

# Usón Ramírez v. Venezuela

## ABSTRACT<sup>1</sup>

*This case is about the prosecution and detention of an officer of the State Armed Forces for criticizing the State military, its procedures, and its leadership, in general, and officers involved in the grisly murder of two soldiers, in particular. The Court found violation of the officers' right to freedom of expression, as well as rights to personal liberty, right to a fair trial and rights to juridical protection.*

## I. FACTS

### A. Chronology of Events

**February 26, 2002:** General Francisco Usón Ramírez, a member of the State military, is appointed Minister of Finance by President Hugo Chávez.<sup>2</sup>

**December 2, 2002:** General Ramírez writes a letter to the Minister of Defense, Army Brigadier General José Luis Prieto, describing his dissatisfaction with the military institution, its procedures, and its leadership capacity.<sup>3</sup> In his letter, General Ramírez discusses his general frustration with the leadership of the Armed Forces and explains that, because of this, he is resigning as Minister of Finance.<sup>4</sup>

**January 27, 2003:** In another letter to the Minister of Defense, General Ramírez condemns National Guard Brigadier General Luis Felipe Acosta Carles and reiterates his dissatisfaction with the military leadership.<sup>5</sup>

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1. Milja Miric, Author; Dale Ogden, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Usón Ramírez v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.554, ¶ 29, n.14 (July 25, 2008).

3. *Id.* ¶ 31.

4. *Id.*

5. *Id.* ¶ 32.

**May 30, 2003:** The Minister of Defense discharges General Ramírez from the military as a result of his two letters, citing General Ramírez's insubordination and insulting, challenging, and provoking his superiors.<sup>6</sup> This is Mr. Ramírez's first disciplinary action.<sup>7</sup>

**August 14, 2003:** Mr. Ramírez's attorneys file a motion to vacate Mr. Ramírez's discharge, asserting the rights to freedom of expression and freedom of conscience, and request Mr. Ramírez's reinstatement.<sup>8</sup>

**October 15, 2003:** The Political and Administrative Chamber of the Supreme Court of Justice issues a judgment holding that Mr. Ramírez's discharge did not violate his rights to freedom of expression and freedom of conscience.<sup>9</sup> The court reasons that the Armed Forces have the discretion to discharge individuals to maintain discipline and decorum within the institution.<sup>10</sup>

**March 30, 2004:** A fire erupts in a detention cell at Fort Mara, killing two soldiers from the 105th Combat and instigating public debate about the cause of the fire.<sup>11</sup> The Venezuelan Fire Department issues a statement indicating the fire could have been intentional.<sup>12</sup>

**April 15, 2004:** Ms. Patricia Poleo publishes an article in *El Nuevo Pais*, a newspaper in the State, regarding the fire.<sup>13</sup> In her article, Ms. Poleo includes the testimony of a Fort Mara officer, who states that the two deceased soldiers were lined up in the cell where superior officers threatened them with a flamethrower until they ultimately activated the flamethrower and burned the soldiers.<sup>14</sup> The officer contends the superior officers were unaware that the pressure regulator on the flamethrower was on high and did not think the flame would be as strong as it was.<sup>15</sup>

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6. *Id.* ¶ 33.

7. *Id.* ¶ 36.

8. *Id.* ¶ 35.

9. *Id.* ¶ 37.

10. *Id.*

11. *Id.* ¶ 39.

12. *Id.*

13. *Id.* ¶ 40.

14. *Id.*

15. *Id.*

**April 16, 2004:** Mr. Ramírez appears on a television show, “*La Entrevista*,” with Ms. Poleo to discuss the fire at Fort Mara.<sup>16</sup> The television host asks Mr. Ramírez for his expert opinion as a combat engineer and a military analyst.<sup>17</sup> Mr. Ramírez says that the officer’s testimony shows premeditation because the soldiers were lined up in the cell and were only burned on the front of their bodies, from the waist up.<sup>18</sup> Further, Mr. Ramírez reads from the Disciplinary Punishment Rules and the Organic Law.<sup>19</sup> He discusses the unconstitutionality of the section regarding military confinement, which allows for the Armed Forces’ punishment procedure.<sup>20</sup> Mr. Ramírez reads from the section that states the punished individual “shall not be permitted to leave except . . . [when] absolutely necessary for his physical needs and under permanent guard.”<sup>21</sup>

**May 2004:** General-in-Chief and Minister of Defense Jorge Luis García Carneiro orders a military criminal investigation opened against Mr. Ramírez.<sup>22</sup> Mr. Jesús Arnoldo Rosales Castro, the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas, opens the investigation and requests an arrest warrant for Mr. Ramírez for his remarks regarding the Fort Mara fire, claiming they were a “direct attack” on the military.<sup>23</sup> The Permanent Military Tribunal of First Instance of La Guaira issues the arrest warrant for Mr. Ramírez.<sup>24</sup>

Mr. Ramírez is detained at the airport in Guayana City, turned over to the Bureau of Military Intelligence, and transported to the National Center for Military Defendants in Ramo Verde.<sup>25</sup> The Military Prosecutor keeps the proceedings secret so Mr. Ramírez will not interfere in the investigation.

The Court of Military Appeals holds that it lacks jurisdiction and transfers the case to the Second Permanent Military Tribunal of First Instance of Caracas.<sup>26</sup>

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16. *Id.* ¶ 41.

17. *Id.* ¶ 42.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* ¶ 44.

23. *Id.* ¶¶ 45–47.

24. *Id.* ¶ 48.

25. *Id.* ¶ 55.

26. *Id.* ¶ 63.

**June 2004:** The Military Prosecutor continues to keep the proceedings against Mr. Ramírez secret for an additional fifteen days.<sup>27</sup> Mr. Ramírez and his attorneys file at least nineteen motions to vacate the arrest warrant, vacate pre-trial detention, and offer evidence that Mr. Ramírez is not a flight risk.<sup>28</sup> The motions are denied, and the court holds that Mr. Ramírez is a flight risk and that his good conduct prior to his television appearance does not warrant his release.<sup>29</sup> The Minister of Defense states that Mr. Ramírez's comments "created alarm in society with the most despicable and shameful aim of tarnishing the good name of the National Armed Forces."<sup>30</sup>

**July 2004:** The Military Prosecutor issues an indictment against Mr. Ramírez.<sup>31</sup> Mr. Ramírez again files a motion to review his pre-trial detention, which is denied because he is still considered a flight risk.<sup>32</sup>

**October 2004:** The court continues proceedings behind closed doors, ultimately finding Mr. Ramírez guilty of insulting the Armed Forces during his television appearance on "*La Entrevista*."<sup>33</sup> He is sentenced to five years and six months' imprisonment at the National Center for Military Defendants.<sup>34</sup> The court additionally disqualifies Mr. Ramírez from political activities while he is serving his sentence.<sup>35</sup>

**November 2004:** In explaining the grounds for Mr. Ramírez's conviction, the First Trial Court holds that Mr. Ramírez's statements constituted an abuse of the freedom of expression.<sup>36</sup> The Court also states that language that weakens the State's Armed Forces undermines national security.<sup>37</sup>

Mr. Ramírez's attorneys file an appeal requesting a new trial in a different court.<sup>38</sup> They argue the sentence should be reduced because the Armed Forces violated rules governing publicity, the judgment was

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27. *Id.* ¶ 58.

28. *Id.* ¶ 59.

29. *Id.* ¶ 61.

30. *Id.* ¶ 64.

31. *Id.* ¶ 65.

32. *Id.* ¶ 66.

33. *Id.* ¶¶ 71–72.

34. *Id.* ¶ 73.

35. *Id.*

36. *Id.* ¶ 74.

37. *Id.*

38. *Id.* ¶ 75.

unfounded, and the process against Mr. Ramírez did not adhere to legal standards.<sup>39</sup> The Court of Military Appeals upholds the judgment.<sup>40</sup>

**February 2005:** Mr. Ramírez's attorneys file an appeal with the Criminal Chamber of the Supreme Court of Venezuela, asking for the annulment of the Court of Military Appeals judgment.<sup>41</sup> They argue that because Mr. Ramírez is a retired military officer and the case did not concern violation of military duties, the military criminal tribunals lack jurisdiction.<sup>42</sup>

**June 2005:** The Criminal Cassation Chamber of the Supreme Court of Justice dismisses the cassation appeal, as military courts are authorized in special cases to try civilians who have committed military offenses.<sup>43</sup> The judgment against Mr. Ramírez becomes final.<sup>44</sup> Mr. Ramírez has been held in pre-trial detention now for one year and eight days.<sup>45</sup>

**December 2006:** President Hugo Chávez states he will consider Mr. Ramírez's case for pardon.<sup>46</sup> Mr. Ramírez writes a letter to the President to express his disinterest in being pardoned for exercising his right to free expression.<sup>47</sup>

**December 24, 2007:** The First Court of Enforcement of Caracas grants Mr. Ramírez parole.<sup>48</sup>

### *B. Other Relevant Facts*

In 2002, a short-lived coup against President Hugo Chavez results in heavier government involvement in the media, which includes the closure of outspoken TV and radio stations.<sup>49</sup> The Law of Social Responsibility in Radio and Television ("*Resorte*") regulates media in

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39. *Id.*

40. *Id.* ¶ 76.

41. *Id.* ¶ 77.

42. *Id.*

43. *Id.* ¶ 78.

44. *Id.* ¶ 80.

45. *Id.*

46. *Id.* ¶ 82.

47. *Id.* ¶ 83.

48. *Id.* ¶¶ 84–85.

49. *In Depth: Media in Venezuela*, BBC NEWS (Oct. 3, 2012), <http://www.bbc.com/news/world-latin-america-19368807>.

the State but is utilized as a tool by the government to censor speech against the State.<sup>50</sup> Some consider *Resorte* “a strategy to silence opposition media,” especially after the failed 2002 coup.<sup>51</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**May 23, 2005:** Mr. Héctor Faúndez Ledesma files a petition with the Inter-American Commission on Human Rights on behalf of Mr. Ramírez.<sup>52</sup>

**March 15, 2006:** The Commission issues Report on Admissibility No. 36/06.<sup>53</sup>

**March 14, 2008:** The Commission issues Merits Report No. 24/08.<sup>54</sup> The Commission finds that the State violated Articles 13 (Freedom of Thought and Expression), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention.<sup>55</sup> The Commission additionally makes several recommendations to the State.<sup>56</sup>

### B. Before the Court

**August 21, 2008:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>57</sup>

#### 1. Violations Alleged by Commission<sup>58</sup>

Article 7 (Personal Liberty)

Article 8 (Right to a Fair Trial)

50. *Id.*

51. *Id.*

52. Usón Ramírez v. Venezuela, Admissibility Report, Report No. 36/06, Inter-Am. Comm'n H.R., ¶ 1 (Mar. 15, 2006).

53. *Id.* ¶ 3. .

54. Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment Inter-Am. Ct. H.R. (ser. C) No. 207, ¶ 1 (Nov. 20, 2009).

55. *Id.* ¶ 3.

56. *Id.*

57. *Id.* ¶ 7.

58. *Id.* ¶ 3.

Article 13 (Freedom of Thought and Expression)

Article 25 (Judicial Protection)

*all in relation to:*

Article 1 (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects) of the American Convention.

## 2. Violations Alleged by Representatives of the Victims<sup>59</sup>

Same Violations Alleged by Commission.

**Between August 21, 2008 and April 1, 2009:** The State submits its answer to the application and lodges a preliminary objection.<sup>60</sup> The State argues that Mr. Ramírez had not exhausted all available domestic remedies before submitting his petition to the Commission because he filed an appeal for reconsideration one month after the Commission issued the Admissibility Report.<sup>61</sup>

**March 30, 2009:** The Civil Rights Association (“ADC”) files an amicus curiae brief.<sup>62</sup>

**April 1, 2009:** The Court holds a public hearing in Santo Domingo, Dominican Republic.<sup>63</sup>

**November 20, 2009:** The State challenges the admissibility of Mr. Ramírez’s case because he had not exhausted all of his domestic remedies.<sup>64</sup> The Commission, however, rejects the State’s preliminary objection because the State did not timely present it to the Commission, thereby missing the opportunity to present it as a defense.<sup>65</sup>

**November 20, 2009:** The Court dismisses the State’s preliminary objection on the grounds that, while the State timely filed the objection, it failed to state which specific domestic remedies were available.<sup>66</sup>

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59. *Id.* ¶ 1. Mr. Héctor Faúndez Ledesma and the Impact Litigation Project of Washington College of Law (WCL) of the American University served as representatives of Mr. Ramírez.

60. *Id.* ¶ 14.

61. *Id.*

62. *Id.* ¶ 10.

63. *Id.* ¶ 11.

64. *Id.* ¶ 14.

65. *Id.* ¶ 17.

66. *Id.* ¶ 23.

Additionally, the State failed to state the availability, suitability, and effectiveness of those remedies.<sup>67</sup>

### III. MERITS

#### *A. Composition of the Court*<sup>68</sup>

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

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

#### *B. Decision on the Merits*

**November 20, 2009:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>69</sup>

The Court found unanimously that Venezuela had violated:

Articles 9 (Freedom from *Ex Post Facto* Laws), 13(1) (Right to Seek, Receive, and Impart Information and Ideas), and 13(2) (Prohibition of A Priori Censorship), in relation to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Ramírez,<sup>70</sup> because:

*Article 9 (Freedom From Ex Post Facto Laws) prohibits the State from convicting an individual of an act that does not constitute a criminal offense.<sup>71</sup> Article 9 (Freedom from Ex Post Facto Laws) also requires that inflicted punishments purport with the laws in place at the time of*

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67. *Id.*

68. Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs. For reasons of *force majeure*, the President of the Court, Judge Cecilia Medina Quiroga, and Judge Leonardo A. Franco did not participate in the deliberation and signing of the Judgment. *Id.* n.1. The Vice President, Judge Diego Garcia-Sayan, stepped in as President. *Id.*

69. Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs.

70. *Id.* “Operative Paragraphs” ¶ 2.

71. *Id.* n.24.



*the criminal offense.*<sup>72</sup>

*Article 13 (Right to Freedom of Thought and Expression) requires States to allow citizens the right to express themselves freely.<sup>73</sup> In guaranteeing this right, states must not exercise excessive or unnecessarily punitive State power.<sup>74</sup> Furthermore, the State must impose strictly proportional limitations on individuals that stay within the scope of Article 13 (Freedom of Thought and Expression).<sup>75</sup> The limitations imposed by the State must balance honoring the Armed Forces and advancing unrestricted criticism against State interests.<sup>76</sup>*

*Here, given that the First Tribunal to Execute Judgments of Caracas prohibited Mr. Ramírez from discussing his case with the media, the Court found the State clearly limited his freedom of expression.<sup>77</sup> Further, as a result of Mr. Ramírez's comments on the Fuerte Mara fire, the State subjected Mr. Ramírez to preventative detention and detained him for five years and six months.<sup>78</sup> The Court additionally concluded that the State could not sanction his comments because they related to an incident of public interest, and determined that the State's actions against Mr. Ramírez were neither necessary nor proportional.<sup>79</sup> Furthermore, the Court concluded that Mr. Ramírez's actions could not have been deemed a threat to the protection of national security or public order.<sup>80</sup>*

*Moreover, the Court determined that the Organic Code, the law used to prosecute Mr. Ramírez, lacked specificity and could lead to broad interpretations on restrictions of speech against the military.<sup>81</sup> As this could result in arbitrary decisions, the Court concluded the Code as too vague and ambiguous to comply with Articles 9 (Freedom from Ex Post Facto Laws) and 13(2) (Prohibition of A Priori Censorship).<sup>82</sup>*

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72. *Id.*

73. *Id.* n.25.

74. *Id.* ¶ 75.

75. *Id.* ¶ 79.

76. *Id.* ¶ 80.

77. *Id.* ¶¶ 98–100. .

78. *Id.* ¶ 81.

79. *Id.* ¶¶ 84, 86, 88.

80. *Id.* ¶ 93–94.

81. *Id.* ¶ 56.

82. *Id.* ¶ 57.

Finally, the Court found that when the Second Permanent Military Tribunal held secret hearings regarding Mr. Ramírez, it violated Article 333 of the Organic Code of Criminal Procedure.<sup>83</sup> Under this law, hearings may only be held in private when the State's security could be "seriously impaired or disturbed."<sup>84</sup> However, the military court stated it held the proceedings in private because of the improper disclosure of Armed Forces' affairs pertaining to the Fort Mara fire.<sup>85</sup>

Ultimately, the Court found the State implemented restrictions on Mr. Ramírez that lacked a legitimate purpose and went beyond what is necessary and proportionate.<sup>86</sup> Moreover, the law used to prosecute Mr. Ramírez was overbroad and ambiguous.<sup>87</sup> Accordingly, the Court found that the State violated Mr. Ramírez's rights under Article 9 (Freedom from Ex Post Facto Laws), Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas), and Article 13(2) (Prohibition of A Priori Censorship).<sup>88</sup>

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 Articles 1(1) and 2 of the Convention, to the detriment Mr. Ramírez,<sup>89</sup> because:

*The State tried Mr. Ramírez in military criminal court, even though he was a retired service member, and thus, failed to observe his right to be tried by a competent and impartial judge or court.*<sup>90</sup>

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) requires the State to provide reasonable measures to provide effective judicial remedies and ensure individuals' right to due process of law.*<sup>91</sup> *The State must also provide competent and impartial judicial due process.*<sup>92</sup> *The judge must*

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83. Usón Ramírez v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.554, ¶ 68 (July 25, 2008).

84. *Id.* ¶ 68.

85. *Id.*

86. *Id.* ¶¶ 88, 100. .

87. *Id.* ¶ 57.

88. *Id.*

89. *Id.* "Operative Paragraphs" ¶ 3.

90. *Id.*

91. *Id.* n.83.

92. *Id.* ¶¶ 109, 117.

demonstrate objectivity to such an extent that “it is beyond all doubt that there is full impartiality.”<sup>93</sup> The judges involved should not have any interest in the matter or be involved in the dispute whatsoever.<sup>94</sup> Article 25 (Right to Judicial Protection) guarantees that persons within the State have effective judicial remedies to prevent violations of their rights.<sup>95</sup> Article 25 (Right to Judicial Protection) requires not only that laws for judicial protection exist, but also that the available measures are effective.<sup>96</sup>

Here, the Armed Forces tried Mr. Ramírez through the criminal military court even though Mr. Ramírez was not an active member of the Armed Forces.<sup>97</sup> Even though Venezuela’s Organic Code of Military Justice reserves the authority to extend military jurisdiction over retired service members, the Court determined that the Code contravenes the American Convention, and Mr. Ramírez should not have been tried in a military jurisdiction because he was a civilian and not a member of active duty.<sup>98</sup> Therefore, the Court determined that the military court was not sufficiently impartial to try Mr. Ramírez and thus, violated Article 8(1) (Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal).<sup>99</sup>

Additionally, the Court determined that the Criminal Court of Appeals judge in Mr. Ramírez’s case, Mr. Eladio Ramón Aponte Aponte, was not impartial because he ordered the investigation into Mr. Ramírez.<sup>100</sup> The Court found that this additional participation raised questions on whether Mr. Aponte was free from prejudice.<sup>101</sup> The Court thus determined that the State violated Mr. Ramírez’s right to a competent and impartial tribunal.<sup>102</sup>

Finally, the State failed to recognize Mr. Ramírez’s requests for appeal by rejecting them as “manifestly unfounded.”<sup>103</sup> As these many appeals

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93. *Id.* ¶ 117.

94. *Id.*

95. *Id.* ¶ 128.

96. *Id.* ¶ 129.

97. *Id.* ¶ 104.

98. *Id.* ¶ 115.

99. *Id.* ¶ 116.

100. *Id.* ¶ 119.

101. *Id.* ¶¶ 118–119.

102. *Id.* ¶ 199.

103. *Id.* ¶ 131.

were summarily denied, Mr. Ramírez did not have a remedy before a competent court to redress the violation of his rights.<sup>104</sup> Thus, the Court found that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection).<sup>105</sup>

Article 7 (Right to Personal Liberty), in relation to Article 1(1) of the Convention, to the detriment of Mr. Ramírez,<sup>106</sup> because:

*The State restricted Mr. Ramírez's personal liberty when it utilized preventative detention.<sup>107</sup> Article 7 (Right to Personal Liberty) protects the right to liberty and guarantees against arbitrary detentions.<sup>108</sup> As the pretrial detention of defendants is precautionary, pretrial detentions must be strictly necessary to prevent obstruction of justice.<sup>109</sup> During this detention, the State must maintain the principle of presumption of innocence.<sup>110</sup>*

*Here, domestic legislation under the Organic Code permitted the State to order preventative detention of Mr. Ramírez.<sup>111</sup> However, because the Court of Appeal judge lacked impartiality, that bias tainted all aspects of Mr. Ramírez's judicial proceedings, including the preventative detention.<sup>112</sup> The lack of impartiality caused Mr. Ramírez's detention to be unreasonable, unforeseeable, and disproportional,<sup>113</sup> and thus, the Court determined the State violated Article 7 (Right to Personal Liberty) of the American Convention.<sup>114</sup>*

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Ramírez,<sup>115</sup> because:

*Venezuela's laws of disobedience under the Organic Code of Military*

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104. *Id.*

105. *Id.* ¶¶ 124, 132.

106. *Id.* "Operative Paragraphs" ¶ 4.

107. *Id.* ¶¶ 136, 144.

108. *Id.* ¶¶ 143, 145.

109. *Id.* ¶ 144.

110. *Id.*

111. *Id.* ¶¶ 135–136.

112. *Id.* ¶ 148.

113. *Id.* ¶¶ 146, 148.

114. *Id.* ¶ 150.

115. *Id.* "Operative Paragraphs" ¶ 5.

*Justice penalize individuals' criticism of the State.*<sup>116</sup> Article 2 (*Obligation to Give Domestic Legal Effect to Rights*) requires States to adopt legislation compatible with the requirements of the American Convention.<sup>117</sup>

*The Court determined that the State's vague and broad laws that restrict critical speech violated Articles 9 (Freedom From Ex Post Facto Laws) and 13 (Freedom of Thought and Expression).*<sup>118</sup> Furthermore, the Court concluded that the State violated Article 8 (*Right to a Fair Trial*) because State law granted military court jurisdiction over civilians and retired military personnel.<sup>119</sup> Therefore, because the State's legislation violated Articles 8(1) (*Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal*), 9 (*Freedom from Ex Post Facto Laws*), and 13 (*Freedom of Thought and Expression*) of the Convention,<sup>120</sup> the Court determined that the State additionally violated Article 2 (*Obligation to Give Domestic Legal Effect to Rights*).<sup>121</sup>

### *C. Dissenting and Concurring Opinions*

#### 1. Concurring Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez agreed with the Court's Judgment and reiterated the importance of due process rights established in Article 8 (*Right to a Fair Trial*).<sup>122</sup> Judge García Ramírez discussed the differences between the more general and broad Article 8(1) (*Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal*) and the more narrow Article 8(2) (*Right to Be Presumed Innocent*).<sup>123</sup> Specifically, Judge García Ramírez reasoned that if a State is in violation of Article 8(2) (*Right to Be Presumed Innocent*), then it must additionally violate Article 8(1) (*Right to a*

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116. *Id.* ¶ 151.

117. *Id.* ¶ 199.

118. *Id.* ¶¶ 200–201.

119. *Id.* ¶ 201.

120. *Id.* ¶ 200.

121. *Id.* ¶ 202.

122. Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 207, ¶ 4 (Nov. 20, 2009).

123. *Id.* ¶ 4.

Hearing Within Reasonable Time by a Competent and Independent Tribunal).<sup>124</sup>

#### 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 Reparation

The Court recognized that the Judgment is a form of reparation because it acknowledges the State violated Mr. Ramírez's rights guaranteed by the American Convention.<sup>125</sup>

###### 2. Declare the Previous Judgments Ineffective

The Court ordered the State, within one year, to nullify Mr. Ramírez's guilty verdict, remove his criminal history, and guarantee his personal liberty.<sup>126</sup>

###### 3. Reform Legislation

The State must adopt all legal, administrative, and other measures to protect the rights of retired military members.<sup>127</sup> The Court ordered the State to limit the provisions in the Organic Code of Military Justice to apply to active military members or those performing military duties.<sup>128</sup> Further, the State must allow its civil servants to express themselves without prosecution.<sup>129</sup>

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124. *Id.* ¶¶ 6–8.

125. *Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs*, ¶ 210.

126. *Id.* ¶ 213.

127. *Id.* ¶ 217.

128. *Id.* ¶ 218.

129. *Id.*

#### 4. Publish the Judgment

The Court ordered the State to publish the Judgment in an Official Gazette, in another national newspaper with wide circulation, and on the official State website for at least an entire year.<sup>130</sup>

#### *B. Compensation*

The Court awarded the following amounts:

##### 1. Pecuniary Damages

The Court ordered the State to pay Mr. Ramírez \$40,000 based on lost earnings that he could have made during his time in prison.<sup>131</sup>

##### 2. Non-Pecuniary Damages

The Court ordered the State to pay \$50,000 for the State's decision to unnecessarily detain Mr. Ramírez for five years and six months.<sup>132</sup> The Court determined that this caused Mr. Ramírez anguish and suffering, and is therefore entitled to non-pecuniary damages.<sup>133</sup>

##### 3. Costs and Expenses

The Court ordered the State compensate Mr. Ramírez \$20,000 for his legal fees.<sup>134</sup>

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

\$ 110,000

#### *C. Deadlines*

The State must nullify Mr. Ramírez's conviction, remove his

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130. *Id.* ¶ 221.

131. *Id.* ¶ 225.

132. *Id.* ¶ 231.

133. *Id.*

134. *Id.* ¶ 238.

criminal record, and guarantee liberty within one year of the Judgment.<sup>135</sup>

The State must reform its legislation to protect military members within a reasonable time.<sup>136</sup>

The State must modify the Organic Code of Military Justice within a reasonable time.<sup>137</sup>

The State must publish the Judgment in the Official Gazette and in another widespread newspaper within six months.<sup>138</sup> The State must publish the Judgment on a State website within two months, and it must remain published for one year.<sup>139</sup>

The State must pay pecuniary damages, non-pecuniary damages, and costs and expenses ordered within one year of notification of the Judgment.<sup>140</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**November 20, 2015:** The Court found the State failed to comply with the obligations in the Judgment.<sup>141</sup> The Court noted that approximately five years has passed since the Judgment against the State was issued without State compliance.<sup>142</sup>

The Court determined that because the State exceeded the amount of time it was given to comply with the Court's judgment, and because the State did submit compliance reports as required by the Judgment, the Court determined the State's inaction constitutes a violation of the American Convention.<sup>143</sup> As a result of the State's lack of compliance, the Court resolved to keep monitoring compliance proceedings open until Venezuela adopts measures to comply with the Judgment.<sup>144</sup>

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

136. *Id.* "Operative Paragraphs" ¶ 8.

137. *Id.* "Operative Paragraphs" ¶ 9.

138. *Id.* "Operative Paragraphs" ¶ 10.

139. *Id.*

140. *Id.* ¶¶ 232, 238.

141. *Usón Ramírez v. Venezuela, Monitoring Compliance with Judgment*, Inter-Am. Ct. H.R., ¶ 1 (Dec. 15, 2015) (Available only in Spanish).

142. *Id.* ¶ 3.

143. *Id.* ¶ 7.

144. *Id.* ¶¶ 3–4.



## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 207 \(Nov. 20, 2009\).](#)

## 2. Decisions on Merits, Reparations and Costs

[Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 207 \(Nov. 20, 2009\).](#)

[Usón Ramírez v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 207 \(Nov. 20, 2009\).](#)

## 3. Provisional Measures

[None]

## 4. Compliance Monitoring

[Usón Ramírez v. Venezuela, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R. \(Dec. 15, 2015\) \(Available only in Spanish\).](#)

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[Usón Ramírez v. Venezuela, Admissibility Report, Inter-Am. Comm'n H.R., Case No. 12.554 \(Mar. 15, 2006\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

Usón Ramírez v. Venezuela, Report on Merits, Report No. 24/08, Inter-Am. Comm'n H.R., Case No. 12.554 (Mar. 14, 2008).

## 5. Application to the Court

[Usón Ramírez v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.554 \(July 25, 2008\).](#)

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