This allows victims of human rights violations or their next of kin to have access to the legal system, be heard in court proceedings, have the State properly investigate the case, and have recourse in seeking the appropriate reparations.*⁸²

*The Court stated that there were several periods during the investigation, ranging from three months to over one year, in which there was no significant activity done by the State.*⁸³ *Moreover, the Court calculated that, taking into account the thirteen instances an extension for the investigation was granted, “the procedure lasted the equivalent of more than 60 times the legal term of 30 days” outlined in the State Code of Criminal Procedure.*⁸⁴ *Additionally, the Court emphasized that insufficient infrastructure or personnel does not excuse the State from its obligations under the Convention.*⁸⁵ *Ultimately, considering the case was a simple murder that was witnessed by numerous people, the State did not conduct its legal proceedings within a reasonable period of time and consequently the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).*⁸⁶

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Garibaldi’s next of kin,⁸⁷ because:

Article 25(1) (Right of Recourse Before a Competent Court) establishes that people have a right to simple and effective recourse before a competent court due to violations of the Convention or domestic fundamen-

80. *Id.* ¶ 71, n.56.

81. *Id.* ¶ 133.

82. *Id.* ¶ 116.

83. *Id.* ¶ 136.

84. *Id.*

85. *Id.* ¶ 137.

86. *Id.* ¶ 140.

87. *Id.*

tal rights in the State.⁸⁸ Victims or their next of kin have a right to see that the investigation is conducted thoroughly, proceedings are held against those responsible, and that the damage inflicted on the next of kin is repaired.⁸⁹ Moreover, article 268 of the State Code of Criminal Procedure allows the next of kin to assist the Public Prosecutor's Office in any criminal proceedings.⁹⁰

Here, the State did not provide the victims with an effective remedy because the State's incomplete investigation led to a premature closure of the case.⁹¹ The Court stressed that investigations into a violent death should be conducted as soon as the State is made aware of the death and that these investigations have certain guiding principles that must be followed.⁹² At a minimum, the State must attempt to: (1) identify the victim, (2) collect and preserve the material evidence that was associated with the death, (3) identify potential witnesses and retrieve their testimonies, (4) determine the "cause, manner, place and time of death" as well as detect any relevant patterns or practices, and (5) determine if the death was a suicide, homicide, manslaughter, or a natural death.⁹³

The State demonstrated that it had not conducted an effective investigation into the murder because it did not seek out the testimonies of pertinent witnesses until 2009, nine years after the start of the case.⁹⁴ The State additionally failed to develop the investigation by erroneously relying on police statements that no witnesses saw Mr. Favoreto and Mr. Lobato and by losing crucial evidence like the .38 caliber rifle.⁹⁵ The Prosecutor's office failed to mention the rifle in its reports and requested to close the case in 2004.⁹⁶ Moreover, the Loanda Judge failed to address the omissions or properly assess the measures the Prosecutor relied on in recommending closing the case.⁹⁷ As such, the State fell short of the investigative requirements of the Convention.⁹⁸

The lack of development in addressing the various errors and omissions

88. *Id.* ¶ 71, n.57.

89. *Id.* ¶ 117.

90. *Id.* ¶ 119.

91. *Id.* ¶ 122.

92. *Id.* ¶¶ 114–15.

93. *Id.* ¶ 115.

94. *Id.* ¶ 122, n.113.

95. *Id.* ¶¶ 123, 126.

96. *Id.* ¶ 126; *see id.* ¶ 96.

97. *Id.* ¶ 129.

98. *Id.* ¶ 130.

that riddled the investigation showed that the State did not act with due diligence.⁹⁹ The case was not complex, as it involved a single violent murder with a single identified victim, committed in front of numerous witnesses that were largely not called during the initial investigation.¹⁰⁰ Accordingly, the Court found the State violated Article 25(1)(Right of Recourse Before a Competent Court).¹⁰¹

The Court found unanimously that State had not violated:

Article 28 (Federal States), in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Garibaldi's next of kin,¹⁰² because:

Article 28 (Federal States) establishes that a federal state shall require its federal government to implement the Inter-American Convention's provisions in its legislation.¹⁰³ The State shall also take all legislative and other necessary action to ensure that there is full and effective enjoyment of the rights and guarantees protected by the Convention.¹⁰⁴ The Court has previously held that a state cannot use its federal structure as an excuse to avoid fulfilling international obligations.¹⁰⁵

Here, the Court only considered how the State handled events after December 10, 1998 due to the Court's temporal constraint in jurisdiction.¹⁰⁶ The representatives claimed that the State reported difficulty communicating between the federal state and the state of Paraná.¹⁰⁷ The State's comments, however, were made during a meeting discussing the progress of implementing the Commission's recommendations from Admissibility and Merits Report No. 13/07.¹⁰⁸ A comment by the State about implementing the Convention's requirements into domestic law is not necessarily indicative of a failure to comply with Article 28 (Federal States).¹⁰⁹ Moreover, the State did not allege that its domestic legal sys-

99. *Id.* ¶ 132.

100. *Id.* ¶¶ 134, 139.

101. *Id.* ¶ 140.

102. *Id.* ¶ 149.

103. *Id.* ¶ 142, n.130.

104. *Id.*

105. *Id.* ¶ 146.

106. *Id.* ¶ 147.

107. *Id.* ¶ 143.

108. *Id.* ¶ 148.

109. *Id.*

*tem was the reason for its failure to adhere to the Convention.*¹¹⁰ *The Court therefore found no violation of Article 28 (Federal States).*¹¹¹

The Court did not have jurisdiction to review the violations of:

Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights), Article 2 (Obligation to Give Domestic Legal Effect to Rights), and Article 28 (Federal States) of the Convention, to the detriment of Mr. Garibaldi and his next of kin,¹¹² because:

*The Court lacked jurisdiction regarding acts that occurred prior to December 10, 1998, when the State accepted compulsory jurisdiction.*¹¹³

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge *ad hoc* Roberto De Figueiredo Caldas

In a separate opinion, Judge De Figueiredo Caldas reflected on the obstacles that some jurisdictional States face in trying to uphold Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court) and proposed a method to prevent violations of these articles.¹¹⁴

Judge De Figueiredo Caldas proposed a simple model of distributive justice, rather than retributive justice, that States may follow to avoid violation of the two articles.¹¹⁵ A distributive model takes into account personal factors that can increase or decrease a sentence.¹¹⁶ In contrast, a retributive model considers only “the facts, acts, things or services in question, in a merely arithmetic proportion and in fairly reasonable terms, totally disregarding the individuals involved.”¹¹⁷ A dis-

110. *Id.*

111. *Id.* ¶ 149.

112. *Id.* ¶ 4.

113. *Id.* ¶¶ 19–25.

114. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge *Ad Hoc* Roberto De Figueiredo Caldas, Inter-Am. Ct. H.R. (ser. C.) No. 203, ¶¶ 1–2, 8 (Sept. 23, 2009).

115. *Id.* ¶¶ 11, 13.

116. *Id.* ¶ 15.

117. *Id.* ¶ 14.

tributive model takes into consideration matters as a whole and can account for equitable principles like bad faith.¹¹⁸ Judge De Figueiredo Caldas opined that the distributive model would generate respect because the perpetrator would receive swift justice.¹¹⁹

According to Judge De Figueiredo Calda, a distributive model would reduce the number of court proceedings, impunity and corruption because justice is prompt and respected in distributive model societies.¹²⁰

IV. REPARATIONS

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

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

1. Judgment as Form of Reparation

The Court stated that the Judgment is a form of reparation that acknowledges the State violated the victims' human rights.¹²¹

2. Publish the Judgment

The State must publish the relevant portions of the Judgment in a newspaper with wide circulation in the state of Paraná, in the State's Official Gazette, and in another national newspaper.¹²² Furthermore, the Judgment must be published in its entirety on the official websites of the Federal State and the state of Paraná for a minimum of one year.¹²³

3. Investigate and Punish Those Responsible

The State must effectively investigate and punish those responsible for any misconduct in the previous investigation, including State ac-

118. *Id.* ¶ 16.

119. *Id.*

120. *Id.* ¶¶ 17–19.

121. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, “Operative Paragraphs” ¶ 5.

122. *Id.* ¶ 157.

123. *Id.*

tors.¹²⁴ The Court also ordered that the State continue to investigate to find the people responsible for Mr. Garibaldi's murder and give the victims access to domestic proceedings.¹²⁵

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$1,000 for Mrs. Garibaldi's transportation costs when seeking support from friends and family during the investigation of her husband's murder.¹²⁶

2. Non-Pecuniary Damages

The Court awarded \$50,000 to Mrs. Garibaldi and \$20,000 to each of Mr. Garibaldi's six children in non-pecuniary damages.¹²⁷

3. Costs and Expenses

The Court awarded \$8,000 to Mrs. Garibaldi for costs and expenses related to the litigation.¹²⁸

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

\$ 179,000

C. Deadlines

The State must publish the relevant portions of the Judgment within six months of the Judgment.¹²⁹ Furthermore, the Judgment must be published in its entirety on the official websites of the Federal State and the state of Paraná for a minimum of one year within two months of the Judgment.¹³⁰ The State must compensate Mrs. Garibaldi and her six

124. *Id.* ¶ 169.

125. *Id.*

126. *Id.* ¶ 187.

127. Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, ¶ 193.

128. *Id.* ¶ 199.

129. *Id.* ¶ 157.

130. *Id.*

children within one year of the Judgment.¹³¹ The State must identify, prosecute, and punish those responsible for Mr. Garibaldi's death within a reasonable time.¹³²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

February 22, 2011: The Court found that the State fully complied with its obligation to publish the Judgment in both the Official Gazette on February 10, 2010, and in *O Globo* on August 16, 2010.¹³³ On May 7, 2010, the Judgment was also published in the following Paraná newspapers: *Hora H*, *Umuarama Ilustrado*, *Diario Popular*, *Tribuna do Norte*, *Diário do Sudoeste*, *Hoje Notícias*, *Gazeta do Paraná*, *Jornal da Manhã* and *Diário Oficial do Estado*.¹³⁴ Additionally, the Judgment was available on the official websites of the Federal State and the State of Paraná.¹³⁵

The Court found that the State partially complied with its obligation to identify and punish the perpetrators of Mr. Garibaldi's murder.¹³⁶ The Court noted that the State only provided one report dated May 10, 2010, which discussed the procedures undertaken to extract testimonies from four witnesses and one possible guilty party.¹³⁷ No substantial progress had been made in the case since entry of the Judgment.¹³⁸ The Court ordered the State to send detailed reports on its compliance with the obligation.¹³⁹

The Court found that the State had not complied with the obligation to compensate Mr. Garibaldi's next of kin for damages and to reimburse costs and expenses.¹⁴⁰ The Court recognized the State's Decree No. 7,307 issued in September of 2010, which provided authorization of payments towards the victims, but the State provided no further infor-

131. *Id.* ¶ 204.

132. *Id.* "Operative Paragraphs" ¶ 7.

133. *Garibaldi v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R.*, ¶ 8 (Feb. 22, 2011).

134. *Id.*

135. *Id.*

136. *Id.* ¶ 15.

137. *Id.* ¶ 13.

138. *Id.* ¶ 15.

139. *Id.*

140. *Id.* ¶ 19.

mation.¹⁴¹ The Court resolved to continue monitoring compliance in this regard.¹⁴²

February 20, 2012: The Court found that the State fully complied with its obligation to pay pecuniary and non-pecuniary damages to the victims.¹⁴³ Additionally, the State made some progress on its obligation to effectively investigate and identify the authors of Mr. Garibaldi's murder but not enough to merit full compliance.¹⁴⁴ Although the State had filed charges against Mr. Favoreto on June 30, 2011, the Court stated that more than twelve years had elapsed since Mr. Garibaldi's death, and the State neither fully clarified the facts nor punished those responsible.¹⁴⁵ The Court resolved to continue monitoring compliance in this regard and required the State submit detailed reports with supporting documentation on its progress.¹⁴⁶

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 203 \(Sept. 23, 2009\).](#)

2. Decisions on Merits, Reparations and Costs

[Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 203 \(Sept. 23, 2009\).](#)

[Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge *Ad Hoc* Roberto De Figueiredo Caldas, Inter-Am. Ct. H.R. \(ser. C.\) No. 203 \(Sept. 23, 2009\).](#)

141. *Id.* ¶ 18.

142. *Id.* ¶ 19.

143. Garibaldi v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Feb. 20, 2012).

144. *Id.* ¶ 15.

145. *Id.* ¶¶ 8, 15.

146. *Id.*

3. Provisional Measures

[None]

4. Compliance Monitoring

[Garibaldi v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 22, 2011\).](#)

[Garibaldi v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 20, 2012\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

Garibaldi v. Brazil, Admissibility Report, Report No. 13/07, Inter-Am. Comm'n H.R., Case No. 12.478 (Mar. 27, 2007).

3. Provisional Measures

[None]

4. Report on Merits

Garibaldi v. Brazil, Report on Merits, Report No. 13/907, Inter-Am. Comm'n H.R., Case No. 12.478 (Mar. 27, 2007).

5. Application to the Court

[Garibaldi v. Brazil, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.478 \(Dec. 24, 2007\) \(Available only in Spanish\).](#)

VIII. BIBLIOGRAPHY

[None]