

Mémoli v. Argentina

ABSTRACT¹

This case is about freedom of expression and libel and defamation laws. The case stems from a dispute between members of a private association, with some members accusing others of embezzlement, and counter-accusations of defamation. The case was pending before various Argentinean courts for more than twenty years. In a rare split vote, the Court found Argentina had not violated the victims' right to freedom of expression. However, in an unanimous vote, it found Argentina had violated their right to a hearing within reasonable time by a competent and independent tribunal.

I. FACTS

A. Chronology of Events

1984: The Municipality of San Andrés de Giles, Buenos Aires Province, leases the Italian Association of Mutual Help and Cultural and Creative Association (*Asociación Italiana de Socorros Mutuos, Cultural and Creativa*; “the Association”) land in the Municipal cemetery.² The Association leases the land so it can construct “burial niches” and sell them to its members under payment plans.³

1989: The Association begins an Italian language course.⁴ It appoints Ms. Clotilde Romanello (“Ms. Romanello”) as course director and Mr. Sergio Romanello (“Mr. Romanello”) as assistant director and teacher.⁵ Ms. Romanello and Mr. Romanello are the wife and son of the Association’s vice president, Mr. Humberto Romanello.⁶

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

2. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 65 (Aug. 22, 2013).

3. *Id.*

4. *Id.* ¶ 66.

5. *Id.*

6. *Id.*

April 1989: Mr. Carlos Mémoli, a pediatrician,⁷ becomes Assistant Secretary of the Association's Governing Committee.⁸

Late 1989: Mr. Mémoli's wife, Mrs. Daisy Sulich de Mémoli, volunteers to assist with the language course.⁹ The Association turns down her offer.¹⁰

November 23, 1989: The Association's Governing Committee suggests the Mémolis' memberships with the Association be suspended.¹¹

March 21, 1990: Because of the Governing Committee's decision, the Association suspends the Mémolis' memberships for 24 months.¹²

April 6, 1990: Mr. Mémoli sends certified letters¹³ to the Governing Committee alleging "irregular conduct" pertaining to its sale of the burial niches and its failure to publish quarterly balance statements.¹⁴

April 11, 1990: Mr. Mémoli files a criminal complaint against the following members of the Association's management committee: Mr. Antonio Guarracino, Mr. Juan Humberto, and Mr. Romanello.¹⁵ He alleges their burial niches sales are fraudulent because the Association's land is public domain.¹⁶ Mr. Mémoli and his son, Mr. Pablo Mémoli, allege that several members of the Association had requested he file the complaint.¹⁷

May 4, 1990: Mr. Mémoli appears on a radio broadcast titled "Radio Val."¹⁸ During the broadcast, and while referring to Mr. Guarracino, Mr. Humberto, and Mr. Romanello, he states: "we want to put an end to certain corrupt people . . . two or three people need to be gotten rid

7. *Id.* ¶ 64.

8. Mémoli v. Argentina, Admissibility Report, Report No. 39/08, Inter-Am. Comm'n H.R., ¶ 10 (July 23, 2008).

9. *Id.*

10. *Id.*

11. *Id.*

12. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 68.

13. Mémoli v. Argentina, Report on Merits, Report No. 74/11, Inter-Am. Comm'n H.R., Case No. 12.653, ¶ 37 (July 20, 2011).

14. *Id.* ¶ 37.

15. Mémoli v. Argentina v. Argentina, Merits, Reparations, and Costs, ¶ 69.

16. *Id.*

17. *Id.*

18. Mémoli v. Argentina, Report on Merits, Report No. 74/11, Inter-Am. Comm'n H.R., Case No. 12.653, ¶ 14 (July 20, 2011) 007; Mémoli v. Argentina v. Argentina, Merits, Reparations, and Costs, ¶ 75.

of.”¹⁹

May 10, 1990: Mr. Mémoli appears on “Radio Val” again and states the three men “defamed and lied, arousing terror in some, [and] threatening others.”²⁰ He labels the men “unscrupulous” and accuses them of hiding abuse and corruption.²¹ He also says the three have a “clear intent of a takeover and arbitrary Fascist management endorsed” by the Governing Committee’s members.²²

Date Unknown: Mr. Mémoli and his son publish articles relating to the Association in *La Libertad*, a bi-monthly newspaper.²³ The articles allege the Association’s sale of the burial niches constitutes fraud.²⁴ Mr. Mémoli’s son works as *La Libertad*’s managing editor when the articles are published.²⁵

May 11, 1990: The Mémolis appeal the suspension, but the Association’s General Assembly affirms it.²⁶ Consequently, the Mémolis resign their Association memberships.²⁷ The Association’s directors tell the Mémolis they are permanently barred from rejoining.²⁸

June 6, 1990: A judge provisionally dismisses Mr. Mémoli’s criminal complaint against Mr. Guarracino, Mr. Humberto, and Mr. Romanello for lack of merit.²⁹ The judge concedes the sales contracts were invalid but that, based on the available documents, he presumes the management committee had acted in “good faith,” and that erroneous advice led to an excusable legal error.³⁰ He further notes an administrative or civil court should hear the matter.³¹

June 13, 1990: A judge rejects the Memolis’ appeal in the criminal

19. *Mémoli v. Argentina*, Admissibility Report, Report No. 39/08, Inter-Am. Comm’n H.R., ¶ 19 (July 23, 2008).

20. *Id.* ¶ 18.

21. *Id.*

22. *Id.*

23. *Id.* ¶¶ 15-16.

24. *Mémoli v. Argentina*, Admissibility Report, ¶ 16.

25. *Mémoli v. Argentina*, Report on Merits, Report No. 74/11, Inter-Am. Comm’n H.R., Case No. 12.653, ¶ 14 (July 20, 2011).

26. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 68 (Aug. 22, 2013).

27. *Mémoli v. Argentina*, Admissibility Report, ¶ 11.

28. *Id.*

29. *Id.* ¶ 70.

30. *Id.*

31. *Id.*

matter.³²

June 27, 1990: Mr. Mémoli files a complaint³³ with the State's federal agency that regulates associations—the National Institute of Mutual Benefit Associations (*Instituto Nacional de Accón Mutual*) (“INAM”).³⁴ He alleges accounting irregularities in the Associations' administration of funds.³⁵ In particular, he alleges that Mr. Juan Bautista Piriz, the Association's treasurer, failed to release the Association's periodical balance statements.³⁶

June 19, 1991: INAM's directors reject, in part, Mr. Mémoli's complaint because it concerns internal Association matters.³⁷ It notes that while the Association committed an error by not releasing its monthly reports and quarterly statements, INAM detected neither financial irregularities nor any other offenses.³⁸ INAM also notes, however, the Association should have regulated their language course and sale of burial niches, and forwarded the regulations to INAM.³⁹

April 1992: Mr. Guarracino, Mr. Humberto, and Mr. Romanello file a criminal complaint for libel and defamation against Mr. Mémoli and his son.⁴⁰ They allege the two began a “smear campaign” against the Association after it turned down Mrs. Mémoli's services.⁴¹ They base the complaint on Mr. Mémoli and his son's statements and newspaper articles regarding the Association's administration and its sale of burial niches.⁴²

December 29, 1994: Court No.7 for Criminal and Correctional Matters of the Judicial Department of Mercedes, Buenos Aires Province, convicts Mr. Mémoli and Mr. Pablo Mémoli.⁴³ It points to phrases Mr.

32. *Id.*

33. Mémoli v. Argentina, Admissibility Report, Report No. 39/08, Inter-Am. Comm'n H.R., ¶ 12 (July 23, 2008).

34. Mémoli v. Argentina, Report on Merits, Report No. 74/11, Inter-Am. Comm'n H.R., Case No. 12.653, ¶ 39 (July 20, 2011).

35. Mémoli v. Argentina v. Argentina, Merits, Reparations, and Costs, ¶ 71.

36. Mémoli v. Argentina, Admissibility Report, ¶ 12.

37. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 71 (Aug. 22, 2013).

38. *Id.*

39. *Id.*

40. *Id.* ¶ 74.

41. *Id.*

42. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 74.

43. Mémoli v. Argentina, Report on Merits, Report No. 74/11, Inter-Am. Comm'n H.R., Case No. 12.653, ¶ 44 (July 20, 2011); Mémoli v. Argentina v. Argentina, Merits, Reparations,

Mémoli used in his radio broadcasts and articles Mr. Pablo Mémoli published in *La Libertad* as evidence they intended to cause the plaintiffs harm.⁴⁴ As an example, the court notes that Mr. Mémoli and Mr. Pablo Mémoli had accused the plaintiffs of intentionally committing fraud despite authorities provisionally dismissing the case.⁴⁵ The court opined the Mémolis had acted, at minimum, to discredit the plaintiffs and called it an extreme measure.⁴⁶

The court sentences Mr. Mémoli and Mr. Pablo Mémoli to one and five-month suspended prison terms, respectively.⁴⁷ It also orders both to pay courts costs.⁴⁸ Lastly, the court orders for Radio Val to broadcast the judgment and for *La Libertad* to publish it.⁴⁹

December 28, 1995: The Mémolis appeal the judgment to the Second Appellate Chamber for Criminal and Correction Matters of the Judicial Department of Mercedes (“Second Appellate court”), but it affirms the judgment.⁵⁰ In its reasoning, the court acknowledges “freedom of the press” and the duty of journalists to provide information; however, it states that this right is not unlimited.⁵¹ The court further notes that reasonableness limits the press’s duty, and that unnecessarily insulting someone to affect his or her reputation exceeds reasonableness.⁵²

March 26, 1996: The same appellate court denies the Mémoli’s motion for a Clarification of the Judgment.⁵³

April 18, 1996: The Mémolis file two motions: (1) set aside the judgment for procedural flaws; and (2) reverse the judgment for inapplicability of the law.⁵⁴ The Second Appellate court denies the motion to reverse the judgment but grants leave to appeal to the Supreme Court of Justice of Buenos Aires Province.⁵⁵

and Costs, ¶¶ 75-76.

44. Mémoli v. Argentina v. Argentina, Merits, Reparations, and Costs, ¶ 75.

45. *Id.*

46. *Id.* ¶ 77.

47. Mémoli v. Argentina, Report on Merits, Report No. 74/11, Inter-Am. Comm’n H.R., Case No. 12.653, ¶ 44 (July 20, 2011).

48. *Id.*

49. Mémoli v. Argentina v. Argentina, Merits, Reparations, and Costs, ¶ 84.

50. Mémoli v. Argentina, Report on Merits, Report, ¶ 47.

51. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 87.

52. *Id.*

53. Mémoli v. Argentina, Report on Merits, Report No. 74/11, Inter-Am. Comm’n H.R., Case No. 12.653, ¶ 47 (July 20, 2011).

54. *Id.*

55. *Id.*

September 10, 1996: The Supreme Court of Buenos Aires Province finds the appeal inadmissible because it fails to meet the requirements of Article 349, Section 1, of the State Criminal Code of Procedure.⁵⁶

September 23, 1996: The Mémolis file an appeal for Reversal of the Judgment before the high court of Buenos Aires Province; the court denies the appeal.⁵⁷

October 8, 1996: The Mémolis file an extraordinary appeal to the Provincial Supreme Court of Buenos Aires, and allege the Second Appellate court's ruling was invalid and arbitrary.⁵⁸

November 26, 1996: The Provincial Supreme Court of Buenos Aires denies the appeal.⁵⁹

December 11, 1996: The Mémolis file a petition of error before the Supreme Court of Justice of the Nation for error in denial of their appeal.⁶⁰

October 3, 1997: The Supreme Court of Justice of the Nation denies the petition.⁶¹

October 9, 1997: The Mémolis file a motion for reconsideration of an interlocutory decision.⁶²

December 16, 1997: The Supreme Court of Justice of the Nation denies the motion.⁶³

March 1, 1996: Mr. Guarracino, Mr. Humberto, and Mr. Romanello file for a "general injunction for the sale or encumbrance of assets" against the Mémolis.⁶⁴ They claim to have received two favorable rulings and that if the results persisted, they would have the right to collect for damages and attorney fees.⁶⁵

56. *Id.*

57. Mémoli v. Argentina, Report on Merits, Report, ¶ 48.

58. *Id.*

59. *Id.*

60. *Id.* ¶ 49.

61. *Id.*

62. Mémoli v. Argentina, Report on Merits, Report, ¶ 49.

63. *Id.*

64. *Id.* ¶ 50.

65. Mémoli v. Argentina, Report on Merits, Report, ¶ 50.

September 18, 2001: The Buenos Aires Province Court vacates the injunction.⁶⁶

March 8, 1996: A judge for Criminal and Correctional Matters in Buenos Aires Province grants the injunction.⁶⁷

March 14, 1996: The Mémolis file an appeal against the injunction.⁶⁸

April 18, 1996: The appellate court for Criminal and Correctional Matters in Buenos Aires Province denies the Mémoli's appeal against the injunction.⁶⁹

April 25, 1996: The Mémolis file a motion for clarification of the decision, which the appellate court denies.⁷⁰ The court states the decision lacks any doubtful or obscure concept.⁷¹

December 29, 1997: Mr. Guarracino, Mr. Humberto, and Mr. Romanello file suit for damages of 90,000 Argentine pesos against the Mémolis based on their criminal conviction.⁷²

February 10, 1998: The Mémolis object to the suit on the grounds of *res judicata* and a lapsed statute of limitations.⁷³

September 11, 2001: The Mémolis settle with two of the plaintiffs in the civil proceedings.⁷⁴ In return for Mr. Guarracino and Mr. Romanello paying the proceedings costs, the Mémolis agree to pay both men three thousand Argentine pesos.⁷⁵ Mr. Piraz remains party to the suit.⁷⁶

September 18, 2001: The court vacates the injunction against the Mémolis.⁷⁷ The court reasons the higher court in the criminal proceeding

66. *Id.* ¶ 51.

67. *Id.* ¶ 50.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 109 (Aug. 22, 2013).

72. *Mémoli v. Argentina*, Report on Merits, Report, ¶ 52.

73. *Id.*

74. *Mémoli v. Argentina*, Merits, Reparations, and Costs, ¶ 97, n.158.

75. *Id.* ¶ 97

76. *See id.*

77. *Mémoli v. Argentina*, Report on Merits, Report, ¶ 51.

had “rejected three civil actions filed in this jurisdiction, because the complainant had not appeared as a complainant claiming damages.”⁷⁸

October 31, 2001: Mr. Piriz requests a general injunction against the Mémolis’ assets.⁷⁹ He argues the admissibility of his claim is no longer at issue because of the Mémolis’ guilty verdict.⁸⁰ Rather, the only remaining issue is the amount of damages he will receive.⁸¹ A judge grants the injunction.⁸²

December 20, 2001: The court denies the Mémolis’ appeal for reversal, but admits their subsidiary appeal challenging the legal grounds of the decision.⁸³

September 2003: The court opens the civil proceedings to evidence for 20 days; the admitted evidence includes cassettes.⁸⁴ The court asks that the courts involved in the matter forward the evidence in those trials to the court for the civil proceedings.⁸⁵

April 2006: The Judge twice issues a “call to attention” to Mr. Pablo Mémoli, which instructs him to observe “proper decorum” in his briefs.⁸⁶ The same judge later orders him admonished for such.⁸⁷

March 12, 2008: Pablo Mémoli files a complaint against the presiding judges of Courts No. 1, 5, and 10 for Civil and Commercial Matters of the Judicial Department of Mercedes.⁸⁸ He alleges malfeasance, abuse of authority, “denial and delay of justice,” and “ongoing violation of the law for the purpose of favoring the plaintiff.”⁸⁹

September 23, 2009: Mr. Piraz and the Mémolis meet in an attempt to settle their lawsuit.⁹⁰ The two parties fail to reach an agreement.⁹¹

78. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 109.

79. *Id.* ¶ 110.

80. *Id.*

81. *Id.*

82. *Id.*

83. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 110.

84. *Id.* ¶ 99.

85. *Id.*

86. *Id.* ¶ 107.

87. *Id.*

88. Mémoli v. Argentina, Report on Merits, Report, ¶ 53.

89. *Id.* ¶¶ 53, 77.

90. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 100.

91. *Id.*

November 18, 2009: Legislators enact Law 26,551, which amends the Criminal Code of the Nation's articles pertaining to defamation and libel offenses.⁹² The law modifies defamation's definition.⁹³

November 23, 2009: The Mémolis request the Appellate and Criminal Guarantees Chamber overturn their convictions and order a halt to Mr. Piriz's civil proceedings against them.⁹⁴ They base their request on the new provisions of Law 26,551, which "decriminalizes libel and defamation."⁹⁵

December 9, 2009: The Appellate and Criminal Guarantees Chamber declare the review for appeal inadmissible because the punishment term for the Mémolis had concluded.⁹⁶ The court states that for a new law to apply retroactively, it must have passed during the appellant's punishment period.⁹⁷

December 23, 2009: The Mémolis file a special remedy of unconstitutionality against the judgment with the Supreme Court of Justice for Buenos Aires Province.⁹⁸

July 4, 2012: The Supreme Court of Justice for Buenos Aires Province rejects the special remedy because it lacked evidence "any constitutional matter had been decided, [and there were no] grounds or wrongful acts observed."⁹⁹ A judge further notes the facts relating to the conviction show no evidence corroborating a "supposed impairment" of the right to freedom of expression on an issue of "significant public interest."¹⁰⁰

B. Other Relevant Facts

This case is related to another case decided by the Inter-American Court: the *Kimel v. Argentina* case.¹⁰¹ In that case, the Court concluded

92. *Id.* ¶ 91.

93. *Id.*

94. *Mémoli v. Argentina*, Merits, Reparations, and Costs, ¶ 92.

95. *Id.*

96. *Id.* ¶ 93.

97. *Id.*

98. *Mémoli v. Argentina*, Merits, Reparations, and Costs, ¶ 94.

99. *Id.*

100. *Id.*

101. *Kimel v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser.

the State had violated Article 13 (Freedom of Thought and Expression) to the detriment of Mr. Kimel.¹⁰² The Court ordered the State to modify its domestic laws on defamation and libel to comply with the Convention's protection of the right to freedom of thought and expression.¹⁰³ Because of this order, legislators enacted Law 26, 551, which amended the Criminal Code of the Nation's pertaining to defamation and libel offenses.¹⁰⁴

II. PROCEDURAL HISTORY

A. Before the Commission

February 12, 1998: The Mémolis file a petition on their own behalf with the Commission.¹⁰⁵

June 25, 2004: The Commission forwards additional submissions to the State.¹⁰⁶

July 23, 2008: The Commission approves Admissibility Report No. 39/08.¹⁰⁷

July 20, 2011: The Commission issues Merits Report No. 74/11.¹⁰⁸ It concludes the State violated the Mémolis' right to a hearing within reasonable time by a competent and independent tribunal and their right to freedom of thought and expression under Articles 8(1) and 13.¹⁰⁹

Consequently the Commission recommended the State: (1) annul the Mémolis' criminal convictions; (2) immediately lift the general injunction on the Mémolis property; (3) safeguard their rights under the American Convention; (4) adopt the measures necessary to decide the civil case against the Mémolis impartially; (5) compensate the Mémolis for their pecuniary and non-pecuniary damages; and (6) adopt the nec-

C) No. 177 (May 2, 2008).

102. *Id.* ¶ 3.

103. Mémoli v. Argentina v. Argentina, Merits, Reparations, and Costs, "And Decides" ¶ 11.

104. Kimel v. Argentina, Monitoring Compliance with Judgment, Inter-Am. Ct. H.R., "Having Seen" ¶ 30 (May. 18, 2010).

105. Mémoli v. Argentina, Admissibility Report, Report No. 39/08, Inter-Am. Comm'n H.R., ¶ 1 (July 23, 2008).

106. *Id.* ¶ 8.

107. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 2(b) (Aug. 22, 2013).

108. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 2(c) (Aug. 22, 2013).

109. *Id.*

essary measures to prevent disproportionate civil proceedings and precautionary measures from occurring in the future.¹¹⁰

B. Before the Court

December 3, 2011: The Commission submits the case to the Court.¹¹¹

1. Violations Alleged by Commission¹¹²

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

Article 13 (Right to Freedom of Thought and Expression)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

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

2. Violations Alleged by Representatives of the Victims¹¹³

Same Violations Alleged by Commission, plus:

Article 9 (Freedom from *Ex Post Facto* Laws)

Article 21 (Right to Property)

Article 23 (Right to Participate in Government)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects)

June 22, 2012: The State submits its brief to the Court and files two preliminary objections, alleging violation of due process and failure to exhaust all domestic remedies.¹¹⁴

110. *Id.* ¶ 2(c).

111. *Id.* ¶ 2(e).

112. *Mémoli v. Argentina*, Merits, Reparations, and Costs, ¶ 3.

113. The *Mémolis* represented themselves with the assistance of lawyer Leopoldo Ariel Gold. *Id.* n.4

114. *Id.* ¶ 6; 19.

III. MERITS

A. Composition of the Court

Diego García-Sayán, President
 Manuel E. Ventura Robles, Vice President
 Alberto Pérez Pérez, Judge^[115]
 Eduardo Vio Grossi, Judge
 Roberto F. Caldas, Judge
 Humberto Antonio Sierra Porto, Judge, and
 Eduardo Ferrer Mac-Gregor Poisot, Judge
 Pablo Saavedra Alessandri, Secretary, and
 Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

August 22, 2013: The Court issues its Judgment on Preliminary Merits, Reparations, and Costs.¹¹⁵

The Court found by four votes to three that the State had not violated:

Article 13 (Right to Freedom of Thought and Expression), in relation to Articles 1(1) and 2 of the Convention, to the Mémolis' detriment,¹¹⁶ because:

The right to freedom of expression is not absolute; rather, the Convention subjects it to conditions and limitations.¹¹⁷ Expressions cannot interfere with other rights the Convention has established.¹¹⁸ Article 13(2) (Prohibition of A Priori Censorship) prohibits censorship, but also establishes that the Court can find an individual liable for abusing the right that it protects.¹¹⁹

The Court also noted that Article 11(2) (Right to Honor and Dignity) prohibits arbitrary or abusive interference in another's life and attacks on someone's honor or reputation.¹²⁰ Article 11(3) (Right to Protection

115. See *Mémoli v. Argentina*, Merits, Reparations, and Costs.

116. See *id.* "Operative Paragraphs" ¶ 2.

117. *Id.* ¶ 123.

118. *Id.*

119. *Id.*

120. *Id.* ¶ 125.

from Attacks against Private Life, Family, Home, Correspondence, Honor, and Dignity) specifically requires states to provide its citizens with legal protection against these attacks; otherwise, the Court could hold the State liable.¹²¹ States play a vital role in ensuring that the rights to freedom of expression and honor co-exist harmoniously.¹²² Consequently, they must be able to enact penalties that help balance the two interests.¹²³ The Court noted that it had previously established that civil and criminal penalties may be appropriate for states to protect the rights the Convention encompasses.¹²⁴

The Court noted that the *Mémolis* were convicted on norms established under the Argentine legal system, and that the considerations of the *Kimel* case failed to apply.¹²⁵ The Court noted that in *Kimel*, it had concluded that the criminal provision under which Mr. Eduardo Kimel had been convicted lacked “precision.”¹²⁶ The provision failed to specify what constituted crimes of defamation and libel;¹²⁷ therefore, the grounds on which a court could convict Mr. Kimel for the crimes were insufficiently foreseeable.¹²⁸

Here, the Court noted the issue of foreseeability failed to apply to the *Mémolis*.¹²⁹ They could have reasonably foreseen their statements and characterizations against the plaintiffs, e.g., referring to them as “criminals”, “corrupt,” and “unscrupulous,” could result in judicial action because of the harm caused to plaintiffs’ “honor” or “reputation[s].”¹³⁰

The Court further noted that the judicial authorities in the present case had examined the *Mémolis*’ statements against the Plaintiffs and their impact on honor or reputation.¹³¹ It concluded the authorities had reasonably and sufficiently weighed the *Mémolis*’ right to freedom of expression against the plaintiff’s right to protection of honor or reputation.¹³² The Court found the statements warranted the liability the

121. *Mémoli v. Argentina*, Merits, Reparations, and Costs, ¶ 125.

122. *Id.* ¶ 127.

123. *Id.*

124. *See id.* ¶ 126.

125. *Id.* ¶ 134.

126. *Id.* ¶ 136.

127. *See id.*

128. *Mémoli v. Argentina*, Merits, Reparations, and Costs, ¶ 136.

129. *Mémoli v. Argentina*, Merits, Reparations, and Costs, ¶ 137.

130. *Id.*

131. *Id.* ¶ 143.

132. *Id.*

*State's courts had imposed on the Mémolis.*¹³³ *Therefore, the State did not violate Article 13 (Right to Freedom of Thought and Expression).*¹³⁴

Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) of the Convention, to the Mémolis' detriment,¹³⁵ because:

*The State's courts had convicted the Mémolis for violating a statute defined under the State's criminal code and in force at the time they made their accusations.*¹³⁶ *The Court noted that the State had amended its criminal code in 2009 to exclude punishment for statements related to "public interest."*¹³⁷ *However, the Court concluded the amended statute failed to apply to the Mémolis.*¹³⁸ *As the appellate court indicated, the Mémolis' punishment had concluded prior to the statute's amendment.*¹³⁹ *Additionally, no evidence existed that the State had violated the Mémolis' freedom of expression on a matter of public interest because the statements they made were not in the "public interest."*¹⁴⁰ *The statements related to neither public officials nor State institutions.*¹⁴¹ *Rather, they reflected and concerned only a dispute between private individuals, or at most, a private mutual association.*¹⁴² *Thus, the State did not violate Article 9 (Freedom from Ex Post Facto Law).*¹⁴³

The Court found unanimously that the State violated:

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 Mémolis' detriment,¹⁴⁴ because:

The Court had examined the elements for determining whether the length of judicial proceedings was reasonable: (1) the matter's complexity, (2) the interested party's procedural activity, (3) the conduct of judicial authorities, and (4) the preceding's impact on the individuals

133. *Id.* ¶ 143.

134. *Id.* ¶ 149.

135. *Id.* "Operative Paragraphs" ¶ 3.

136. *Mémoli v. Argentina, Merits, Reparations, and Costs, "Operative Paragraphs" ¶ 156.*

137. *Id.*

138. See *id.* ¶ 156.

139. *Id.*

140. *Id.*

141. *Id.* ¶ 146.

142. *Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 146.*

143. *Id.* 159

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

concerned.¹⁴⁵

The Court determined that the civil proceedings did not entail particularly complex legal or probative aspects.¹⁴⁶ Rather, they concluded the case was relatively simple because it involved a civil matter with ordinary characteristics that required no special procedural activity.¹⁴⁷

The Court noted that both parties had contributed to the length of the proceedings; combined, they had filed more than 30 remedies.¹⁴⁸ The Court agreed with the State's argument that these remedies had contributed to the case's complexity and duration.¹⁴⁹ It noted that the filing of appeals was not an objective factor held against the respondent state when determining whether the length of proceedings were appropriate in a case.¹⁵⁰

However, the Court also noted that neither of the parties had acted negligently in the case.¹⁵¹ Moreover, it noted that the Mémolis had requested the courts to act on at least six occasions pertaining to some aspect of the case.¹⁵² On three more occasions, they had asked the court to make a ruling.¹⁵³ Lastly, the plaintiffs had reactivated the case following a period of inactivity on at least three occasions.¹⁵⁴ The Court noted that the State's judicial authorities have an obligation to direct court proceedings, maintain equality between parties, and ensure the greatest procedural economy available.¹⁵⁵ But here, the Court could attribute several periods of inactivity entirely to the judicial authorities involved.¹⁵⁶ Finally, the Court noted that the State had acknowledged that authorities in the case had contributed to its delays, and that these delays had contributed to the case's length of seventeen years.¹⁵⁷

Finally, the Court noted that the preceding had resulted in the possibility the Mémolis could find themselves liable in a civil court for the same

145. *Id.* ¶ 172.

146. *Id.*

147. *Id.* ¶ 173.

148. *Id.*

149. *Id.*

150. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 174.

151. *Id.* ¶ 175.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* ¶ 176.

156. Mémoli v. Argentina, Merits, Reparations, and Costs, ¶ 176.

157. *See id.* ¶¶ 177-78.

acts they were convicted for in a criminal court 15 years prior.¹⁵⁸ Thus, the length of the civil proceedings had exceeded a reasonable period and unfairly impacted the *Mémolis*.¹⁵⁹ This violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.¹⁶⁰

Article 21 (Right to Property), in relation to Article 1(1) of the Convention, to the *Mémolis*' detriment,¹⁶¹ because:

*The Judicial authorities failed to take into account the consequences the prolonged judicial proceedings would have on the Mémolis' ability to dispose of their property.*¹⁶² They also failed to adhere to the State's law which established: "[T]he judge, to avoid unnecessary liens and prejudice to the owner of the property, may establish a precautionary measure other than the one requested, or limit it, taking into account the significant of the right that it is sought to protect." Consequently, the authorities had subjected the *Mémolis* to a property lien for 17 years.¹⁶³ The Court found this length of time to exceed reasonableness.¹⁶⁴ This violated their right under Article 21 (Right to Property).¹⁶⁵

It would not be in order to rule on the violations alleged in Articles 23 (Right to Participate in Government), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the Convention,¹⁶⁶ because:

*Since the Court found that the State had not violated Articles 13 (Freedom of Thought and Expression) and 9 (Freedom from Ex Post Facto Laws), it concluded it would be inappropriate for the court to examine the State's alleged violation of Article 23 (Right to Participate in Government).*¹⁶⁷ For Article 25 (Right to Judicial Protection), the Court determined it had already analyzed the pertinent arguments and also that an unfavorable ruling does not necessarily mean the remedy is ineffective.¹⁶⁸ Finally, for Article 24 (Right to Equal Protection), the Court de-

158. *Id.* ¶ 182.

159. *See id.* ¶ 183.

160. *Id.* ¶ 183

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

162. *Id.* ¶ 180.

163. *Mémoli v. Argentina, Merits, Reparations, and Costs*, ¶ 180.

164. *Id.*

165. *Id.*

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

167. *Id.* ¶ 160.

168. *Id.* ¶ 195.

terminated that there was not any evidence of unequal treatment or discrimination.¹⁶⁹

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Diego Garcia-Sayán

In a separate opinion, Judge Diego Garcia-Sayán issued a concurring opinion to reiterate that case law supported the Court's findings.¹⁷⁰ He reaffirmed that freedom of expression is a fundamental right in democratic societies.¹⁷¹ He noted that, without freedom of expression, democracy begins to fade, which creates a fertile ground for an authoritarian government to root itself within a society.¹⁷² He noted freedom of expression as particularly important in mass media.¹⁷³ It should make available to the public information and opinions that, in turn, allow the populace to form opinions and participate in public affairs.¹⁷⁴ Additionally, investigative journalists often play an important role in learning about information that would otherwise remain hidden.¹⁷⁵ Judge Garcia-Sayán noted that in *Kimel*, investigative journalism had played an important role in disseminating information about human rights violations.¹⁷⁶ But Mr. Kimel had not used excessive language nor had he made references to anyone's personal life.¹⁷⁷ Rather, he had simply reconstructed the judicial investigation of the massacre and made a value judgment.¹⁷⁸

He stated that the facts in *Mémoli* differed from those in *Kimel*.¹⁷⁹ He noted that the plaintiffs in the case were neither public officials, nor did they perform public functions.¹⁸⁰ Rather, they served as members of a management committee in a private entity.¹⁸¹ The judge reiterated the Court's finding that the dispute affected only members of a private as-

169. *Id.* ¶ 196.

170. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Diego Garcia-Sayán, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 24 (Aug. 22, 2013).

171. *Id.* ¶ 2.

172. *Id.* ¶ 3.

173. *Id.* ¶ 4.

174. *Id.*

175. *Id.* ¶ 4.

176. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Diego Garcia-Sayán, ¶ 5.

177. *Id.*

178. *Id.*

179. *Id.* ¶ 20.

180. *Id.*

181. *Id.* ¶ 20.

sociation and therefore failed to constitute the “public interest.”¹⁸²

He noted the Convention binds everyone who exercises their right to freedom of expression to respect the rights of others to their reputations and honor.¹⁸³ Thus, because freedom of expression is not absolute, states can restrict or impose liability, criminal or civil, on the basis of it.¹⁸⁴

2. Concurring Opinion of Judge Alberto Pérez Pérez

In a separate opinion, Judge Alberto Pérez Pérez issued a concurring opinion to emphasize points he found particularly important.¹⁸⁵ He noted that the Court had taken into account that State officials had examined the statements the *Mémolis* made and concluded that some of them did not constitute a libel or defamation offense.¹⁸⁶ The State’s authorities exempted the *Mémolis* from liability for “opinions that did not disparage” the plaintiffs.¹⁸⁷ Rather, it imposed liability on them for statements that had exceeded simple opinion or news analysis.¹⁸⁸ The authorities had determined the *Mémolis* made these statements with the intent to disparage and defame the plaintiffs.¹⁸⁹

Judge Pérez Pérez also emphasized that the facts in *Mémoli* were distinguished from previous cases where petitioners had prevailed on freedom of expression claims: the plaintiffs were not public officials, the incriminating statements did not concern the public, and the *Mémolis* had used excessive language.¹⁹⁰

3. Joint Partially Dissenting Opinion of Judges Manuel E. Ventura Robles, Eduardo Vio Grossi, and Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judges Manuel E. Ventura Robles, Eduardo Vio Grossi, and Eduardo Ferrer Mac-Gregor Poisot dissented from the Court because they believed the State had violated Article 9 (Freedom

182. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Diego Garcia-Sayán, ¶ 20.

183. *Id.* ¶ 7.

184. *See id.* ¶ 9.

185. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 1 (Aug. 22, 2013).

186. *Id.* ¶ 16.

187. *Id.* ¶ 17.

188. *Id.*

189. *Id.*

190. *Mémoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Alberto Pérez Pérez, ¶ 19.

from *Ex-Post Facto* Laws) and Article 13 (Freedom of Thought and Expression).¹⁹¹

The judges noted that the purpose of the proceedings was not for the Court to determine whether the State could impose liability on individuals for exercising their right to freedom of expression; such liability was unquestioned.¹⁹² Rather, the Court's purpose was to determine whether the liabilities or penalties the State established were necessary to ensure the rights of the plaintiffs in the domestic proceedings.¹⁹³

The judges expressed their disappointment that the Court had not proportionally weighed the right to freedom of expression with the domestic judge's need to impose liability or sanctions.¹⁹⁴ Instead, the Court had deferred to the State's judgment because "it was in a better position to determine which rights had been harmed the most."¹⁹⁵ The judges concluded the domestic judge in the case had incorrectly weighed the plaintiff's right to honor and reputation with the Mémolis' right to freedom of expression.¹⁹⁶ They believed he had failed to examine the case's particular circumstances.¹⁹⁷ Instead, he had simply concluded that the "freedom of the press" failed to protect defendants who cite it as a defense after causing harm to third parties.¹⁹⁸

The judges noted that it was incorrect for the Court to examine the context of the litigation to determine whether the statements qualified as public interest; nearly all litigation occurs between private parties.¹⁹⁹ Instead, the Court should have examined the circumstance under which the Mémolis made the statement.²⁰⁰ It noted that the town in which the dispute occurred had a populace of 18,000, and nearly 300 of them belong to the Association.²⁰¹ Additionally, the statements concerned the town's municipal cemetery.²⁰² Consequently, there "was no doubt" the

191. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judges Manuel E. Ventura, Eduardo Vio Grossi, and Eduardo Ferrer Mac-Gregor Poisot Inter-Am. Ct. H.R. (ser. C) No. 265, p. 1.

192. *Id.* p. 2.

193. *Id.*

194. *Id.* p.5.

195. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judges Manuel E. Ventura Robles, Eduardo Vio Grossi and Eduardo Ferrer Mac-Gregor Poisot, p. 5.

196. *Id.* p. 6.

197. *Id.*

198. *Id.*

199. *Id.* p. 8.

200. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judges Manuel E. Ventura Robles, Eduardo Vio Grossi and Eduardo Ferrer Mac-Gregor Poisot, p. 8.

201. *Id.* p. 9.

202. *Id.*

information's importance transcended the Association.²⁰³

The judges next addressed Article 9 (Freedom from *Ex-Post Facto* Laws).²⁰⁴ They stated that because they believed the Mémolis' statements constituted the public interest, the new definition of defamation outline by Law No. 26,551 should have retroactively applied.²⁰⁵ Pertaining to their punishment's conclusion, the judges argued that the Mémolis were still engaged in the civil action, which had directly resulted from the criminal matter.²⁰⁶

IV. REPARATIONS

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

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

1. Adopt The Necessary Measures to Decide the Civil Case and Revoke Its Precautionary Measures

The State must adopt the necessary measures to decide the civil case against the Mémolis as soon as possible.²⁰⁷ It must also immediately revoke the general injunction on the Mémolis' property.²⁰⁸

2. Publish and Disseminate the Judgment

The State must publish a summary, prepared by the Court, of the judgment in its official gazette.²⁰⁹ It must also publish the judgment, in its entirety, for one year on an official State website.²¹⁰

203. *Id.*

204. *Id.* p.11.

205. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judges Manuel E. Ventura Robles, Eduardo Vio Grossi and Eduardo Ferrer MacGregor Poisot, p. 11.

206. *Id.*

207. Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 206 (Aug. 22, 2013).

208. *Id.*

209. *Id.* ¶ 207.

210. *Id.*

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

As compensation for moral damages suffered, the Court ruled that the State owes the following:

The Court awarded \$15,000 to Mr. Carlos Mémoli and \$15,000 to Mr. Pablo Mémoli for non-pecuniary damages.²¹¹

3. Costs and Expenses

The Court awarded \$8,000 to Mr. Pablo Mémoli for the reimbursement of legal expenses.²¹²

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

\$38,000

C. Deadlines

Within one year of receiving the Court's judgment, the State must compensate the Mémolis for non-pecuniary damages.²¹³

Within three months of receiving the Court's judgment, the State must submit a report to the Court on whether it complied with the Court's order to immediately lift the general injunction against the Mémolis' property.²¹⁴

Within six months of receiving the Court's judgment, the State must publicize the Court's summary in its official gazette, and publish the case in its entirety on an official State website.²¹⁵

Within one year of receiving the Court's notification, the State

211. *Id.* ¶ 221.

212. *Id.* ¶ 226.

213. *Mémoli v. Argentina, Merits, Reparations, and Costs*, ¶ 227.

214. *Id.* "And Decides" ¶ 8.

215. *Id.* "And Decides" ¶ 9.

must submit a report to the Court on its compliance with the Court's judgment.²¹⁶

V. INTERPRETATION AND REVISION OF JUDGMENT

[NONE]

VI. COMPLIANCE AND FOLLOW-UP

[NONE]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 265 \(Aug. 22, 2013\).](#)

[Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Diego Garcia-Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 265, ¶ 24 \(Aug. 22, 2013\).](#)

[Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. \(ser. C\) No. 265, ¶ 1 \(Aug. 22, 2013\).](#)

[Mémoli v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judges Manuel E. Ventura Robles, Eduardo Vio Grossi and Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. \(ser. C\) No. 265 \(Aug. 22, 2013\).](#)

3. Provisional Measures

[None]

216. *Id.* ¶ 11.

4. Compliance Monitoring

[Mémoli v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Dec. 19, 2012\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Mémoli v. Argentina, Admissibility Report, Report No. 39/08, Inter-Am. Comm'n H.R., July 23, 2008\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Mémoli v. Argentina, Report on Merits, Report No. 74/11, Inter-Am. Comm'n H.R., Case No. 12.653 \(July 20, 2011\).](#)

5. Application to the Court

[Not Available]

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