

Fornerón and daughter v. Argentina

ABSTRACT¹

This case is about a child who was given up for adoption by the mother right after birth, but whose biological father fought for years to obtain recognition and custody. The Court found Argentina in violation of several articles of the American Convention including the right to a hearing within reasonable time and the right to family.

I. FACTS

A. Chronology of Events

1999 to 2000: Mr. Leonardo Aníbal Javier Fornerón and Ms. Diana Elizabeth Enríquez, both of Rosario del Tala, in the Entre Ríos Province of Argentina, have a relationship that lasts approximately twelve months.² Ms. Enríquez becomes pregnant before the two end their relationship, but does not inform Mr. Fornerón.³ He remains unaware of the pregnancy for approximately five months, until a mutual friend tells him.⁴ After learning of Ms. Enríquez's pregnancy, Mr. Fornerón asks her several times whether he is the child's father; she denies that he is.⁵

June 16, 2000: Ms. Enríquez gives birth at the Victoria Polyclinic Hospital in the city of Victoria, Entre Ríos Province.⁶ The child, a girl, is named Milagros.⁷

June 17, 2000: In the presence of the Assistant Ombudsman for Children

1. Matthew Follett, Author; Diane Chang, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Fornerón and daughter v. Argentina, Report on Merits, Report No. 83/10, Inter-Am. Comm'n H.R., Case No. 11.748, ¶ 39 (July 13, 2010); Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 242, ¶ 21 (Apr. 27, 2012).

3. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 21.

4. *Id.*

5. *Id.*

6. Fornerón and daughter v. Argentina, Report on Merits, ¶ 2.

7. Fornerón and daughter v. Argentina, Admissibility Report, Report No. 117/06, Inter-Am. Comm'n H.R., Case No. 11.752, ¶ 2 (Oct. 26, 2006).

and the Poor of Victoria (Defensor de Pobres y Menores), Ms. Enríquez signs an official document stating she willingly places Milagros under a provisional guardianship pending future adoption, and does not wish to undergo any formal judicial guardianship or adoption procedure.⁸ She then surrenders Milagros to a married couple from Buenos Aires, Mr. Zucchi and Mrs. Bassi, and returns to Rosario del Tala.⁹ Mr. Fornerón, after learning of the birth, asks Ms. Enríquez again if he is the child's father and says that if so, they can retrieve the child and he will care for her.¹⁰ She finally admits that he is the father, but tells him she does not want him to retrieve Milagros.¹¹

July 3, 2000: Mr. Fornerón and Ms. Enríquez appear for a hearing at the Office of the Ombudsman for Children and Poor, where Mr. Fornerón states he intends to recognize paternity of Milagros.¹² He states that, despite his uncertainty over whether he fathered the child, if appropriate, he wishes to take responsibility for the child.¹³ Ms. Enríquez denies Mr. Fornerón fathered the child and claims that Milagros is staying with an aunt in the city of Baradero, Buenos Aires Province.¹⁴

July 4, 2000: Mr. Fornerón requests that the Ombudsman summon Ms. Enríquez because he has doubts about the information she disclosed regarding the child's whereabouts.¹⁵ He also expresses concern for the child's health and states that he wishes to protect and care for her.¹⁶

July 5, 2000: Ms. Enríquez appears before the Ombudsman and again denies that Mr. Fornerón fathered the child.¹⁷ She states that, because of her limited resources, she surrendered the child to a married couple eager to adopt.¹⁸

July 11, 2000: Mr. Fornerón travels to the Government Attorney's Office in Rosario de Tala to establish Milagros's whereabouts.¹⁹

8. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 22.

9. Fornerón and daughter v. Argentina, Report on Merits, ¶ 40; Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 22.

10. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 22.

11. *Id.*

12. Fornerón and daughter v. Argentina, Report on Merits, ¶ 41.

13. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 23.

14. Fornerón and daughter v. Argentina, Report on Merits, ¶ 41.

15. *Id.*

16. *Id.*

17. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 23.

18. *Id.*

19. Fornerón and daughter v. Argentina, Report on Merits, Report No. 83/10, Inter-Am.

The Assistant Government Attorney (“AGA”) requests that Rosario de Tala’s examining magistrate adopt measures presuming that a “suppression and attribution of civil status and of identity,” under Title IV, Chapter II of the Criminal Code had been committed.²⁰ The measures include sending a letter to the Victoria Ombudsman for Children and the Poor asking whether Ms. Enríquez initiated foster care procedures and, if so, requesting the identities of those to whom she delivered the child.²¹ The case is titled, “Government Attorney Requests Prior Measures – Suspected Crime of Suppression of Legal Status. Case 537.”²²

The investigating officer finds evidence suggesting that a “baby-buying scenario” may exist between Ms. Enríquez and the Zucchi-Bassi married couple.²³ The evidence includes the fact that someone offered a young, pregnant girl financial aid to surrender her child at birth.²⁴ Also, she entered a private clinic in a different city free of cost.²⁵ There she met the Zucchi-Bassi couple to whom she surrendered the child.²⁶

July 18, 2000: Mr. Fornerón travels to the Registrar for Marital Status and Personal Legal Capacity in Victoria and legally recognizes Milagros as his daughter.²⁷

July 28, 2000: The court grants some of the measures the AGA requested on July 11, 2000; however, it notes that the alleged criminal offenses were not committed.²⁸

August 1, 2000: The Zucchi-Bassi couple applies for legal guardianship of Milagros.²⁹ The Ombudsman for Children and the Poor encloses a copy of her birth certificate and notes that it has come to his attention that Mr. Fornerón had recognized his paternity of Milagros.³⁰ The case is titled “Case of Enríquez, Milagros – Legal Guardianship. Case 944 of

Comm’n H.R., Case No. 11.748, ¶ 42 (July 13, 2010).

20. *Id.* ¶ 43.

21. *Id.*

22. *Id.*

23. Fornerón and daughter v. Argentina, Admissibility Report, Report No. 117/06, Inter-Am. Comm’n H.R., Case No. 11.752, ¶ 11 (Oct. 26, 2006).

24. *Id.*

25. *Id.*

26. *Id.*

27. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 242, ¶ 13 (Apr. 27, 2012).

28. Fornerón and daughter v. Argentina, Report on Merits, Report No. 83/10, Inter-Am. Comm’n H.R., Case No. 11.748, ¶ 44 (July 13, 2010).

29. *Id.* ¶ 47.

30. *Id.*

2000.”³¹

August 2, 2000: Mr. Fornerón is recorded as Milagros’s father on her birth certificate.³² The same day, the AGA requests a preliminary investigation into the alleged commission of criminal offenses under Articles 138 and 139(2) of the Criminal Code.³³

August 4, 2000: The examining magistrate orders the proceedings set aside.³⁴ He concludes that, because Mr. Fornerón did not recognize Milagros as his daughter at birth, regardless of the reasons, Ms. Enríquez did not violate his civil status as a father; as such, she is not criminally liable.³⁵

August 10, 2000: The AGA appeals the examining magistrate’s decision.³⁶

September 12, 2000: The Gualaguey Criminal Court, Entre Ríos Province, overturns the examining magistrate’s decision and orders him to continue the preliminary investigation.³⁷

October 18, 2000: Mr. Fornerón presents a brief to the court and requests that it remove Milagros from foster care and return her to him.³⁸ The parties in the hearing agree to a DNA test to determine whether Mr. Fornerón is Milagros’s biological father.³⁹

November 14, 2000: Mr. Fornerón undergoes the DNA test.⁴⁰

December 11, 2000: The DNA test reveals a 99.9992% probability that Mr. Fornerón fathered Milagros.⁴¹

January 31, 2001: After examining all of the evidence, the examining

31. *Id.*

32. *Id.* ¶ 42.

33. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 27; Fornerón and daughter v. Argentina, Report on Merits, ¶ 44.

34. Fornerón and daughter v. Argentina, Report on Merits, ¶ 45.

35. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 28; Fornerón and daughter v. Argentina, Report on Merits, ¶ 45.

36. Fornerón and daughter v. Argentina, Report on Merits, ¶ 46.

37. *Id.*

38. *Id.* ¶ 47.

39. *Id.*

40. *Id.* ¶ 18.

41. *Id.* ¶ 47.

magistrate arrives at the same conclusion as before and once again orders the proceedings set aside.⁴²

February 5, 2001: The AGA appeals the examining magistrate's decision.⁴³ He emphasizes that Mr. Fornerón had recognized Milagros as his daughter and that DNA testing confirmed his paternity.⁴⁴

February 14, 2001: On the basis of the DNA test, Mr. Fornerón reiterates his request for the court to return Milagros to him.⁴⁵

April 25, 2001: Mr. Fornerón's mother offers her home as a possibility for the court to bear in mind when considering Milagros's development.⁴⁶

April 26, 2001: The Gualaguey Criminal Court upholds the examining magistrate's decision to set the proceedings aside.⁴⁷ It notes that the reform of Law 24.410 was not intended to halt the activities of individuals profiting or brokering the sale of children for "benevolent or humanitarian ends."⁴⁸

May 7, 2001: Mr. Fornerón appears before the Court of First Instance in the Civil and Commercial Court of Victoria ("Court of First Instance") and requests it suspend the Zucchi-Bassi couple's legal guardianship over Milagros.⁴⁹ He further requests the court immediately return the child to him.⁵⁰

May 9, 2001: At the court's request, a psychologist from the Department for Protection of Minors gives her opinion on the matter.⁵¹ She states that, because the foster family had cared for Milagros for nearly a year, removing her would prove psychologically harmful.⁵² The Ombudsman for Children and the Poor concurs.⁵³ Mr. Fornerón and Ms. Enríquez are both

42. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 29; Fornerón and daughter v. Argentina, Report on Merits, ¶ 46.

43. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 29.

44. *Id.*

45. Fornerón and daughter v. Argentina, Report on Merits, ¶ 47.

46. *Id.*

47. *Id.* ¶ 46.

48. *Id.*

49. *Id.* ¶ 47.

50. *Id.*

51. Fornerón and daughter v. Argentina, Report on Merits, ¶ 47.

52. *Id.*

53. *Id.*

present for the proceeding.⁵⁴ Ms. Enríquez confirms her support of the Zucchi-Bassi couple; Mr. Fornerón remains opposed.⁵⁵

May 17, 2001: The Court of First Instance rejects Mr. Fornerón's request for his daughter's return and grants legal guardianship to the Zucchi-Bassi couple for one year.⁵⁶ The court notes, however, that it could institute visiting arrangements so Mr. Fornerón could maintain contact with Milagros.⁵⁷

The judge bases his decision on the belief that Mr. Fornerón and Ms. Enríquez did not intend to form a family when they conceived Milagros.⁵⁸ He further notes that he took account of Ms. Enríquez's strong opposition to the court delivering Milagros to her father.⁵⁹ The judge adds that he did not believe that Mr. Fornerón was unaware of the pregnancy, and that he waited excessively long to safeguard his link to the child.⁶⁰ Lastly, he cites the psychologist's opinion that removing Milagros from her foster family would cause psychological harm.⁶¹

May 18, 2001: Mr. Fornerón appeals the court's decision to the Second Court of Appeals of Paraná for Entre Ríos ("Second Court of Appeals").⁶²

November 15, 2001: Mr. Fornerón petitions for the court to establish visiting rights.⁶³ The case is titled "Fornerón Leonardo Aníbal Javier – Visiting Rights Case No. 3768."⁶⁴

April 23, 2002: The Second Court of Appeals orders: (1) a socio-environmental profile on Mr. Fornerón, (2) that it receive all background information on the matter that the Office of the Ombudsman possesses, (3) that experts interview the foster family, and (4) that the court interview the foster family and Ombudsman.⁶⁵

August 14, 2002: An interdisciplinary team from the Court for Enforcement of Sentences and Security Measures interviews the Zucchi-Bassi

54. *Id.*

55. *Id.* ¶ 47.

56. *Id.* ¶ 48.

57. Fornerón and daughter v. Argentina, Report on Merits, ¶ 48.

58. *Id.* ¶ 49.

59. *Id.*

60. *Id.*

61. *Id.* ¶ 49.

62. Fornerón and daughter v. Argentina, Admissibility Report, ¶ 16.

63. *Id.* ¶ 18.

64. Fornerón and daughter v. Argentina, Report on Merits, ¶ 60.

65. *Id.* ¶ 51.

couple.⁶⁶

August 15, 2002: The same team interviews Mr. Fornerón and Ms. Enríquez.⁶⁷

February 14, 2003: The Second Court of Appeals holds a hearing with the two parties present.⁶⁸ Both agree, with the assistance of the interdisciplinary team, to start a process of rapprochement and dialogue.⁶⁹ The court then suspends the hearing for forty-five days.⁷⁰

April 1, 2003: The interdisciplinary team advises that Milagros's return to her father should use the assistance of professionals and occur through gradual exposure under judicial supervision.⁷¹

June 10, 2003: In a two-to-one vote, the Second Court of Appeals vacates the ruling of the Court of First Instance and orders that Milagros return to her father.⁷²

June 27, 2003: The Zucchi-Bassi couple appeals the ruling of the Second Court of Appeals to the Superior Court of Justice of Entre Ríos ("Superior Court of Justice").⁷³

November 20, 2003: The Superior Court of Justice overturns the ruling of the Second Court of Appeals and re-affirms the ruling of the Court of First Instance.⁷⁴

July 6, 2004: The Zucchi-Bassi couple requests to adopt Milagros.⁷⁵ The case is titled "Fornerón Milagros – Full Adoption. Case No. 4707."⁷⁶

October 14, 2004: A petition is filed on behalf of Mr. Fornerón with the Inter-American Commission ("the Commission").⁷⁷

66. *Id.* ¶ 52.

67. *Id.*

68. *Id.* ¶ 53.

69. *Id.*

70. Fornerón and daughter v. Argentina, Report on Merits, ¶ 53.

71. *Id.* ¶ 54.

72. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶; Fornerón and daughter v. Argentina, Report on Merits, ¶ 54.

73. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 36.

74. *Id.*

75. *Id.* ¶ 43.

76. Fornerón and daughter v. Argentina, Report on Merits, ¶ 61.

77. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 1.

May 19, 2005: Mr. Fornerón requests joinder of the visiting rights, legal guardianship, and adoption cases to avoid duplicating evidence and “dragging out” the proceedings.⁷⁸

June 14, 2005: The court denies Mr. Fornerón’s request for joinder because a judgment had been issued in the guardianship case and the visiting rights case was occurring through a different procedural channel.⁷⁹

October 21, 2005: A court observer and psychologist observe as Mr. Fornerón meets his daughter, who is now 5 and 1/2 years old, for the first time in the lobby of a hotel for forty-five minutes.⁸⁰

October 26, 2005: Ms. Enríquez files a complaint alleging that an attorney representing Mr. Fornerón in his petition to the Commission harassed her.⁸¹ She alleges the attorney attempted to compel her opposition to the Bassi-Zucchi couple’s adoption of Milagros.⁸² The court concludes no criminal conduct occurred and sets the case aside.⁸³ The case is titled “Case of Enríquez, Diana – Her Complaint to the Examining Magistrate’s Court of the City of Victoria.”⁸⁴

December 23, 2005: The Court of First Instance grants the Zucchi-Bassi couple’s request to adopt Milagros.⁸⁵ The Court notes the Superior Court of Justice already ruled that Milagros should remain with the foster parents who intended to adopt her.⁸⁶ The court also notes the Superior Court’s comments that contact should gradually occur between Mr. Fornerón and his daughter.⁸⁷

May 8, 2009: Mr. Fornerón applies for precautionary measures, which include his daughter’s return to him.⁸⁸ The case is titled “Fornerón Aníbal Leonardo, Precautionary Measures. Case No. 33.707.”⁸⁹

78. Fornerón and daughter v. Argentina, Report on Merits, ¶ 60.

79. *Id.* ¶ 62.

80. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 40.

81. Fornerón and daughter v. Argentina, Report on Merits, ¶ 63.

82. *Id.*

83. *Id.*

84. *Id.*

85. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 43.

86. Fornerón and daughter v. Argentina, Report on Merits, ¶ 62.

87. *Id.*

88. Fornerón and daughter v. Argentina, Report on Merits, ¶ 64.

89. *Id.*

May 27, 2009: A judiciary interdisciplinary team member indicates to the court that Mr. Fornerón possesses the appropriate state of mind for visitation with the purpose of returning Milagros to her foster family.⁹⁰

June 17, 2010: After numerous requests from 2003-2009, the court denies Mr. Fornerón's request for visitation rights.⁹¹

June 23, 2010: Mr. Fornerón appeals the court's decision to the First Court of the Second Chamber of the Judiciary of Entre Ríos ("First Court of the Second Chamber").⁹²

November 9, 2010: The First Court of the Second Chamber rejects Mr. Fornerón's appeal.⁹³

December 2, 2010: Mr. Fornerón files an appeal of non-applicability of the law.⁹⁴

February 28, 2011: The First Court of the Second Chamber refers the case to the Civil and Commercial Chamber of the Superior Court of Justice ("Civil and Commercial Chamber").⁹⁵

May 4, 2011: Before the Civil and Commercial Chamber, Mr. Fornerón and the Zucchi-Bassi couple agree to progressively establish a visiting regime of Milagros, who now is 11 years old.⁹⁶ Mr. Fornerón also agrees to file no additional criminal or civil complaints, halt any publicity regarding the case, sign a confidentiality agreement, and desist from his remedy of non-applicability of the law.⁹⁷

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

90. *Fornerón and daughter v. Argentina*, Merits, Reparations, and Costs, ¶ 41.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Fornerón and daughter v. Argentina*, Merits, Reparations, and Costs, ¶ 42.

97. *Id.*

October 14, 2004: An attorney for the Center for Social and Political Studies for Human Development (Centro de Estudios Sociales y Políticos para el Desarrollo Humano) files a petition with the Commission on behalf of Mr. Fornerón.⁹⁸

October 26, 2006: The Commission adopts Report on Admissibility No. 117/06.⁹⁹

November 13, 2006: The petitioners request precautionary measures to prevent Milagros from leaving the country.¹⁰⁰

January 30, 2008: The Commission advises the petitioners that no grounds exist to invoke the precautionary measures mechanism.¹⁰¹

July 13, 2010: The Commission adopts Report on Merits No. 83/10.¹⁰² The Commission concludes that the State violated Mr. Fornerón and Milagros's rights to a fair trial, their right to judicial protection, and protection of the family.¹⁰³ In particular, the Commission finds the unjustifiably lengthy proceedings particularly relevant because the State used this length of time as grounds to disregard Mr. Fornerón's rights.¹⁰⁴ It further concludes the State violated Articles 2 (Obligation to Give Domestic Legal Effect to Rights), 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), 17 (Rights of the Family), and 25(1) (Right of Recourse Before a Competent Court) of the American Convention in relation to Articles 1(1) (Obligation of Non-Discrimination) and 19 (Rights of the Child).¹⁰⁵ The Commission recommends that the State: (1) provide reparations to Mr. Fornerón and his daughter, (2) create conditions for Mr. Fornerón to establish a relationship with his daughter, (3) punish the public servants responsible for violating the rights of Mr. Fornerón and his daughter, (4) train judicial and other public officials on children's rights, and (5) adopt measures to prevent and punish the selling of children.¹⁰⁶

98. *Id.* ¶ 1.

99. Fornerón and daughter v. Argentina, Report on Merits, ¶ 5.

100. *Id.* ¶ 8.

101. *Id.* ¶ 10.

102. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 1.

103. Fornerón and daughter v. Argentina, Report on Merits, ¶ 135.

104. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 2.

105. *Id.*

106. Fornerón and daughter v. Argentina, Report on Merits, ¶ 136(1)–(5).

B. Before the Court

November 29, 2010: The Commission submits the case to the Court after the State fails to adopt its recommendations.¹⁰⁷

1. Violations Alleged by Commission¹⁰⁸

Article 2 (Obligation to Give Domestic Legal Effect to Rights)
 Article 8(1) (Right to Have a Hearing Within Reasonable Time by a Competent and Independent Tribunal)
 Article 17 (Rights of the Family)
 Article 19 (Rights of the Child)
 Article 25(1) (Right to Recourse Before a Competent Court)
all in relation to:
 Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹⁰⁹

Same Violations Alleged by Commission, plus:

Article 24 (Right to Equal Protection)

May 31, 2011: The Court declares Mr. Fornerón's request to use the Court's Victims Legal Assistance Fund admissible.¹¹⁰

Date Unknown: The Court receives amicus curiae briefs from: (1) University of Buenos Aires Law School (*Universidad de Buenos Aires*), (2) the Legislator of Buenos Aires, (3) The Provincial Commission for Memory's Committee Against Torture (*Comisión Provincial por la Memoria*), (4) the Adoptar Foundation (*Adoptar*), and coordinators of University of Buenos Aires Law School (*Universidad de Buenos Aires*) Master's Program in Family, Children, and Adolescent Law.¹¹¹

107. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 1.

108. Fornerón and daughter v. Argentina, Report on Merits, ¶ 135.

109. Fornerón and daughter v. Argentina, Admissibility Report, ¶ 5. Ms. Susana Ana María Terenzi and Ms. Margarita R. Nicoliche served as representatives for Mr. Fornerón. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, n.5.

110. Fornerón and daughter v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Decides," ¶ 1 (May 31, 2011).

111. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 8.

III. MERITS

A. *Composition of the Court*¹¹²

Diego García-Sayán, President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

April 27, 2012: The Court issues its Judgment on Preliminary Merits, Reparations, and Costs.¹¹³

The Court found unanimously that the State violated:

Article 8(1) (Right to Have a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Articles 17(1) and 1(1) of the Convention, to the detriment of Mr. Fornerón and Milagros Fornerón, and in relation to Article 19, to the detriment of Milagros Fornerón,¹¹⁴ because:

*The State failed to act with due diligence in guardianship proceedings for Milagros, and the periods for both the guardianship and visiting proceedings exceeded reasonable time.*¹¹⁵

The Court examined whether the State exceeded reasonable periods for the guardianship proceedings by analyzing: (1) the complexity of the guardianship and visiting matter, (2) Mr. Fornerón's procedural activi-

112. Judge Leonardo A. Franco, an Argentine national, recused himself from the case in accordance with Article 19(1) of the Court's Rules of Procedure. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 242, 1 (Apr. 27, 2012). *Id.* n*.

113. See Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 242 (Apr. 27, 2012).

114. *Id.* ¶ 77.

115. *Id.* ¶¶ 77, 106.

ties, (3) the judicial authorities' conduct, and (4) the effect of the proceeding on Mr. Fornerón's legal situation.¹¹⁶

The Court determined the proceedings for guardianship over Milagros and for Mr. Fornerón's visiting regime required special care, but were not particularly complex.¹¹⁷ Regarding Mr. Fornerón's procedural activity, the Court found that he had actively participated in the proceedings and made every effort to conclude them.¹¹⁸ Concerning the judicial authorities' conduct, the Court found that they had acted throughout both cases with unacceptable delay and failed to consider the effects of time on Mr. Fornerón and his daughter's rights.¹¹⁹ Regarding the effect the proceeding had on Mr. Fornerón's legal situation, the Court concluded that they had significantly and irreversibly damaged the rights of Mr. Fornerón and his daughter.¹²⁰

Next, the Court examined whether the State's judicial authorities acted with due diligence in the guardianship proceedings by analyzing their: (1) failure to observe legal requirements, (2) omission of evidence, (3) stereotyping, and (4) judgment based on delays in the proceedings.¹²¹

The Court concluded that the State failed to observe its own legal requirements because Ms. Enriquez's relinquishment of her daughter did not comply with, among other provisions, Article 318 of the Argentine Civil Code, which was in force at the time and prohibited surrendering a child through public instruments or administrative procedures.¹²²

The Court concluded that the State omitted evidence because it granted guardianship of Milagros Fornerón to the Zucchi-Bassi couple without applying the necessary probative measures.¹²³ The Court noted, as an example, that the Ombudsman for Children and the Poor of Victoria had verified that evidence was omitted, and that the omission required rectification.¹²⁴ Accordingly, he proposed that the Juvenile Court's technical team interview Mr. Fornerón for the purposes of conducting a study on him.¹²⁵ The Court cited the absence of such a study as an example of

116. *Id.* ¶ 67.

117. *Id.*

118. *Id.* ¶ 68.

119. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 70.

120. *Id.* ¶ 76.

121. *Id.* ¶ 78.

122. *Id.* ¶ 79.

123. *Id.* ¶ 90.

124. *Id.* ¶ 89.

125. Fornerón and daughter v. Argentina, Merits, Reparations and Costs, ¶ 89.

omitted evidence.¹²⁶

The Court further concluded that the State's preconceived notions about gender roles led the State to base its decision on stereotypes.¹²⁷ It noted, as an example, the judge of the Court of First Instance's reasoning for his judgment on the guardianship matter.¹²⁸ In his opinion, the judge remarked that granting guardianship of Milagros to her father would prejudicially affect her mental and physical health, because Mr. Fornerón was unmarried and Milagros would have no mother.¹²⁹ The Court concluded that the Judge based his remark on a preconceived notion that a father lacked capacity to care for his child without a wife.¹³⁰ It further concluded that no legitimate evidence supported this notion, yet it constituted the legal grounds for depriving Mr. Fornerón of his rights as a father.¹³¹

Lastly, the Court concluded that the State also based its decision against Mr. Fornerón on the delayed proceedings because of additional remarks judges made in their reasoning for the judgment.¹³² It noted that two judges of the Superior Court of Justice, the Court that upheld the ruling of the Court of First Instance, remarked on the effect of the delayed proceedings on the court's decision.¹³³ In particular, one judge noted that, had the final ruling occurred earlier, the Court would have likely held differently.¹³⁴ Thus, the State violated Article 8(1) (Right to Have a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.¹³⁵

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Articles 17(1), 8(1), and 1(1) of the Convention, to the detriment of Mr. Fornerón and Milagros Fornerón, and in relation to Article 19 to the detriment of Milagros Fornerón,¹³⁶ because:

The judicial remedies Mr. Fornerón sought filed failed to appropriately

126. *Id.*

127. *Id.* ¶ 94.

128. *Id.* ¶ 91.

129. *Id.* ¶ 95.

130. *Id.* ¶ 96.

131. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶¶ 96-98.

132. *Id.* ¶ 104.

133. *Id.* ¶¶ 102-03.

134. *Id.* ¶ 103.

135. *Id.* ¶ 106.

136. *Id.* "Operative Paragraphs" ¶ 2.

and effectively protect Milagros's rights as a child, and her and Mr. Fornerón's rights to protection of the family.¹³⁷ The Court noted that Article 25(1) (Right of Recourse Before a Competent Court) requires states to provide effective judicial remedies to individuals within their jurisdiction for violations against their fundamental rights.¹³⁸ The Court determined the length of time the State took to deliver its judgments on the guardianship and visiting regime cases was unreasonably long.¹³⁹ Because of its unreasonable delay in delivering the judgments, the State failed to provide Mr. Fornerón with an effective judicial remedy.¹⁴⁰

Article 17(1) (Family's Right to Be Protected), in relation to Articles 1(1), 8(1), and 25(1) of the Convention, to the detriment of Mr. Fornerón and Milagros Fornerón, in relation to Article 19 to the detriment of Milagros Fornerón,¹⁴¹ because:

The State, by separating Mr. Fornerón and his daughter in a manner noncompliant with the requirements necessary for such a separation, violated their rights to protection of the family recognized in Article 17 (Rights of the Family).¹⁴² The Court noted family separation as one of the most severe examples of State interference with personal rights.¹⁴³ It further noted that for a state to restrict a right guaranteed in the American Convention, the restriction must meet several requirements.¹⁴⁴ The most important requirement is the restriction's legitimate legal basis.¹⁴⁵ The Court concluded that the State unlawfully granted the Zucchi-Bassi couple legal guardianship over Milagros Fornerón because it lacked, among other things, the consent of her father.¹⁴⁶ Rather, the judge granted legal guardianship to the couple despite Mr. Fornerón's repeated and explicit requests to take responsibility for his daughter.¹⁴⁷ Further, the State failed to take measures in the later adoption proceedings to establish a relationship between Mr. Fornerón and his daughter.¹⁴⁸ Lastly, because Milagros's childhood occurred without contact

137. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, "Operative Paragraphs", ¶ 2.

138. *Id.* ¶ 107.

139. *Id.* ¶ 109.

140. *See id.* ¶ 110.

141. *Id.* ¶ 124.

142. *Id.* ¶ 121.

143. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 116.

144. *Id.* ¶ 117.

145. *Id.*

146. *Id.* ¶ 118.

147. *Id.* ¶ 121.

148. *Id.* ¶ 122.

with or ties to her biological family, the State violated her right to preserve her identity.¹⁴⁹ Therefore, the State violated Article 17(1) (Family's Right to Be Protected) of the Convention.¹⁵⁰

Article 2 (Domestic Legal Effects), in relation to Articles 19, 8(1), 25(1), and 1(1) of the Convention, to the detriment of Mr. Fornerón and Milagros Fornerón,¹⁵¹ because:

The State, by failing to criminalize Ms. Enríquez's alleged act—the “selling” of a child—did not comply with its obligations to adopt measures that prevent the sale of children in “any form.”¹⁵² The Court noted that adopting state law to the parameters of the Convention entail both: (1) eliminating practices and norms that violate guarantees encompassed in the Convention, and (2) enacting laws and practices that lead to effective observance.¹⁵³ It noted that enacting laws and practices sometimes requires states to criminalize certain acts.¹⁵⁴ In the instant case, an investigation revealed that Ms. Enríquez may have surrendered Milagros in exchange for money; however, authorities twice dismissed the case because such an exchange was not criminal.¹⁵⁵ Consequently, the State failed to investigate Ms. Enríquez's alleged “sale” of Milagros, an act that the Convention prohibits.¹⁵⁶

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

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

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

1. Restore Ties Between Mr. Fornerón and Milagros

149. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 123.

150. *Id.* ¶ 124.

151. *Id.* ¶ 144.

152. *Id.* ¶ 144.

153. *Id.* ¶ 131.

154. *Id.*

155. Fornerón and daughter v. Argentina, Merits, Reparations and Costs, ¶ 132.

156. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 144; *see* Fornerón v. Argentina, Merits, Reparations, and Costs, ¶ 160.

Fornerón

The State must immediately initiate a process for establishing a bond between Mr. Fornerón and Milagros Fornerón.¹⁵⁷ This should be done through periodic meetings, and the State should design the process so Mr. Fornerón and his daughter can develop and exercise their family rights in the future.¹⁵⁸ Finally, the process should: (1) involve at least one expert; (2) provide therapeutic support; (3) provide material support that experts deem necessary; (4) have the state adopt judicial, legal, and administrative measures; (4) consider the opinion of Milagros Fornerón; (5) involve Mr. Fornerón in his daughter's life; and (6) require the State submit progress reports on compliance.¹⁵⁹

Regarding the expert appointment, the State must either appoint a professional or a team of professionals with expertise in the bonding process.¹⁶⁰ If the State appoints a team, it should select an individual to lead the team and immediately develop a process for establishing a bond between Mr. Fornerón and his daughter.¹⁶¹ Additionally, the State must inform the team of the Court's judgment and ensure its awareness of all relevant circumstance regarding Mr. Fornerón and his daughter.¹⁶² Finally, the State must ensure the team's impartiality and aptness.¹⁶³

Concerning therapeutic support, the State must provide it to Mr. Fornerón and his daughter so long as they desire.¹⁶⁴ The State should require the two receive support immediately prior and subsequent to meeting each other, and if they request, while they meet.¹⁶⁵

On the provision of material resources and conditions, the State must guarantee the resources and conditions that experts deem necessary for Mr. Fornerón and his daughter to bond.¹⁶⁶ The State must further facilitate the meetings, travel expenses, lodging, and time off work for Mr. Fornerón, and when necessary, Milagros Fornerón.¹⁶⁷

Concerning the adoption of judicial, legal, and administrative measures, the State must modify each to ensure none obstruct the bonding process between Mr. Fornerón and his daughter.¹⁶⁸ In particular, the State

157. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 160.

158. *Id.*

159. *Id.* ¶ 161.

160. *Id.*

161. *Id.*

162. *Id.*

163. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 161.

164. *Id.* ¶ 162.

165. *Id.*

166. *Id.* ¶ 163.

167. *Id.*

168. *Id.* ¶ 164.

must ensure the Zucchi-Bassi couple collaborates with bonding.¹⁶⁹

Regarding the opinion and wishes of Milagros Fornerón, the State must ensure the appointed experts on bonding inform Milagros Fornerón of her rights and, based on her level of development, take her wishes and opinions into account.¹⁷⁰

On Mr. Fornerón's involvement in his daughter's life, the State should provide him the appropriate means for involving himself in his daughter's life.¹⁷¹ Additionally, he should periodically receive information about her life.¹⁷²

2. Investigate and Sanction Officials

Within a reasonable period subsequent to notification of the Court's judgment, the State must verify to the Court whether the intervention of public officials during the domestic proceedings conformed to State laws.¹⁷³ If appropriate, the State must also forward detailed information and supporting documents of its investigation.¹⁷⁴

3. Reform State Law

The State must criminalize the "sale" of children.¹⁷⁵ Specifically, it must outlaw the exchange of children for any means of compensation and for any purpose.¹⁷⁶ The State must ensure "selling" children constitutes a criminal offense in accordance with international standards and binds each of the State's powers and organs.¹⁷⁷

4. Train Public Officials

Within a reasonable period, the State must implement a compulsory course or program for its judicial agents.¹⁷⁸ It must educate the agents on international human rights standards.¹⁷⁹ In particular, it must teach them about non-discrimination and a child's rights and best interests.¹⁸⁰

169. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 164.

170. *Id.* ¶ 165.

171. *Id.* ¶ 166.

172. *Id.*

173. *Id.* ¶ 172.

174. *Id.*

175. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 177.

176. *Id.*

177. *Id.*

178. *Id.* ¶ 182.

179. *Id.*

180. *Id.*

5. Publish the Judgment

The State must publish the Court's official summary of the judgment in the State's official gazette and that of Entre Ríos Province.¹⁸¹

6. Submit a Report

The State must submit a report to the Court on steps taken to comply with the judgment.¹⁸²

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded Mr. Fornerón the sum of \$50,000 for pecuniary damages.¹⁸³ It awarded \$45,000 as compensation for the business he owned and had to close as a result of the case.¹⁸⁴ It awarded \$5,000 for the psychological treatment he received as a result of the case.¹⁸⁵

2. Non-Pecuniary Damages

As compensation for moral damages suffered, the Court ruled that the State owes \$60,000 to Mr. Fornerón and \$40,000 to Milagros Fornerón for non-pecuniary damages.¹⁸⁶

3. Costs and Expenses

The Court awarded \$40,000 for the reimbursement of legal expenses.¹⁸⁷ It awarded \$10,000 to Mr. Fornerón and \$15,000 to the attorney who assisted him in the domestic case, Mr. Baridón.¹⁸⁸ It also awarded \$15,000 to Mr. Fornerón's representatives before the Court.¹⁸⁹ Lastly, the Court order the State to reimburse the Victim's Legal

181. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 183.

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

183. *Id.* ¶¶ 191-192.

184. *Id.* ¶ 191.

185. *Id.* ¶ 192.

186. *Id.* ¶ 197.

187. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶¶ 204-06.

188. *Id.* ¶¶ 204-05.

189. *Id.* ¶ 206.

Assistance Fund \$9,046.35.¹⁹⁰

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

\$199,046.35

C. Deadlines

Within three months of the Court's judgment, the State must submit a report to the Court on the details and progress of the bonding progress.¹⁹¹ For the two years following the initial report, the State must submit a report every four months.¹⁹² Afterward, the Court will determine how often the State must submit additional reports.¹⁹³

Within six months of the Court's ruling, the State must publish the Court's official summary of the judgment in the State's official gazette and in the official gazette of Entre Ríos Province.¹⁹⁴

Within one year of receiving the Court's judgment, the State must compensate Mr. Baridón, Mr. Fornerón, his daughter, and those who represented Mr. Fornerón before the Court.¹⁹⁵

Within a reasonable period after notification of the Court's judgment, the State must confirm with the Court whether the intervention of public officials during the domestic proceedings conformed to State laws.¹⁹⁶ If appropriate, the State must also forward detailed information and supporting documents of its investigation.¹⁹⁷

Within a year, the State must submit a report to the Court on the measures it took to comply with the Court's judgment.¹⁹⁸

V. INTERPRETATION AND REVISION OF JUDGMENT

[NONE]

VI. COMPLIANCE AND FOLLOW-UP

Date Unknown: A visiting regime was established between Mr. Fornerón

190. *Id.* ¶ 206.

191. *Id.* ¶ 167.

192. *Id.*

193. Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, ¶ 167.

194. *Id.* ¶ 183.

195. *Id.* ¶ 211.

196. *Id.* ¶ 172.

197. *Id.*

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

and his daughter. Milagros Fornerón visited her father in Buenos Aires every week for “a few hours.”¹⁹⁹

August 22, 2013: The Court concluded that the State failed to comply with its obligation to reimburse the Court’s Victims’ Assistance Fund.²⁰⁰ It ordered the State to reimburse the fund and, within thirty days, explain the measures it took to comply with its obligation.²⁰¹

May 22, 2014: By Official Decree 751/2014, the State paid Mr. Fornerón \$199,046 and reimbursed the Court’s Victims Legal Assistance Fund \$9,046.35.²⁰² President Cristina Fernández signed the decree and the State’s official gazette published it.²⁰³ The Decree summarized the Court’s judgment and noted it as the reason for the compensation and the fund’s reimbursement.²⁰⁴

July 2016: The State’s Supreme Court overturned the decision to set aside the investigation into the question as to whether Milagros’s adoption constituted a criminal offense; it was reopened.²⁰⁵

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

199. Fornerón Case: The Argentine Government Paid Compensation to The Complainant, paralelo32.com.ar (June 1, 2014), <http://paralelo32.com.ar/secciones/detalle.php?id=15588> (Available only in Spanish).

200. Fornerón and daughter v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Declares That” ¶ 1 (Aug 22, 2013).

201. *Id.* “And Decides,” ¶¶ 2-3.

202. Law No. 751/2014, May 28, 2014, B.O., Argentine Legal Information System (Arg.), http://www.saij.gob.ar/legislacion/decreto-nacional-751-2014-pago_en_efectivo_sentencia.htm (Available only in Spanish).

203. *Id.*

204. *Id.*

205. Fornerón Case: The Court Decided to Reopen The Case and Investigate Whether Crimes Were Committed During The Adoption Process, [Fiscales.gob.ar](https://www.fiscales.gob.ar), (July 3, 2016), <https://www.fiscales.gob.ar/procuracion-general/caso-forneron-la-corte-dispuso-reabrir-la-causa-e-investigar-si-se-cometieron-delitos-durante-el-proceso-de-adopcion/> (Available only in Spanish).

[Fornerón and daughter v. Argentina, Merits, Reparations, and Costs, Judgment, Inter Am. Ct. H.R. \(ser. C\) No. 242, \(Apr. 27, 2012\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Fornerón and daughter v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., \(May 31, 2011\).](#)

[Fornerón and daughter v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., \(Aug 22, 2013\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Fornerón and daughter v. Argentina, Admissibility Report, Report No. 117/06, Inter-Am. Comm'n H.R., Case No. 11.752, \(Oct. 26, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Fornerón and daughter v. Argentina, Report on Merits, Report No. 83/10, Inter-Am. Comm'n H.R., Case No. 11.748, \(July 13, 2010\).](#)

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

[Fornerón Case: The Argentine Government Paid Compensation to The Complainant, paralelo32.com.ar](http://paralelo32.com.ar) (June 1, 2014), <http://paralelo32.com.ar/secciones/detalle.php?id=15588> (Available only in Spanish).

[Fornerón Case: The Court Decided to Reopen The Case and Investigate Whether Crimes Were Committed During The Adoption Process, FISCALES.GOB.AR](https://www.fiscales.gob.ar/procuracion-general/caso-forneron-la-corte-dispuso-reabrir-la-causa-e-investigar-si-se-cometieron-delitos-durante-el-proceso-de-adopcion/), (July 3, 2016), <https://www.fiscales.gob.ar/procuracion-general/caso-forneron-la-corte-dispuso-reabrir-la-causa-e-investigar-si-se-cometieron-delitos-durante-el-proceso-de-adopcion/> (Available only in Spanish).

[J. Vázquez Camacho, Judgment on Care of Girl Case, Fornerón and Daughter v. Argentina, IDH Court Blog](http://corteidh-blog.blogspot.com/2012/06/sentencia-sobre-caso-de-guarda-de-nina.html), (June 26, 2012), <http://corteidh-blog.blogspot.com/2012/06/sentencia-sobre-caso-de-guarda-de-nina.html>. (Available only in Spanish).

[Law No. 751/2014, May 28, 2014, B.O., Argentine Legal Information System \(Arg.\)](http://www.saij.gob.ar/legislacion/decreto-nacional-751-2014-pago-en-efectivo-sentencia.htm), <http://www.saij.gob.ar/legislacion/decreto-nacional-751-2014-pago-en-efectivo-sentencia.htm> (Available only in Spanish).

[L. Rizik Mulet, 2 U. Chile L. J., The Rights of The Child and The Protection of The Family. Forneron and Daughter vs. Argentina in The Inter-American Human Rights Court](http://idibe.org/wp-content/uploads/2013/09/36.pdf), (Dec. 2014), <http://idibe.org/wp-content/uploads/2013/09/36.pdf>, (Available only in Spanish).

[M. Berti García & F. Nasazzi Ruano, 4 INT'L J. HUMAN RTS, Legal Ethics Case Analysis, Fornerón and Daughter vs. Argentina, In Light of The Right to Biological Identity and The Adoptive Family and Subsidiary Parental Link](http://revistaidh.org/ridh/article/download/45/42), 222-238, (2014), [http:// http://revistaidh.org/ridh/article/download/45/42](http://revistaidh.org/ridh/article/download/45/42) (Available only in Spanish).

[The Commission Blames Argentina for an Illegal Adoption, La Capital](http://www.lacapital.com.ar/la-cidh-responsabilizo-argentina-una-adopcion-ilegal-n368057.html) (June 13, 2012), <http://www.lacapital.com.ar/la-cidh-responsabilizo-argentina-una-adopcion-ilegal-n368057.html> (Available only in Spanish).