

Ximenes Lopes v. Brazil

ABSTRACT¹

This case is about the mistreatment and eventual death of a patient of a psychiatric clinic. The case is notable because it is one of the few decided by the Court that touches upon the rights of persons with disabilities and the duties of the State in that regard. Eventually, the Court found the State in violation of the American Convention.

I. FACTS

A. Chronology of Events

1995: Mr. Damião Ximenes Lopes (“Mr. Ximenes Lopes”), a mentally ill individual, is admitted to a psychiatric hospital, Guararapes Rest Home (Casa de Reposo Guararapes), in the Municipality of Sobral, State of Ceará, for the first time.² Two months after he is admitted, Mr. Ximenes Lopes returns home mentally stable but with physical “injuries to his knees and ankles.”³

October 1, 1999: Mr. Ximenes Lopes, now thirty years old, is committed, a second time, to Guararapes Rest Home for psychiatric treatment.⁴ Mr. Ximenes Lopes is suffering from anxiety and cannot sleep or eat.⁵ Other than those conditions, Mr. Ximenes Lopes is in “excellent physical condition” and is not exhibiting aggression or other odd behaviors.⁶

October 3, 1999: Mr. Ximenes Lopes has a psychological episode and refuses to come out of the bathroom.⁷ A nurse’s aide and two other patients force him out, but, in the process, Mr. Ximenes Lopes injures his

1. Michelle Gonzalez, Author; Emily Williams, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 2, 112(3) (July 4, 2006).

3. *Id.*

4. *Id.* ¶ 2.; *Id.* ¶ 112(2).

5. *Id.* ¶ 112(4).

6. *Id.* ¶ 112(5).

7. *Id.* ¶ 112(7).

face.⁸ After he is removed from the bathroom, he is physically restrained.⁹ Later, he experiences another episode and is physically restrained again.¹⁰

October 4, 1999: At approximately 9:00 am Ms. Albertina Viana Lopes (“Ms. Viana Lopes”), Mr. Ximenes Lopes’ mother, visits him only to find him still restrained, “bleeding, with bruises, his clothes torn, dirty and smelling like excrement.”¹¹ Mr. Ximenes Lopes also has lesions, and is experiencing shortness of breath and severe pain, shouting for help.¹² Upon seeing this, Ms. Viana Lopes asks Dr. Francisco Ivo de Vasconcelos (“the doctor”) to tend to her son, who simply prescribes Mr. Ximenes Lopes medication without assessing his physical state.¹³ After prescribing the medication, the doctor leaves the hospital; there is no permanent doctor at the facility.¹⁴

Later that morning, Mr. Ximenes Lopes dies; no doctor is at the hospital to tend to his needs.¹⁵ After his death, the doctor returns to the hospital and examines the body, reports him dead, notes no visual injuries, and deems the cause of death a “cardio respiratory arrest.”¹⁶ He does not request an autopsy, but Mr. Ximenes Lopes’ next of kin – Ms. Viana Lopes, Mr. Francisco Leopoldino Lopes (father), Mrs. Irene Ximenes Lopes Miranda (sister), and Mr. Cosme Ximenes Lopes (twin brother) – request an autopsy.¹⁷

Late that night Mr. Ximenes Lopes’ body arrives at the morgue, where the doctor also works, and an autopsy is conducted.¹⁸ The autopsy states that there are no signs of internal injuries, only external ones caused by blunt force or multiple falls.¹⁹ The cause of death is unknown; there is no evidence to determine whether a foreign object caused Mr. Ximenes Lopes’ death.²⁰

October 12, 1999: Ms. Viana Lopes and Mrs. Ximenes Lopes Miranda, both file complaints – one civil and one criminal – requesting justice for

8. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶ 112(7).

9. *Id.*

10. *Id.* ¶ 112(8).

11. *Id.* ¶ 112(9).

12. *Id.*

13. *Id.* ¶ 112(10).

14. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶ 112(10).

15. *Id.* ¶ 112(11).

16. *Id.* ¶ 112(12).

17. *Id.* ¶¶ 112(12)-(13).

18. *Id.* ¶ 112(14).

19. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶ 112(14).

20. *Id.*

Mr. Ximenes Lopes.²¹

November 9, 1999: An investigation regarding Mr. Ximenes Lopes' death is ordered.²²

November 22, 1999: Mrs. Ximenes Lopes Miranda presents a petition to the Inter-American Commission on Human Rights.²³

December 8, 1999: After conducting an investigation and gathering statements from several individuals involved in the case, the Chief of Police submits his final report, which states that Guararapes Rest Home and its staff may be liable for the “maltreatment, torture, and homicide” of Mr. Ximenes Lopes.²⁴

March 27, 2000: Criminal proceedings begin against the employees of the hospital Mr. Ximenes Lopes was committed to that were responsible for his well-being – Mr. Sérgio Antunes Ferreira Gomes, Mr. Carlos Alberto Rodrigues dos Santos, Mr. André Tavares do Nascimento and Ms. Maria Salete Moraes de Mesquita – for their alleged involvement in Mr. Ximenes Lopes' death.²⁵

July 10, 2000: Pursuant to Administrative Resolution No. 113, Guararapes Rest Home may no longer administer care to psychiatric clients or represent themselves as a psychiatric hospital.²⁶

January 26, 2001: Ms. Viana Lopes is added as a complainant to the criminal action.²⁷

April 6, 2002: The body of Mr. Ximenes Lopes is exhumed in an attempt to determine the cause of death.²⁸ Due to the deterioration of the body, experts are not able to determine the cause.²⁹

September 9, 2004: The State trial court judge states that due to complications, such as attorneys not being available, attorneys not being given

21. *Id.* ¶ 112(17).

22. *Id.* ¶ 112(18).

23. *Id.* ¶ 5.

24. *Id.* ¶ 112(22).

25. *Ximenes Lopes v. Brazil*, Merits, Reparations and Costs, ¶ 112(25).

26. *Id.* ¶ 112(67).

27. *Id.* ¶ 112(28).

28. *Id.* ¶ 112(16).

29. *Id.*

proper notice, and the judge being gone for 90 days, the court has not had the opportunity to come to a resolution.³⁰

February 14, 2005: State criminal proceedings regarding Mr. Ximenes Lopes' death are suspended until a decision is made regarding a "motion to stay the filing of closing arguments."³¹

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

November 22, 1999: Mrs. Ximenes Lopes Miranda presents a petition to the Inter-American Commission on Human Rights.³²

October 9, 2002: The Commission notifies the State about the complaint and asks that it provide any information the State deems necessary.³³ The State fails to reply,³⁴ and Admissibility Report No. 38/02 is approved.³⁵

October 8, 2003: The Commission adopts Report on the Merits 43/03.³⁶ The Commission concludes the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.³⁷ Recommendations to the State by the Commission include adopting measures to rectify the violations related to Mr. Ximenes Lopes's inhumane hospitalization, murder, and the inadequate investigation surrounding these facts.³⁸

October 17, 2003: The *Centro por la Justicia Global* (Center for Global

30. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶¶ 112(34), (38), (41).

31. *Id.* ¶ 112(42).

32. *Id.* ¶ 5.

33. Ximenes Lopes v. Brazil, Admissibility Report, Report No. 38/02, Inter-Am. Comm'n H.R., Case No. 12.237, ¶ 18 (Oct. 9, 2002).

34. *Id.*

35. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶ 7.

36. *Id.* ¶ 10.

37. *Id.*

38. *Id.*; See also Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, <http://www.cidh.org/annualrep/2000eng/chap.6e.htm> (last visited July 30, 2016).

Justice) is allowed to be a co-applicant in the case before the Commission.³⁹

March 17 and June 18, 2004: The State requests an extension to implement measures to redress the violations.⁴⁰ The time extension is granted.⁴¹

September 23, 2004: The State files a partial report on its implementations.⁴² Twelve days later, after the extension expires, the State files an answer to the Report on the Merits 43/03.⁴³

November 30, 2005: The State acknowledges partial international responsibility for its violation of Articles 4 (Right to Life) and 5 (Right to Humane Treatment).⁴⁴

B. Before the Court

October 1, 2004: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴⁵

1. Violations Alleged by Commission⁴⁶

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁴⁷

Same Violations Alleged by Commission.

39. *Id.* ¶ 9.

40. *Ximenes Lopes v. Brazil*, Merits, Reparations and Costs, ¶ 13.

41. *Id.*

42. *Id.* ¶ 14.

43. *Id.*

44. *Id.* ¶ 66.

45. *Id.* ¶ 16.

46. *Ximenes Lopes v. Brazil*, Merits, Reparations and Costs, ¶ 10.

47. *Id.* ¶ 20.; *Centro por la Justicia Global* served as representative of the petitioners. *Id.* ¶ 18. However, new representatives were appointed during the proceedings. *Id.* n.2.

March 8, 2005: The State files a preliminary objection⁴⁸ claiming that domestic remedies have not been exhausted.⁴⁹

November 30, 2005: The Court dismisses the preliminary objection of the State.⁵⁰ The Court finds that an objection to the Court's exercise of jurisdiction based on lack of exhaustion of remedies should have been raised before the Commission in a timely fashion.⁵¹ Since the State did not submit its objection at the appropriate procedural stage, the State implicitly waives any preliminary objection.⁵²

Judge Cançado Trindade appended a Concurring Opinion.⁵³ In his opinion he notes his satisfaction with the parties' arguments and thinks there needs to be a better understanding of the role of the Commission under the American Convention on Human Rights as well as improving the proceedings under the Convention.⁵⁴

III. MERITS

A. *Composition of the Court*⁵⁵

Sergio García Ramírez, President
 Alirio Abreu Burelli, Vice President
 Antônio Augusto Cançado Trindade, Judge
 Cecilia Medina Quiroga, Judge
 Manuel E. Ventura Robles, Judge
 Diego García-Sayán, Judge

Pablo Saavedra Alessandri, Secretary
 Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

July 4, 2006: The Court issues its Judgment on Merits, Reparations and

48. *Id.* ¶ 21.

49. *Ximenes Lopes v. Brazil*, Preliminary Objection, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 139 (Nov. 30, 2005).

50. *Id.* "Decides" ¶ 1.

51. *Id.* ¶ 9.

52. *Id.* ¶ 5.

53. *Id.* "Concurring Opinion".

54. *Id.* "Concurring Opinion" ¶ 2.

55. Judge Oliver Jackman did not participate in the proceedings for reasons beyond his control. *Ximenes Lopes v. Brazil*, Merits, Reparations and Costs, n.**.

Costs.⁵⁶

The Court found unanimously that Brazil had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), 5(1) (Right to Physical, Mental, and Moral Integrity), and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) of the Convention, to the detriment of Mr. Ximenes Lopes,⁵⁷ because:

To show the international community the State's commitment to human rights, the State acknowledged international responsibility with regards to Article 4 (Right to Life) and 5 (Right to Humane Treatment).⁵⁸ The State acknowledged Mr. Ximenes Lopes's mistreatment and its role in his death, along with the deficits in their mental health care system.⁵⁹ However, the Court still found it pertinent to analyze the violations in light of the mental health aspect of the case.⁶⁰

The Court looked to the rights of persons with mental illness, and the obligations of the State to secure these rights.⁶¹ The State must ensure access to health care, especially for individuals with mental illness.⁶² Those with mental illness are more vulnerable than others due to their psychological and emotional state, and their vulnerability increases when they are admitted to mental health facilities.⁶³ The State must ensure that conditions in its mental health facilities uphold a patient's dignity and uphold the standards outlined by the United Nations.⁶⁴ Part of these conditions include using restraints; treatment should be administered in the least restrictive way possible, so restraint should only be used when absolutely necessary since it poses the greatest risk of harm.⁶⁵ The Court determined that the State failed its duty of care, its duty to preserve "the right to life and humane treatment," and its duty to "regulate and

56. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149 (July 4, 2006).

57. *Id.* "Operative Paragraphs" ¶ 2.

58. *Id.* ¶¶ 115, 119.

59. *Id.* ¶ 122.

60. *Id.* ¶ 123.

61. *See generally id.* ¶¶ 124-49.

62. Ximenes Lopes v. Brazil, Merits, Reparations, and Costs, ¶ 128.

63. *Id.* ¶ 129.

64. *Id.* ¶ 131.

65. *Id.* ¶¶ 133-35.

monitor health care services.”⁶⁶ Additionally, the State has a duty to conduct fair, serious, and effective investigations of human rights violations without delay.⁶⁷ Accordingly, the Court found the State in violation of these articles.⁶⁸

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Ms. Viana Lopes, Mr. Francisco Leopoldino Lopes, Mrs. Ximenes Lopes Miranda, and Mr. Cosme Ximenes Lopes, next of kin of Mr. Ximenes Lopes,⁶⁹ because:

Ms. Viana Lopes left her son, Mr. Ximenes Lopes, under the State’s custody with the expectation the State would aid him in his recovery, but instead learned he had died only three days after leaving him at the hospital.⁷⁰ As a result of Mr. Ximenes Lopes’ death, Ms. Viana Lopes began suffering from depression, “lost the will to continue living,” and developed an ulcer, among other health issues.⁷¹

Mr. Leopoldino Lopes, though separated from Ms. Viana Lopes, was very close to Mr. Ximenes Lopes.⁷² Mr. Leopoldino Lopes became distressed after Mr. Ximenes Lopes’ death and wanted revenge for his son’s death.⁷³

Mrs. Ximenes Lopes Miranda suffered extreme depression after Mr. Ximenes Lopes’ death, which damaged her ability to connect to her newborn child and the rest of her family, as well as resulted in her terminating her employment.⁷⁴ Additionally, she was heavily involved in the judicial process seeking justice for Mr. Ximenes Lopes, and because of this she has had to travel away from her family for long periods of time.⁷⁵

Mr. Cosme Ximenes Lopes was Mr. Ximenes Lopes’ twin and is also mentally ill, which created a strong relationship between him and Mr. Ximenes Lopes.⁷⁶ After learning of his brother’s death he went into shock, became depressed, and terminated his employment.⁷⁷

66. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶ 146.

67. *Id.* ¶¶ 147-48.

68. *Id.* ¶¶ 122, 150.

69. *Id.* “Operative Paragraphs” ¶ 3.

70. *Id.* ¶ 157.

71. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶ 157.

72. *Id.* ¶ 159.

73. *Id.*

74. *Id.* ¶ 160.

75. *Id.*

76. *Id.* ¶ 162.

77. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, ¶ 162.

*All of this combined amounted to a violation of Article 5 (Right to Humane Treatment) of the Convention to the detriment of Mr. Ximenes Lopes' next of kin.*⁷⁸

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Ms. Viana Lopes and Mrs. Ximenes Lopes Miranda,⁷⁹ because:

*The Court determined that the State had the responsibility to investigate the violation of Mr. Ximenes Lopes' right to life and humane treatment.*⁸⁰ *When a death occurs, State authorities investigating must: (a) identify the victim; (b) obtain and preserve evidence; (3) identify potential witnesses and their statements; (d) determine the "cause, manner, location and time of death;" and (e) determine if the death was natural, accidental, suicide or homicide.*⁸¹ *In this investigation, the doctor initially labeled cause of death as "cardio respiratory arrest," despite signs of ill-treatment.*⁸² *The Court determined that the doctor failed to adopt sufficient measures in examining Mr. Ximenes Lopes's body since he failed to include the external injuries in his report and did not automatically order an autopsy.*⁸³ *When the autopsy was ordered, it did not meet international standards since it did not describe the external injuries or what they were caused by; it also did not include a cause of death.*⁸⁴ *Additionally, the investigation into Mr. Ximenes Lopes's death was not commenced until 36 days later, showing a "lack of due diligence" since it delayed the gathering and preserving of evidence.*⁸⁵ *All of this pointed to negligence on behalf of the authorities.*⁸⁶

Under Article 25(1) (Right of Recourse Before a Competent Court), States must ensure that everyone has access to "effective judicial recourse" if their fundamental rights have been violated, and must also be in accordance with the due process requirements under Article 8 (Right

78. *Id.* ¶ 163.

79. *Id.* "Operative Paragraphs" ¶ 4.

80. *Id.* ¶ 177.

81. *Id.* ¶ 179.

82. *Id.* ¶ 180.

83. *Ximenes Lopes v. Brazil, Merits, Reparations and Costs*, ¶ 182.

84. *Id.* ¶ 187.

85. *Id.* ¶¶ 188-89.

86. *Id.* ¶ 191.

to a Fair Trial).⁸⁷ Under Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), the Court looks to (a) complexity, (b) procedure, and (c) judicial conduct to determine if the time period of the investigation was reasonable.⁸⁸ Here, the Court determined that the case was not complex since there was only one victim who had clearly been identified.⁸⁹ Ms. Viana Lopes and Mrs. Ximenes Lopes Miranda fully cooperated over six years with the police investigation, whereas the State was not fully committed to its investigation.⁹⁰ All delays in judicial proceedings were due to conflicts with only the State's judicial authorities and after six years the trial court had made no decision.⁹¹ Such a significant delay is unreasonable and constitutes a violation.⁹² Thus, the State violated the rights of Ms. Viana Lopes and Mrs. Ximenes Lopes Miranda set forth in Articles 8(1) (Right of Recourse Before a Competent Court) and Article 25(1) (Right of Recourse Before a Competent Court).

C. Dissenting and Concurring Opinions

1. Reasoned Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez wrote that it is the duty of the State to protect all people under its jurisdiction, regardless of how able or disabled they are.⁹³ The State's duty becomes even more important for persons who are mentally ill, because they rely, either directly or indirectly, on agents of the State for their care.⁹⁴ Here, the State must take responsibility for the death of Mr. Ximenes Lopes because the hospital "operates under a public law relationship" with the State.⁹⁵ The Court appreciates the State taking partial international responsibility because it paves the way for a resolution between the parties.⁹⁶

2. Separate Opinion of Judge Antônio Augusto Cançado Trindade

87. *Id.* ¶¶ 192-93.

88. *Id.* ¶ 196.

89. *Ximenes Lopes v. Brazil, Merits, Reparations, and Costs*, ¶ 197.

90. *Id.* ¶ 198.

91. *Id.* ¶ 199.

92. *Id.* ¶ 203.

93. *Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Reasoned Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 3 (July 4, 2006).*

94. *Id.* ¶ 17.

95. *Id.* ¶ 28.

96. *Id.* ¶ 29.

In a separate opinion, Judge Cançado Trindade compares Mrs. Ximenes Lopes Miranda's loss of her brother to that of *Electra* by Sophocles and Euripides.⁹⁷ He goes on to write that an efficient judicial process is a legal right at the international and national level.⁹⁸ The Court should have analyzed beyond Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) of the Convention, which would have broadened the scope of what exactly the "right of access to justice" means and elaborated on what due process guarantees.⁹⁹ The purpose of international law and the "guarantee of non-repetition of human rights violations" rests on educating States on human rights.¹⁰⁰ If the Court would have gone beyond analyzing only Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) regarding judicial rights and efficiency, it would have made it more difficult for States and other actors to create human rights violations.¹⁰¹

IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself should be understood as a form of reparation.¹⁰²

2. Further Investigate the Instant Case

The Court indicated that Mr. Ximenes Lopes' family is entitled to an effective investigation.¹⁰³ The Court takes issue with the fact that six

97. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶¶ 3-14 (July 4, 2006).

98. *Id.* ¶ 20.

99. *Id.* ¶ 47.

100. *Id.* ¶ 37.

101. *Id.* ¶ 47.

102. Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 251 (July 4, 2006).

103. *Id.* ¶ 246.

years have passed and the perpetrators have not been prosecuted or punished.¹⁰⁴ The State must ensure legal proceedings are carried out within a reasonable amount of time.¹⁰⁵

3. Publication of Judgment

The Court indicated that the State must publish the Judgment in a nationally circulated newspaper and in the Official Gazette.¹⁰⁶

4. Implementation of Training Programs

The Court indicated that the State must implement “training and education” programs for all persons working in the mental health industry.¹⁰⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$1,500 to Ms. Viana Lopes for Mr. Ximenes Lopes’ funeral expenses.¹⁰⁸

2. Non-Pecuniary Damages

The Court awarded \$50,000 total to Ms. Viana Lopes, Mrs. Ximenes Lopes Miranda, Mr. Leopoldino Lopes, and Mr. Cosme Ximenes Lopes as compensation for non-pecuniary damages, because Mr. Ximenes Lopes’ death was due to inadequate medical care and treatment.¹⁰⁹

Additionally, the Court awarded \$30,000 to Ms. Viana Lopes as compensation for non-pecuniary damages because she witnessed Mr. Ximenes Lopes’ condition at the hospital and his death caused her “physical and psychological after-effects.”¹¹⁰

The Court awarded \$10,000 to Mr. Leopoldino Lopes as compensation for non-pecuniary damages, because he must endure the death of his

104. *Id.* ¶ 247.

105. *Id.* ¶ 248.

106. *Id.* ¶ 249.

107. *Id.* ¶ 250.

108. *Ximenes Lopes v. Brazil, Merits, Reparations and Costs*, ¶ 226.

109. *Id.* ¶¶ 237(a), 238(a).

110. *Id.* ¶¶ 237(b), 238(b).

son, Mr. Ximenes Lopes.¹¹¹

The Court awarded \$25,000 to Mrs. Ximenes Lopes Miranda as compensation for non-pecuniary damages because Mr. Ximenes Lopes' death affected her psychologically, as well as affected her relationship with her children.¹¹² Additionally, Mrs. Ximenes Lopes Miranda was heavily involved in litigation regarding Mr. Ximenes Lopes' death, which forced her to repeatedly relive her brother's death.¹¹³

The Court awarded \$10,000 to Mr. Cosme Ximenes Lopes as compensation for non-pecuniary damages, as a result of the death of his twin brother, Mr. Ximenes Lopes.¹¹⁴

3. Costs and Expenses

The Court awarded \$10,000 to Ms. Viana Lopes to reimburse her "costs incurred" as well as the costs incurred by the rest of Mr. Ximenes Lopes' next of kin.¹¹⁵ Additionally, Ms. Viana Lopes is to pay the Center for Global Justice "an amount she deems appropriate" as reimbursement for the costs they incurred.¹¹⁶

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

\$ 136,500

C. Deadlines

The State must initiate "domestic proceedings" against those responsible for the death of Mr. Ximenes Lopes within a reasonable time.¹¹⁷

The State must publish the Judgment within six months.¹¹⁸

The State must pay pecuniary damages in cash within one year of the Judgment.¹¹⁹

The State must pay non-pecuniary damages in cash within one year of the Judgment.¹²⁰

The State must pay the costs and expenses in cash within one year

111. *Id.* ¶¶ 237(c), 238(c).

112. *Id.* ¶¶ 237(d), 238(d).

113. *Id.*

114. *Id.* ¶¶ 237(e), 238(e).

115. *Ximenes Lopes v. Brazil*, Merits, Reparations and Costs, ¶ 253.

116. *Id.*

117. *Id.* (Operative Paragraphs) ¶ 6.

118. *Id.* ¶ 7.

119. *Id.* ¶ 9.

120. *Ximenes Lopes v. Brazil*, Merits, Reparations and Costs, ¶ 10.

of the Judgment.¹²¹

The State must monitor compliance with the Judgment and report on compliance in one year.¹²²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

May 2, 2008: The State fully complied with its obligations to publish the Judgment and pay Ms. Viana Lopes, Mrs. Ximenes Lopes Miranda, Mr. Leopoldino Lopes, and Mr. Cosme Ximenes Lopes their pecuniary and non-pecuniary damages.¹²³ The Court kept open the proceeding for monitoring compliance with regard to the proceedings against those responsible for Mr. Ximenes Lopes' death and the educational training programs for those in the mental health industry.¹²⁴

September 21, 2009: The Court found the State did not fully comply with its obligations and decided to keep open the proceeding for monitoring compliance with regard to the proceedings against those responsible for Mr. Ximenes Lopes' death and the educational training programs for those in the mental health industry.¹²⁵

May 17, 2010: The Court found, again, that the State did not fully comply with its obligations and decided to keep open the proceeding for monitoring compliance with regard to the proceedings against those responsible for Mr. Ximenes Lopes' death and the educational training programs for those in the mental health industry.¹²⁶

121. *Id.* ¶ 11.

122. *Id.* ¶ 12.

123. Ximenes Lopes v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Declares) ¶ 1 (May 2, 2008).

124. *Id.* ¶ 2.

125. Ximenes Lopes v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Declares) ¶ 1 (Sept. 21, 2009).

126. Ximenes Lopes v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Declares) ¶ 1 (May 17, 2010).

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Ximenes Lopes v. Brazil, Preliminary Objection, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 139 \(Nov. 30, 2005\).](#)

2. Decisions on Merits, Reparations and Costs

[Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 149 \(July 4, 2006\).](#)

[Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Reasoned Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 149 \(July 4, 2006\).](#)

[Ximenes Lopes v. Brazil, Merits, Reparations and Costs, Separate Opinion of Judge A. A. Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 149 \(July 4, 2006\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Ximenes Lopes v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 2, 2008\).](#)

[Ximenes Lopes v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 21, 2009\).](#)

[Ximenes Lopes v. Brazil, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 17, 2010\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Ximenes Lopes v. Brazil, Admissibility Report, Report No. 38/02, Inter-Am. Comm'n H.R., Case No. 12.237 \(Oct. 9, 2002\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Ximenes Lopes v. Brazil, Report on Merits, Report No. 43/03, Inter-Am. Comm'n H.R., Case No. 12.237 \(Oct. 1, 2004\).](#)

5. Application to the Court

[Ximenes Lopes v. Brazil, Final Written Allegations, Inter-Am. Comm'n H.R., Case No. 12.237 \(Dec. 23, 2005\).](#)

VIII. BIBLIOGRAPHY

[Cássia Maria Rosato & Ludmila Cerquiera Correla, *The Damião Ximenes Lopes Case: Changes and Challenges Following the First Ruling Against Brazil in the Inter-American Court of Human Rights*, CONECTAS HUMAN RIGHTS, <http://www.conectas.org/en/actions/sur-journal/issue/15/1000170-caso-damiao-ximenes-lobes-mudancas-e-desafios-apos-a-primeira-condenacao-do-brasil-pela-corte-interamericana-de-direitos-humanos>.](#)