

Garrido and Baigorria v. Argentina

ABSTRACT¹

This case is about the disappearance of two persons who had been stopped and arrested after they had been pulled over by police in the city of Mendoza, Argentina, in 1990. The State admitted to international responsibility and the Court found violation of the American Convention.

I. FACTS

A. Chronology of Events

April 28, 1990: Mr. Aldo Argentino Garrido Calderón and Mr. Raúl Baigorria Balmaceda take an afternoon drive through General San Martín Park in Mendoza, Argentina.² At about 4:00 p.m., two police patrol cars pull them over.³ Four uniformed officers surround Mr. Garrido Calderón and Mr. Baigorria Balmaceda to detain and question them.⁴

About an hour later, word of the incident reaches Mr. Garrido Calderón's family.⁵ Concerned that there is a warrant for his arrest, Mr. Garrido Calderón's family immediately initiates a search.⁶ They contact their family attorney, Ms. Mabel Osorio, to help determine what happened.⁷ She quickly establishes that Mr. Garrido Calderón is not in official custody in any of the local police stations.⁸ Nevertheless, a relative observes the car Mr. Garrido Calderón and Mr. Baigorria Balmaceda were driving parked at a Mendoza police station.⁹ An officer at the sta-

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

2. Case of Garrido and Baigorria v. Argentina, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 39, ¶ 3 (Aug. 27, 1998).

3. *Id.*

4. *Id.*

5. *Id.* ¶ 4.

6. *Id.* ¶ 5.

7. *Id.*

8. *Id.*

9. *Id.*

tion explains to the family that, based on anonymous tip, the police discovered the car abandoned in General San Martín Park.¹⁰

April 30, 1990: Ms. Osorio files a writ of habeas corpus on behalf of Mr. Garrido Calderón.¹¹ The Fourth Court of Inquiry of the First District of Mendoza Province dismisses the writ for failure to establish a deprivation of liberty.¹²

May 2, 1990: The families of Mr. Garrido Calderón and Mr. Baigorria Balmaceda report the disappearances to the Committee on Rights and Guarantees of the Mendoza House of Representatives (“the Committee”).¹³ The Committee does not respond.¹⁴

Mr. Garrido Calderón’s family files a complaint with the district attorney.¹⁵ When Mr. Garrido Calderón’s brother, Esteban Garrido, responds to a court summons, a police officer informs him that his brother was a suspect in a robbery and that the police had been pursuing him.¹⁶

May 3, 1990: Mr. Oscar A. Mellado, an attorney, files a writ of habeas corpus for Mr. Baigorria Balmaceda.¹⁷ The Fourth Court of Inquiry of the First District of Mendoza Province dismisses the writ, holding that Mr. Mellado failed to establish a deprivation of liberty.¹⁸

May 11, 1990: The families report the disappearances to the Mendoza Senate.¹⁹ Like the Committee, the Senate does not respond.²⁰

September 19, 1991: Mr. Esteban Garrido files a writ of habeas corpus with the First Court of Inquiry of Mendoza on behalf of his brother.²¹ The court dismisses the writ, and Mr. Esteban Garrido appeals to the Third Criminal Court of Mendoza.²²

10. *Id.*

11. *Id.* ¶ 6.

12. *Id.*

13. *Id.* ¶ 10.

14. *Id.*

15. *Id.* ¶ 7.

16. *Id.* ¶ 8.

17. *Id.* ¶ 6.

18. *Id.*

19. *Id.* ¶ 10.

20. *Id.*

21. *Id.* ¶ 11.

22. *Id.*

November 20, 1991: Mr. Esteban Garrido files a civil complaint for the disappearances with Mendoza's Fourth Court of Inquiry for the First District.²³

November 25, 1991: The Third Criminal Court of Mendoza denies Mr. Esteban Garrido's appeal.²⁴

1991 through 1996: The families of Mr. Garrido Calderón and Mr. Baigorria Balmaceda continue to file complaints with the government and search police stations and hospitals.²⁵ Their searches are unsuccessful.²⁶ Their judicial proceedings similarly have not progressed.²⁷

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

April 29, 1992: The Inter-American Commission on Human Rights ("the Commission") receives Petition No. 11.009 in connection with the forced disappearances.²⁸

September 20, 1994: Commission adopts Merits Report No. 26/94.²⁹ The Commission finds that the State is responsible for the disappearances of Mr. Garrido Calderón and Mr. Baigorria Balmaceda.³⁰ The Commission concludes that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 25 (Right to Judicial Protection) of the American

23. *Id.* ¶ 12.

24. *Id.* ¶ 11.

25. *Id.* ¶ 13.

26. *Id.*

27. *Id.*

28. Case of Garrido and Baigorria v. Argentina, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 26, ¶ 1 (Feb. 2, 1996).

29. *Id.* ¶¶ 1, 20.

30. *Id.* ¶ 20.

Convention.³¹ Based on these findings, the Commission recommends that the State: 1) open an investigation into the victims' whereabouts, 2) return the victims' remains, 3) identify and prosecute those responsible for the disappearances, 4) compensate the victims' families, and 5) make any additional reparations necessary.³²

B. Before the Court

May 29, 1995: The Commission submits the case to the Court after the State failed to adopt its recommendations.³³

1. Violations Alleged by Commission³⁴

Article 4 (Right to Life)

Article 5 (Right to Human Treatment)

Article 7 (Right to Personal Liberty)

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

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 Victims³⁵

Same Violations Alleged by Commission.

July 10, 1995: The State informs the Court that it will not present preliminary objections and appoints Julio A. Barberis as judge *ad hoc*.³⁶

September 11, 1995: The State admits to the facts alleged in the appli-

31. *Id.* ¶¶ 2, 20.

32. *Id.*

33. *Id.*

34. *Id.* ¶ 2.

35. *Garrido and Baigorria v. Argentina, Reparations and Costs*, ¶ 16. No attorney was listed as representing the victims in the Merits Judgment; however, the Costs and Reparations Judgment names Mr. Carlos Varela Alvarez as representative of Ms. Calderón, Mr. Esteban Garrido, Ms. Ana Benita Garrido, Mr. Samuel Garrido, Mr. Moisés Garrido, Ms. Sara Rosa Garrido, Ms. Rita Garrido, Mr. Ricardo Baigorria, Ms. Sara Esther Baigorria, Mr. Roberto Baigorria, and Mr. Osvaldo Baigorria. *Id.* ¶ 30.

36. *Garrido and Baigorria v. Argentina, Merits*, ¶ 6.

cation and accepts responsibility for the disappearances.³⁷

February 1, 1996: The Court holds a public hearing on the merits.³⁸ During the hearing, the State reiterates its full acknowledgement of international responsibility for the events.³⁹ Additionally, the Commission agrees to the State's terms of acceptance of responsibility.⁴⁰

III. MERITS

A. Composition of the Court

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

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

B. Decision on the Merits

February 2, 1996: The Court issues its Judgment on the Merits.⁴¹ The Court found unanimously that Argentina had violated:

Article 4 (Right to Life) in relation to Article 1(1) of the Convention, to the detriment of Mr. Garrido Calderón and Mr. Baigorria Balmaceda,⁴² because:

*The State acknowledged its responsibility for the events of April 28, 1990.*⁴³ *Because of this, it is therefore responsible for the deprivation of*

37. *Id.* ¶¶ 7, 24.

38. *Id.* ¶ 8.

39. Garrido and Baigorria v. Argentina, Reparations and Costs, ¶ 16.

40. Garrido and Baigorria v. Argentina, Merits, ¶ 25.

41. Garrido and Baigorria v. Argentina, Merits.

42. *Id.* ¶ 27.

43. *Id.* ¶ 20.

*the right to life of Mr. Garrido Calderón and Mr. Baigorria Balmaceda, in violation of Article 4 (Right to Life).*⁴⁴

Article 5 (Right to Human Treatment) in relation to Article 1(1) of the Convention, to the detriment of Mr. Garrido Calderón and Mr. Baigorria Balmaceda,⁴⁵ because:

*The State acknowledged its responsibility for the events of April 28, 1990.⁴⁶ Because of this, it is therefore responsible for depriving Mr. Garrido Calderón and Mr. Baigorria Balmaceda of their right to humane treatment, in violation of Article 5 (Right to Humane Treatment).*⁴⁷

Article 7 (Right to Personal Liberty) in relation to Article 1(1) of the Convention, to the detriment of Mr. Garrido Calderón and Mr. Baigorria Balmaceda,⁴⁸ because:

*The State acknowledged its responsibility for the events of April 28, 1990.⁴⁹ Because of this, it is therefore responsible for depriving Mr. Garrido Calderón and Mr. Baigorria Balmaceda of personal liberties, in violation of Article 7 (Right to Personal Liberty).*⁵⁰

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) of the Convention, to the detriment of Mr. Garrido Calderón, Mr. Baigorria Balmaceda, and their next of kin,⁵¹ because:

The State acknowledged its responsibility for the events of April 28, 1990.⁵² Because of this, it is therefore responsible for depriving Mr. Garrido Calderón, Mr. Baigorria Balmaceda, and their next of kin of their right to a court hearing, in violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tri-

44. *Id.* ¶ 27.

45. *Id.*

46. *Id.* ¶ 20.

47. *Id.* ¶ 27.

48. *Id.*

49. *Id.* ¶ 20.

50. *Id.* ¶ 27.

51. *Id.* ¶¶ 2, 27.

52. *Id.* ¶ 20.

bunal).⁵³

Article 25 (Right to Judicial Protection) in relation to Article 1(1) of the Convention, to the detriment of Mr. Garrido Calderón, Mr. Baigorria Balmaceda, and their next of kin,⁵⁴ because:

The State acknowledged its responsibility for the events of April 28, 1990.⁵⁵ Because of this, it is therefore responsible for depriving Mr. Garrido Calderón, Mr. Baigorria Balmaceda, and their next of kin of their right to judicial protection, in violation of Article 25 (Right to Judicial Protection).⁵⁶

The Court unanimously held:

To allow both parties six months to reach an agreement on reparations and compensation,⁵⁷ because:

The Court found it appropriate to allow more time to potentially reach a settlement in this case, given the ongoing conversations between the State, the Commission, and the victims' representatives.⁵⁸ However, if the parties involved failed to reach an agreement, the Court reserved the authority to intervene and determine the measures the State must take.⁵⁹ On January 31, 1997, the Court held that the parties did not reach an agreement in compliance with the Judgment on the Merits.⁶⁰ Thus, the Court held a public hearing on reparations on January 20, 1998.⁶¹

C. Dissenting and Concurring Opinions

[None]

53. *Id.* ¶ 27.

54. *Id.* ¶¶ 2, 27.

55. *Id.* ¶ 20.

56. *Id.* ¶ 27.

57. Garrido and Baigorria v. Argentina, Merits, ¶ 29.

58. *Id.*

59. Garrido and Baigorria v. Argentina, Reparations and Costs, ¶ 17.

60. *Id.* ¶ 24.

61. *Id.* ¶ 30.

IV. REPARATIONS⁶²

The Court ruled that the State had the following obligations:

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

1. Investigate the Disappearances

The State must investigate the facts surrounding the disappearances of Mr. Garrido Calderón and Mr. Baigorria Balmaceda and identify and punish those responsible for the disappearances.⁶³

2. Locate Mr. Baigorria Balmaceda's Children

The State must attempt to identify the two natural children of Mr. Baigorria Balmaceda in order to compensate them as his heirs.⁶⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court did not award pecuniary damages.

2. Non-Pecuniary Damages

The Court awarded non-pecuniary damages to the victims based on the “aggression and abuse” they suffered at the hands of the Mendoza police.⁶⁵ The Court found that the State's acknowledgement of re-

62. The August 27, 1998 Judgment for Reparations and Costs was decided by Hernán Salgado Pesantes, President; Antônio A. Cançado Trindade, Vice President; Máximo Pacheco Gómez, Judge; Oliver Jackman, Judge; Alirio Abreu Burelli, Judge; Sergio García Ramírez, Judge; Carlos Vicente de Roux Rengifo, Judge; and Julio A. Barberis, Judge *Ad Hoc*. Assisting in the proceedings were Manuel E. Ventura Robles, Secretary, and Ana María Reina, Deputy Secretary. Carlos Varela Alvarez and Diejo J. Lavado represented the victims in the reparations stage of the case. *Garrido and Baigorria v. Argentina, Reparations and Costs*.

63. *Id.* ¶ 91(4).

64. *Id.* ¶¶ 56–57, 91(3).

65. *Id.* ¶ 49.

sponsibility is sufficient to establish compensable non-pecuniary damages.⁶⁶ The Court distributed the victims' non-pecuniary damages to their next of kin either through inheritance or based on personal suffering experienced as a result of the disappearances.⁶⁷

The Court awarded \$75,000 to Mr. Garrido Calderón's mother, Ms. Calderón.⁶⁸ The Court awarded \$6,000 to each of Mr. Garrido Calderón's siblings: Mr. Esteban Garrido, Ms. Ana Benita Garrido, Mr. Samuel Garrido, Mr. Moisés Garrido, Ms. Sara Rosa Garrido, and Ms. Rita Garrido.⁶⁹

The Court awarded \$6,000 to each of Mr. Baigorria Balmaceda's siblings: Mr. Ricardo Baigorria, Ms. Sara Esther Baigorria, Mr. Roberto Baigorria, and Mr. Osvaldo Baigorria.⁷⁰ The Court awarded \$40,000 to each of Mr. Baigorria Balmaceda's two unidentified natural children.⁷¹

3. Costs and Expenses

Because the families did not keep a record of costs, the Court awarded \$45,000 in costs, to be split equally between the Garrido and Baigorria families.⁷² The Court awarded \$20,000 of that amount to attorneys Carlos Varela Álvarez and Diego J. Lavado.⁷³

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

\$ 220,500

C. Deadlines

The State must compensate the victims' families within six months of the Judgment.⁷⁴ The State must deposit the money for the two unidentified natural children of Mr. Baigorria Balmaceda into a savings account that must remain open for ten years.⁷⁵

66. *Id.*

67. *Id.* ¶ 50.

68. *Id.* ¶ 62.

69. *Id.* ¶ 63.

70. *Id.* ¶ 64.

71. *Id.* ¶ 65.

72. *Id.* ¶¶ 76, 82.

73. *Id.* ¶ 85.

74. *Id.* ¶ 86.

75. *Id.*

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 27, 2003: The Court found that the State complied with its obligation to compensate the victims' families and reimburse costs.⁷⁶

The State failed to comply with its obligation to locate Mr. Baigorria Balmaceda's natural children and to deposit their compensation into a bank account.⁷⁷ The State additionally failed to investigate the circumstances of the disappearance and to punish those responsible.⁷⁸ The Court decided to keep these areas open and to continue monitoring the State's compliance.⁷⁹

November 17, 2004: The State failed to submit a report on compliance with the Judgment by April 1, 2004.⁸⁰ Because the Court did not receive any information on compliance, the Court ordered the State to submit a compliance report by January 31, 2005.⁸¹

November 23, 2007: The Court held a private hearing on pending compliance with the Judgment.⁸² The State alleged it complied with the Court's Judgment.⁸³ First, the State claimed that it published advertisements in an attempt to locate Mr. Baigorria Balmaceda's natural children.⁸⁴ Second, the State claimed to have conducted two excavations in attempt to locate the victims' remains and to have issued a \$5,000 re-

76. Garrido and Baigorria v. Argentina, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R., "Having Seen" ¶ 5 (Nov. 27, 2007). The referenced court decision dated November 27, 2003 could not be located, but it is likely that the decision was made in a Monitoring Compliance document.

77. *Id.*

78. *Id.*

79. *Id.*

80. Garrido and Baigorria v. Argentina, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R., "Having Seen" ¶ 4, "Considering" ¶ 7 (Nov. 17, 2004).

81. *Id.* "Decides" ¶ 1.

82. Garrido and Baigorria v. Argentina, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R., "Having Seen" ¶ 13 (Nov. 27, 2007).

83. *Id.* "Considering" ¶ 6(a).

84. *Id.*

ward for any information about the victims' disappearances.⁸⁵

November 27, 2007: Based on the November 23, 2007 hearing, the Court found that the State must submit an additional compliance report on the search for Mr. Baigorria Balmaceda's natural children and the ongoing investigation into the disappearances.⁸⁶

The Court ordered the State to submit a report on compliance by February 15, 2008, indicating all measures taken to comply with the Judgment.⁸⁷ Particularly, the State must organize a meeting to discuss reparations, must inform the Court of the results of the meeting and, if possible, must produce a schedule outlining the State's projected compliance.⁸⁸

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Garrido and Baigorria v. Argentina, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 26 \(Feb. 2, 1996\).](#)

[Garrido and Baigorria v. Argentina, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 39 \(Aug. 27, 1998\).](#)

3. Provisional Measures

[None]

85. *Id.* "Considering" ¶ 6(b).

86. *Id.* "Decides" ¶ 3.

87. Garrido and Baigorria v. Argentina, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R., "Having Seen" ¶ 3 (Nov. 27, 2007).

88. *Id.*

4. Compliance Monitoring

[Garrido and Baigorria v. Argentina, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(Nov. 17, 2004\).](#)

[Garrido and Baigorria v. Argentina, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(Nov. 27, 2007\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Garrido and Baigorria v. Argentina, Petition No. 11.009, Inter-Am. Comm'n H.R., Case No. 11.009 (Apr. 29, 1992).

2. Admissibility Report

[Not Available]

3. Provisional Measures

[None]

4. Report on Merits

Garrido and Baigorria v. Argentina, Report on Merits, Report No. 26/94, Inter-Am. Comm'n H.R., Case No. 11.009 (Sept. 20, 1994).

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

Tullio Scovazzi and Gariella Citroni, *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention* (June 2007).