

Eduardo Kimel v. Argentina

ABSTRACT¹

This case is about the prosecution for libel of a journalist who published a book criticizing the investigation and prosecution of those responsible for a massacre of five members of a Catholic society during the 1976 coup. The Inter-American Court found Argentina had violated the journalists' right to a hearing within reasonable time, freedom from ex post facto laws, and right to impart information and ideas.

I. FACTS

A. Chronology of Events

March 24, 1976: A military coup overthrows the State's constitutional government with a military dictatorship.²

July 4, 1976: Five members of the Pallottines, a society of apostolic life within the Roman Catholic Church, are murdered at the San Patricio church in Buenos Aires, Argentina.³ Three are priests: Pedro Duffau, Alfredo Kelly and Alfredo Leaden; two are seminary students: Emilio Barletti and Salvador Barbeito.⁴

October 7, 1977: Judge Guillermo Federico Rivarola oversees the investigation performed by the National First-Instance Court for Criminal and Correctional Matters No. 1.⁵ The Court provisionally dismisses the case against the alleged murderers.⁶

1984: The Court reopens the proceedings.⁷

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

2. Eduardo Kimel v. Argentina, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.450, ¶ 40 (April 10, 2007).

3. *Id.* ¶¶ 40-41.

4. *Id.*

5. *Id.* ¶ 42.

6. *Id.*

7. *Id.*

June 1987: The Court issues a declaration stating the statute of limitations has run and closes the case.⁸

1989: Eduardo Kimel, an Argentinian political historian and journalist, publishes the book *La Masacre de San Patricio* (“The San Patricio Masacre”).⁹ The book chronicles Mr. Kimel’s research of the murder of the five Pallotines and the subsequent investigation and murder case.¹⁰ In particular, Mr. Kimel criticizes Judge Rivarola, who, although followed all required procedures during the course of the investigation, did not pursue various investigative leads suggesting that the military ordered these killings.¹¹

October 28, 1991: Judge Rivarola files a criminal libel suit against Mr. Kimel, alleging that Mr. Kimel’s portrayal of him in *La Masacre de San Patricio* caused him prejudice.¹² In his complaint, Judge Rivarola also alleges that Mr. Kimel’s claims violate Article 248 of the Criminal Code (“commission of the offenses of dereliction of duty by a public official”) and Article 277 (about cover-up).¹³ The 8th National First-Instance Court for Criminal and Correctional Matters of Buenos Aires hears this case and numbers it No. 2.564.¹⁴

September 25, 1995: The Court convicts Mr. Kimel of slander (*injurias*) under Article 110 of the Criminal Code, and subsequently sentences him to one year in prison, pay twenty thousand pesos (approximately \$19,978.00 USD at the time) to Judge Rivarola and pay three thousand pesos (approximately \$2,996.70 USD at the time) in attorney’s fees.¹⁵ Mr. Kimel appeals, seeking an annulment of the judgment and an imposition of fees upon Judge Rivarola.¹⁶ Judge Rivarola also seeks an appeal, hoping for an additional conviction of libel and compensation for costs.¹⁷

November 19, 1996: The 6th Chamber of the National and Correctional Appeals Court annuls Mr. Kimel’s slander (*calumnia*) conviction and

8. Eduardo Kimel v. Argentina, Petition to the Court, ¶ 42.

9. *Id.* ¶¶ 43-44.

10. *Id.* ¶ 44.

11. *Id.* ¶ 45.

12. *Id.* ¶ 47.

13. *Id.* ¶ 48.

14. Eduardo Kimel v. Argentina, Petition to the Court, ¶ 49.

15. *Id.* ¶ 51.

16. *Id.* ¶ 52.

17. *Id.*

sentence.¹⁸ The Court specifically mentions freedom of thought and expression in its ruling, stating that public officers like judges are exposed to press criticism.¹⁹

December 22, 1998: The Supreme Court of Justice of the Nation admits Judge Rivarola's extraordinary appeal and orders the case return to the original venue to be given a new judgment based on the terms of its ruling.²⁰

March 17, 1999: The 4th Chamber of the National Criminal and Correctional Appeals Court upholds Mr. Kimel's original sentence and modifies the conviction from slander (*injurias*) to libel (*calumnias*), asserting that Mr. Kimel made these claims knowing they were false.²¹ Mr. Kimel files an extraordinary appeal, which is declared inadmissible.²²

September 14, 2000: The Supreme Court of Justice rules Mr. Kimel's complaint remedy *in limine*, thereby confirming the conviction.²³

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

December 6, 2000: The Center for Legal and Social Studies ("CELS") and the Center for Justice and International Law ("CEJIL") lodge a petition before the Inter-American Commission on Human Rights ("Commission").²⁴ The Commission initially joins this petition with another petition, No. 12.128, Horacio Verbitsky v. Argentina, with similar facts.²⁵ Petition No. 12.128 involves a journalist who called the Minister of the Supreme Court "disgusting" and was then convicted for contempt.²⁶

18. *Id.* ¶¶ 54-55.

19. *Id.* ¶ 54.

20. Eduardo Kimel v. Argentina, Petition to the Court, ¶ 56.

21. *Id.* ¶¶ 57-58.

22. *Id.* ¶ 60.

23. *Id.*

24. *Id.* ¶ 10.

25. *Id.* ¶ 11.

26. Horacio Verbitsky v. Argentina, Friendly Settlement, Inter-Am. Comm'n H.R., Case No. 11.012, ¶ 1 (Sept. 20, 1992).

April 17, 2001: The petitioners agree to join Mr. Kimel's petition with petition No. 12.128 and agree to participate in pre-existing friendly settlement proceedings.²⁷ However, the petitioners request that the proceedings separately analyze the criminal and civil aspects of Mr. Kimel's petition.²⁸

July 30, 2001: The State submits a copy of a proposed legislative bill amending both the Civil and Criminal Codes regarding libel and slander to align them with the object and purpose of the American Convention.²⁹

November 26, 2003: The Commission officially separates Mr. Kimel's petition and petition No. 12.128.³⁰ The Commission informs the parties that Mr. Kimel's petition will proceed as No. P720/00.³¹ The Commission also concludes the friendly settlement proceedings since they did not yield results.³²

February 24, 2004: The Commission issues Admissibility Report No. 5/04.³³ The Commission concludes its competency to examine this petition regarding alleged violations of Articles 8 (Right to a Fair Trial) and 13 (Freedom of Thought and Expression) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.³⁴ The Commission reserves the right to further evaluate alleged facts regarding Article 25 (Right to Judicial Protection) of the Convention under the *iura novit curia* principle.³⁵

May 31, 2005: The State submits observations on the merits.³⁶ The State reiterates its openness to participating in the friendly settlement "abandoned by the petitioners."³⁷ The State emphasizes the importance of giving the State "a reasonable period of time before pronouncing itself on

27. Eduardo Kimel v. Argentina, Petition to the Court, ¶ 13.

28. *Id.*

29. *Id.* ¶ 14.

30. *Id.* ¶ 23.

31. *Id.*

32. *Id.*

33. Eduardo Kimel v. Argentina, Petition to the Court, ¶ 24; Eduardo Kimel v. Argentina, Admissibility Report, Report No. 5/04, Inter-Am. Comm'n H.R., Case No. 12.450 (Feb. 24, 2004).

34. Eduardo Kimel v. Argentina, Petition to the Court, ¶ 24.

35. *Id.*

36. *Id.* ¶ 28.

37. *Id.*

the merits of the case.”³⁸

July 7, 2005: Mr. Victor Abramovich of CELS is elected as a member of the Commission, and therefore resigns as legal counsel in this case.³⁹

September 12, 2006: The Human Rights Clinic of the Universidad de Palermo submits an *amicus curiae* brief, which the Commission forwards to the parties.⁴⁰

October 26, 2006: The Commission adopts Report on Merits 111/06.⁴¹ It concludes that the State violated Mr. Kimel’s right to due process and right to freedom of thought and expression under Articles 8 (Right to a Fair Trial) and 13 (Freedom of Thought and Expression) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effects to Rights) of the American Convention.⁴² The Commission recommends the State: (1) recognize international responsibility for this case; (2) grant adequate reparations to Mr. Kimel for this violation; (3) “adopt all necessary judicial, administrative and other measures necessary” to annul Mr. Kimel’s criminal conviction and sentence, expunge his criminal record and rectify any economic implications; and (4) adjust its criminal code to comply with Article 13 (Freedom of Thought and Expression) of the Convention.⁴³

B. Before the Court

April 19, 2007: The Commission submits the case to the Court after the State fails to comply with its recommendations.⁴⁴

1. Violations Alleged by Commission⁴⁵

Article 8 (Right to a Fair Trial)

Article 13 (Freedom of Thought and Expression)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

38. *Id.*

39. *Id.* ¶ 29.

40. Eduardo Kimel v. Argentina, Petition to the Court, ¶ 31.

41. *Id.* ¶ 32.

42. *Id.*

43. *Id.* ¶ 33.

44. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 177, ¶ 1 (May 2, 2008).

45. *Id.* ¶ 3.

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

2. Violations Alleged by Representatives of the Victim⁴⁶

Same Violations Alleged by Commission, plus:

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

Article 8(2)(h) (Right to Appeal)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

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

July 2, 2007: The Court admits an *amicus curiae* brief submitted by the Human Rights Clinic of the Master's Degree in Fundamental Rights of Universidad Carlos III of Madrid.⁴⁷

August 24, 2007: The State files its answer to the application.⁴⁸ The State acknowledges responsibility for violating Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 13 (Freedom of Thought and Expression) of the American Convention.⁴⁹ The State makes observations about violating of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 8(2)(h) (Right to Appeal) of the American Convention.⁵⁰

October 11, 2007: The Court holds the public hearing in Bogota, Colombia.⁵¹ The representatives, Commission, and the State submit a "memorandum of agreement" in which the representatives ratify waiving claims for alleged violations of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2)(h) (Right to Appeal) and 25 (Right to Judicial Protection) of the Convention, and the State ratifies acknowledgement of international responsibility.⁵²

46. *Id.* ¶ 4. Mr. Gastón Chillier, Ms. Andrea Pochak, Mr. Santiago Felgueras, and Alberto Bovino from CELS, and Ms. Liliana Tojo from CEJIL served as representatives for Mr. Kimel.

47. *Id.* ¶ 13.

48. *Id.* ¶ 5.

49. *Id.*

50. *Id.* ¶ 5.

51. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, ¶ 9.

52. *Id.*

October 12, 2007: The Court admits an *amicus curiae* brief submitted by the World Press Freedom Committee (Comité Mundial para la Libertad de Prensa).⁵³

December 28, 2007: The Court admits an *amicus curiae* brief submitted by the Civil Rights Association (*Asociación por los Derechos Civiles*; “ADC”).⁵⁴

III. MERITS

A. Composition of the Court⁵⁵

Cecilia Medina Quiroga, President
Diego García-Sayán, Vice President
Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

May 2, 2008: The Court issues its judgment on Merits, Reparations, and Costs.⁵⁶

The Court unanimously found 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 detriment of Mr. Kimel,⁵⁷ because:

The Court examined Argentina’s acquiescence, the proven facts of Mr. Kimel’s domestic trial, and its previously articulated criteria of the reasonable time principle to determine that Argentina violated Article 8(1)

53. *Id.* ¶ 13.

54. *Id.* at ¶ 13.

55. As an Argentine national, Judge Leonardo A. Franco did not participate in the proceedings. *Id.* n*.

56. See *Eduardo Kimel v. Argentina*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 177 (May 2, 2008).

57. *Id.* “Declares” ¶ 2.

*(Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.*⁵⁸ The factors of the reasonable time period include: “(1) the complexity of the matter, (2) the procedural activity of the involved party, and (3) the actions of judicial authorities.”⁵⁹ Mr. Kimel’s criminal case spanned nine years, yet he was the only defendant and did nothing to hinder the processing of his case.⁶⁰ Additionally, the Commission found that proceedings against honor are typically privately actionable offenses and therefore should have no time-consuming investigatory phase, thereby demonstrating that the judicial authorities did not act with proper promptness or due diligence.⁶¹ After applying Mr. Kimel’s procedural history to the reasonable time period factors and in considering Argentina’s acquiescence, the Court found that Mr. Kimel’s trial did not occur within a reasonable time and therefore, Argentina violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) to the detriment of Mr. Kimel.⁶²

Article 9 (Freedom from *Ex Post Facto* Laws) in relation to Articles 1(1) and 2 of the Convention to the detriment of Mr. Kimel,⁶³ because:

*Although neither the Commission nor the representatives alleged any violation of Article 9 (Freedom from Ex Post Facto Laws), the Court believed the facts of this case constituted a violation.*⁶⁴ Any criminal restriction or limitation on the freedom of information must previously be materially and formally recognized by law and must comply with the *nulum crimen nulla poena sine lege praevia* principle.⁶⁵ This principle provides that the criminal conduct must be accurately defined and clearly identify the elements so as to distinguish it from non-punishable acts or acts with non-criminal sanctions.⁶⁶ The Court found that Mr. Kimel’s original conviction under Article 110 of the Criminal Code and the Supreme Court’s subsequent change to a conviction under Article 109 of the Criminal Code did not provide the required accuracy of legislation for criminal defamation and therefore, violated Article 9 (Freedom from

58. *Id.* ¶ 97.

59. *Id.* n.73.

60. *Id.* ¶ 96.

61. *Id.*

62. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, ¶ 97.

63. *Id.* “Declares” ¶ 3.

64. *Id.* ¶ 62.

65. *Id.* ¶ 63.

66. *Id.*

Ex Post Facto Laws).⁶⁷

Articles 13(1) (Right to Seek, Receive, and Impart Information and Ideas) and 13(2) (Prohibition of A Priori Censorship) in relation to Article 1(1) of the Convention, to the detriment of Mr. Kimel,⁶⁸ because:

*Article 13(2) (Prohibition of A Priori Censorship) places possible restrictions on the freedom of expression and thought, but these restrictions cannot restrict the full exercise of this right beyond strict necessity, nor become “a direct or indirect mechanism of prior censorship.”*⁶⁹ Additionally, Article 11 (Right to Privacy) recognizes the right to individual honor and dignity, and the proper recourse for a violation would be through the State judicial system.⁷⁰ To determine whether a violation occurred, the Court followed a four-step analysis: (1) apply the *nullum crimen nulla poena sine lege praevia* principle; (2) determine whether protecting judicial reputations serves a legitimate purpose complying with the Convention and whether criminal penalty is appropriate to achieve said purpose; (3) establish necessity; and (4) analyze the strict proportionality of the penalty and whether the imposed sentence guarantees Judge Rivarola’s honor to be respected while still recognizing Mr. Kimel’s right to freedom of expression.⁷¹

As discussed above, Mr. Kimel’s conviction did not comply with the *nullum crimen nulla poena sine lege praevia* principle.⁷² The Court proceeded to the second step of the analysis and determined that the Convention provides for an individual’s protection of honor and reputation; this right extends to judges.⁷³ Further, the Court found that, generally speaking, criminal proceedings are appropriate and can help achieve the purpose of the Convention, although they may not be necessary or proportional in this case specifically.⁷⁴ The Court proceeded to step three of the analysis to determine the necessity of the adopted measure.⁷⁵ In this analysis, the Court considered possible alternatives and the seriousness of criminal penalties, since criminal law most stringently determines liability for illegal activity.⁷⁶ Additionally, punitive power should only be

67. *Id.* ¶¶ 64-66.

68. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, “Declares” ¶ 1.

69. *Id.* ¶ 54.

70. *Id.* ¶ 55.

71. *Id.* ¶ 58.

72. *Id.* ¶¶ 63-67.

73. *Id.* ¶ 71.

74. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, ¶ 71.

75. *Id.* ¶¶ 72-80.

76. *Id.* ¶¶ 74-76.

*exercised to the extent necessary to protect fundamental rights from serious possible infringements.*⁷⁷ *In general, criminal sanctions regarding the freedom of thought and expression are not inherently incompatible with the Convention, but there must be an analysis of the individual's actual malice and the seriousness of the act, with the burden of proof falling on the party bringing the criminal proceedings.*⁷⁸ *Additionally, journalists specifically must exhaust reasonable measures to verify the truthfulness of facts that support their opinion.*⁷⁹ *In this case, the Court considered the State's acknowledgement of its abuse of power, the criminal charges brought against Mr. Kimel, the effect these charges had on his legally protected interest, and whether his sentence deprived him of his freedom.*⁸⁰

*The Court proceeded to step four of the analysis to determine proportionality between the restriction and the right protected by the statute.*⁸¹ *Here, the restriction should have ensured the right of respect for an individual's reputation without preventing individuals from criticizing the performance of public officials.*⁸² *The Court determined: (1) the criminal proceedings against Mr. Kimel created a significant risk for the deprivation of his liberty; (2) the stigma of his criminal sentence showed the serious nature of Mr. Kimel's liability; and (3) the fine imposed on Mr. Kimel was a serious deprivation of the right to freedom of expression and thought, especially considering the amount of the fine compared to his income.*⁸³ *There is a different threshold of protection for private and public individuals.*⁸⁴ *Public individuals are more likely to be exposed to scrutiny and be criticized, and opinions regarding a public official's qualifications or performance are given greater protection.*⁸⁵ *There is a public interest inherent in a public official's actions, including an investigation conducted by a judge.*⁸⁶ *The press must inform on matters of public interest and issues that affect social rights.*⁸⁷

In this case, Mr. Kimel's statements about Judge Rivarola's actions as a

77. *Id.* ¶ 76.

78. *Id.* ¶ 78.

79. *Id.* ¶ 79.

80. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, ¶ 80.

81. *Id.* ¶ 83.

82. *Id.* ¶ 84.

83. *Id.* ¶ 85.

84. *Id.* ¶ 86.

85. *Id.*

86. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, ¶ 86.

87. *Id.* ¶ 88.

public official were matters of public concern.⁸⁸ Additionally, the paragraph Judge Rivarola brought charges about contained Mr. Kimel's opinion and not facts.⁸⁹ Mr. Kimel opined to Judge Rivarola's handling of this case and did not affect Judge Rivarola's personal life or accuse him of illegal conduct.⁹⁰ Instead, Mr. Kimel reconstructed the judicial investigation, critically judged the judiciary's performance under Argentina's military dictatorship based on verified facts, and refrained from any excessive language.⁹¹ Therefore, the Court found Mr. Kimel's right to freedom of expression and thought was disproportionately violated compared to the infringement on Judge Rivarola's right to have his honor respected.⁹² After concluding the four-step analysis, the Court determined that the State violated Article 13(1) (Right to Seek, Receive and Impart Information and Ideas) and Article 13(2) (Prohibition of A Priori Censorship) of the Convention to the detriment of Mr. Kimel.⁹³

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Diego García-Sayán

In his concurring opinion, Judge García-Sayán emphasized the importance of Argentina's acquiescence that it violated Mr. Kimel's right to freedom of expression and thought and that its criminal defamation laws were not sufficiently accurate.⁹⁴ The right of freedom and expression is a cornerstone of exercising democracy according to Article 4 of the Inter-American Democratic Charter.⁹⁵ This right is guaranteed to all individuals; as such, it should not be restricted to journalists.⁹⁶

This right is subject to limitation by other fundamental rights, for example, the right to "ensure respect for the rights or the reputation of others" as provided in Article 13(2) (Prohibition of A Priori Censorship).⁹⁷ The right to freedom of expression and thought applies to all individuals, and not just journalists.⁹⁸ States must ensure this protection

88. *Id.* ¶ 89.

89. *Id.*

90. *Id.* ¶ 91.

91. *Id.* ¶ 92.

92. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, ¶ 94.

93. *Id.* ¶ 95.

94. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Concurring Opinion of Judge García Sayán, Inter. Am. Ct. H.R. (ser. C) No. 177, ¶ 3 (May 2, 2008).

95. *Id.* ¶ 5.

96. *Id.*

97. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Concurring Opinion of Judge García Sayán, Inter. Am. Ct. H.R. (ser. C) No. 177, ¶ 7 (May 2, 2008).

98. *Id.*

through appropriate judicial mechanisms.⁹⁹ Any mechanism chosen must comply with the rights to due process and to a fair trial.¹⁰⁰ Although the Court held in its decision that there is a different threshold for public and private persons, this does not create a lack of rights for public individuals or a lack of limitations on the media, since this right is indivisible.¹⁰¹

Judge García-Sayán reiterates the tension between the freedom of thought and expression, and the right to have one's honor respected.¹⁰² However, these rights cannot be categorized or ranked in a hierarchical way, as this would violate the Convention; instead, they must be exercised with regard for each other.¹⁰³

2. Concurring Opinion of Judge Sergio García Ramírez

Judge García Ramírez partially dissented regarding potential limitations on the freedom of thought and expression provided for in Article 13(2) (Prohibition of A Priori Censorship) of the Convention.¹⁰⁴ Judge García Ramírez reiterated that, although this case was decided in the context of a journalist, all should enjoy this freedom.¹⁰⁵ However, this right assumes distinct characterizations when discussed in the context of the media distributing information to the general public.¹⁰⁶

Judge García Ramírez also discussed the tension between the freedom of thought and expression and the right to have one's honor respected.¹⁰⁷ He acknowledged that both rights are on equal footing and nothing should be done to change that.¹⁰⁸ In an attempt to resolve this tension, the Court created an analysis regarding the operation and validity of any restrictions on the freedom of thought and expression.¹⁰⁹

Judge García Ramírez then examined this issue in the context of international politics and the diminishing excessive power of states and how this can occasionally result in depriving States of necessary duties, which inevitably leads to restricting individual rights.¹¹⁰ There must be a

99. *Id.* ¶ 11.

100. *Id.* ¶ 25.

101. *Id.* ¶ 13.

102. *Id.* ¶ 17.

103. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Concurring Opinion of Judge García Sayán, Inter. Am. Ct. H.R. (ser. C) No. 177, ¶¶ 17-18. (May 2, 2008).

104. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, Concurring Opinion of Judge García Ramírez, Inter. Am. Ct. H.R. (ser C.) No. 177, ¶ 1 (May 2, 2008).

105. *Id.* ¶ 4.

106. *Id.*

107. *Id.* ¶ 6.

108. *Id.* ¶ 7.

109. *Id.* ¶ 9.

110. Eduardo Kimel v. Argentina, Merits, Reparations and Costs, Concurring Opinion of Judge

rational mechanism to remedy these infringements and States must resist the temptation to criminalize conduct unless necessary.¹¹¹ In Mr. Kimel's case, Judge García Ramírez did not believe that criminal proceedings were a proper mechanism, and instead suggested that civil courts would be more appropriate avenues for redress.¹¹²

IV. REPARATIONS

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

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

1. Annul the Criminal Judgment

The State must expunge this case from Mr. Kimel's criminal record.¹¹³ The State must also annul Mr. Kimel's conviction for libel, annul his one year suspended imprisonment sentence, and pay Mr. Kimel \$20,000.00 in Argentine pesos (approximately \$19,978.00 USD).¹¹⁴

2. Publish and Publicly Acknowledge the Judgment

The State has six months to publish Chapter VI of this Judgment, including operative paragraphs but not including footnotes, in the Official Gazette and another nationally circulated newspaper.¹¹⁵ The State must also publicly acknowledge its responsibility.¹¹⁶

3. Adopt Domestic Law to Conform with the American Convention

The State must ensure its domestic laws conform to the Convention.¹¹⁷ Specifically, the State must amend the acknowledged ambiguity of its slander and libel laws to comply with legal certainty requirements so as to not affect the freedom of thought and expression.¹¹⁸

García Ramírez, Inter. Am. Ct. H.R. (ser C.) No. 177, ¶ 13 (May 2, 2008).

111. *Id.* ¶¶ 16-17.

112. *Id.* ¶¶ 19-21.

113. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Inter-Am. Ct. H.R.(ser. C) No. 177 ¶ 123 (May 2, 2008).

114. *Id.*

115. *Id.* ¶ 125.

116. *Id.* ¶ 126.

117. *Id.* ¶ 128.

118. *Id.* ¶¶ 127-28.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must pay Mr. Kimel \$10,000 in pecuniary damages.¹¹⁹

2. Non-Pecuniary Damages

The State must pay Mr. Kimel \$20,000 in Argentine pesos (approximately \$19,978.00 USD) for non-pecuniary damages.¹²⁰

3. Costs and Expenses

The State must pay \$10,000 to Mr. Kimel as reimbursement for costs and expenses, including any future expenses Mr. Kimel may incur at the domestic level or for monitoring compliance.¹²¹

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

\$39,978

C. Deadlines

The State must immediately expunge this case from Mr. Kimel's criminal record.¹²²

The State must annul Mr. Kimel's criminal conviction for libel, annul his sentence, and pay Mr. Kimel AP \$20,000 (approximately \$19,978.00 USD) within six months.¹²³

The State must publish Chapter VI of this Judgment with its operative paragraphs in the Official Gazette and another nationally circulated newspaper within six months.¹²⁴

The State must publicly acknowledge its responsibility within six

119. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, ¶ 110.

120. *Id.* ¶ 119.

121. Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R.(ser. C) No. 177 ¶ 133 (May 2, 2008).

122. *Id.* ¶ 123.

123. *Id.*

124. *Id.* ¶ 125.

months.¹²⁵

The State must change its domestic laws to comply with the Convention within a reasonable time.¹²⁶

The State must reimburse Mr. Kimel \$10,000.00 for costs and expenses within one year.¹²⁷

The State must issue a report on the adopted measures to the Court within one year.¹²⁸

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

May 2010: On September 24, 2008, the General Treasury of Argentina deposited \$40,000.00 into Mr. Kimel's bank account and, as a result, the State fully complied with the compensation requirements of the judgment.¹²⁹ The State had not yet fulfilled its obligation to annul Mr. Kimel's criminal conviction.¹³⁰ The State indicated that the annulment was waiting on determinations from each Ministry.¹³¹ The tribunal requested the State submit evidence regarding the implementation of this obligation within the time period specified by the Judgment.¹³² The State fulfilled its obligation under the Judgment by removing Mr. Kimel's name from all public records.¹³³ The State published the Judgment in the Official Bulletin (*Boletín Oficial*) and the *Clarín* newspaper on September 10 and 25, 2008, and thereby fulfilled this obligation.¹³⁴ On September 11, 2009, the President announced via national transmission that a bill presented to the legislature would remove the crimes of libel and slander from the freedom of thought and expression.¹³⁵ However, the Court determined that this did not fulfill the public acknowledgement obligation because

125. *Id.* ¶ 126.

126. *Id.* ¶ 128.

127. *Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R.(ser. C) No. 177 ¶ 133 (May 2, 2008).*

128. *Id.* ¶ 139.

129. *Id.* ¶¶ 9-11.

130. *Id.* ¶ 12.

131. *Id.*

132. *Id.* ¶ 15.

133. *Eduardo Kimel v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶¶ 16-19 (May 18, 2010).*

134. *Id.* ¶¶ 20-23.

135. *Id.* ¶ 24.

the address was about domestic implementation rather than acknowledging that the State had violated Mr. Kimel's freedom of thought and expression.¹³⁶ Further, the State did not notify Mr. Kimel about this address and therefore, this obligation was still pending.¹³⁷ Finally, the State complied with its obligation to enact domestic legislation in compliance with the Convention by passing Law 26.551, which modifies the crimes libel and slander to exclude "expressions to matters of public interest" or "expressions of a non-assertive nature" and limits the punishment to only monetary fines.¹³⁸ Mr. Kimel died on February 10, 2010.¹³⁹

November 2010: The Supreme Court of Justice of the Nation determined that the annulment of Mr. Kimel's conviction must follow the domestic legal proceedings.¹⁴⁰ The Attorney General's Office required the representatives to file an application for judicial review.¹⁴¹ The Court reminded the State that it could not blame the domestic sphere for failure to fulfill its pre-existing international legal obligation.¹⁴² Therefore, the Court required the State submit evidence of all further actions taken.¹⁴³ Additionally, the State satisfied the public acknowledgement requirement by holding a public news conference in the office of the CELS with high-ranking government officials and Mr. Kimel's next of kin present; the speech addressed the State's violation of Mr. Kimel's rights as well as steps taken by the State to ensure further compliance.¹⁴⁴

February 2013: After Mr. Kimel's representatives filed an appeal for review, the Third Chamber of the National Criminal Cassation Chamber officially annulled Mr. Kimel's conviction and sentence, and ruled to pay the AP \$20,000.00 (approximately \$19,978.00 USD) fine on November 10, 2011.¹⁴⁵ Therefore, the Court determined that the State fulfilled its obligation.¹⁴⁶

136. *Id.* ¶ 27.

137. *Id.*

138. *Id.* ¶¶ 30-33.

139. Eduardo Kimel v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 7 (May 18, 2010).

140. *Id.* ¶ 7.

141. *Id.*

142. *Id.* ¶ 8.

143. *Id.* ¶ 13.

144. *Id.* ¶¶ 14-17.

145. Eduardo Kimel v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 11.

146. *Id.* ¶ 12.

VII. LIST OF DOCUMENTS

1. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

[Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 177 \(May 2, 2008\).](#)

[Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Concurring Opinion of Judge García Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 177 \(May 2, 2008\).](#)

[Eduardo Kimel v. Argentina, Merits, Reparations, and Costs, Concurring Opinion of Judge García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 177 \(May 2, 2008\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Eduardo Kimel v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 18, 2010\).](#)

[Eduardo Kimel v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(November 15, 2010\).](#)

[Eduardo Kimel v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(February 5, 2013\).](#)

5. Review and Interpretation of Judgment

[None]

2. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Eduardo Kimel v. Argentina, Admissibility Report No. 5/04, Inter-Am. Comm'n H.R., Case No. 12.450 \(Feb. 24, 2004\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Eduardo Kimel v. Argentina, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.450, \(Apr. 10, 2007\).](#)

6. Other Commission Documents

Horacio Verbitsky v. Argentina, Friendly Settlement, Inter-Am. Comm'n H.R., Case No. 11.012, ¶ 1 (Sept. 20, 1992).

VIII. BIBLIOGRAPHY

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[Janet Koven Levitt, *The Constitutionalization of Human Rights in Argentina: Problem or Promise?*, 37 *Colum. J. Transn'l L.* 281 \(1999\).](#)