

Mohamed v. Argentina

ABSTRACT¹

This case is about the trial of a bus driver who hit and killed a pedestrian crossing at an intersection in Buenos Aires. The Court found that the bus driver's right to an appeal had been violated, but found otherwise in favor of the State on other grounds.

I. FACTS

A. Chronology of Events

March 16, 1992: Mr. Oscar Alberto Mohamed, a bus driver in Buenos Aires, Argentina, strikes a pedestrian, Ms. Adela Vidarte de Urli, who was crossing an intersection.² She suffers severe injuries and is rushed to the hospital.³ Shortly after, she dies from a skull fracture, contusion, and brain hemorrhage.⁴

April 27, 1992: Traffic and Transportation Regulations Decree 692/92 takes effect.⁵

August 30, 1994: An initial judgment relieves the bus driver of responsibility for negligent homicide.⁶

August 31, 1994: The Public Prosecutor's Office files an appeal against the acquittal.⁷

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

2. Mohamed v. Argentina, Report on Merits, Report No. 173/10, Inter-Am. Comm'n H.R., Case No. 11.618, ¶ 31 (Nov. 2, 2010).

3. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 255, ¶ 38 (Nov. 23, 2012).

4. *Id.* ¶¶ 38, 55, n.54; Mohamed v. Argentina, Report on Merits, ¶ 31.

5. Mohamed v. Argentina, Report on Merits, ¶ 39.

6. Mohamed v. Argentina, Admissibility Report, Report No. 2/05, Inter-Am. Comm'n H.R., Case No. 25.014, ¶ 11 (Feb. 22, 2006); Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 41.

7. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 46.

September 9 and 20, 1994: Mr. Roque J. Mantione, Mr. Mohamed's defense attorney, files an appeal for fees.⁸

September 14, 1994: Ms. Vidarte de Urli's attorney files an appeal against the acquittal and attorney's fees.⁹

September 29, 1994: The National Correctional Court No. 3, Secretariat No. 60, of the Federal Capital grants all three appeals and orders the case to be heard by a higher court.¹⁰

September 30, 1994: The case is given to the First Chamber of the Chamber of Appeals for Criminal and Correctional Matters ("First Chamber"), which is made up of three judges.¹¹

February 22, 1995: The First Chamber overturns the original decision, gives Mr. Mohamed a "three-year suspended prison sentence," and bans him from driving for eight years.¹²

March 13, 1995: Mr. Mantione files a special appeal against the First Chamber's ruling,¹³ requesting a transfer to a Superior Court, which would allow the higher court to annul and issue a new judgment because his client had been unconstitutionally denied "access to the federal level."¹⁴ Furthermore, Mantione notes that the First Chamber's ruling is wrongly based on a decree (Decree 696/96) that had not taken force at the time of the accident.¹⁵

April 7, 1995: The Prosecutor of the First Chamber ("First Chamber Prosecutor") files a report suggesting the special appeal should be rejected.¹⁶ He argues that the nature of the case does not warrant a special appeal because Mr. Mantione is appealing under "the doctrine of arbitrariness," which is only allowed in exceptional circumstances.¹⁷ Further, he contends that even though Decree 696/96 does not apply, the final decision of the First Chamber stands because traffic regulations in force at the time

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Mohamed v. Argentina, Admissibility Report, ¶ 12.

13. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 52.

14. *Id.*

15. *Id.*

16. *Id.* ¶ 53.

17. *Id.*

of the accident contained guidelines similar to those in Decree 696/96.¹⁸

April 27, 1995: The Plaintiff asks the First Chamber to deny the appeal.¹⁹

July 4, 1995: The First Chamber declines to accept the defense's appeal and indicates that while they have pointed out an error, the judgment was based on indisputable, "objective responsibility."²⁰

July 18, 1995: Mr. Mantione files a motion for review appeal directly before the Supreme Court of Justice ("Supreme Court").²¹

September 19, 1995: The Supreme Court rejects the appeal as inadmissible.²²

September 27, 1995: Mr. Mantione files a brief with the Supreme Court asking for it to overturn its judgment.²³ He states that by dismissing the motion for review, the Supreme Court has run afoul of Article 8 (Right to a Fair Trial) and Article 9 (Freedom from *Ex Post Facto* Laws) of the American Convention of Human Rights ("American Convention"),²⁴ and the matching provisions outlined in the State Constitution and Universal Declaration of Human Rights.²⁵

October 19, 1995: The Supreme Court dismisses Mr. Mantione's motion as inadmissible.²⁶

July 17, 1995: Mr. Mohamed is fired from his job because he lost driving privilege due to his conviction.²⁷

B. Other Relevant Facts

[None]

18. *Id.*

19. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 53.

20. Mohamed v. Argentina, Admissibility Report, ¶ 13.

21. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 57.

22. Mohamed v. Argentina, Admissibility Report, ¶ 13.

23. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 59.

24. *Id.*

25. Mohamed v. Argentina, Admissibility Report, ¶ 14.

26. Mohamed v. Argentina, Report on Merits, ¶ 38.

27. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 61.

II. PROCEDURAL HISTORY

A. Before the Commission

March 18, 1996: Mr. Mohamed and Mr. Mantione present a petition to the Inter-American Commission on Human Rights (“the Commission”).²⁸

February 22, 2005: The Commission issues the Report on Admissibility.²⁹ The State claims that it did not apply an *ex-post facto* law,³⁰ and that it provided Mr. Mohamed due process.³¹ The Commission rebuts that at this stage of proceedings, it must only show that the facts could define a possible cause of action, not whether they do.³² The Commission finds the claims at this time are not so unmerited as to prevent admission.³³ The State also claims the appellate review process was sufficient, and that if the Commission were to review the case, it would be acting as an appellate court of state law.³⁴ The Commission rebuts that it is acting within its authority to uphold the rights agreed to in the American Convention.³⁵

November 2, 2010: The Commission issues Report on the Merits No. 173/104.³⁶ The Report determines that the State violated Articles 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(h) (Right to Appeal), 9 (Freedom from *Ex Post Facto* Laws), and 25(1) (Right of Recourse Before a Competent Court), all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.³⁷ The Commission recommends the State take steps to allow Mr. Mohamed to file an appeal of his conviction, adopt steps that allow for the right to appeal to be accessed consistently, and take steps so Mr. Mohamed can receive “adequate and timely reparation” for the violation of his human rights.³⁸

28. Mohamed v. Argentina, Admissibility Report, ¶ 1.

29. *Id.*

30. *Id.* ¶ 19. An *ex-post facto* law as defined by the American Convention is a law that convicts a person of “any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed.” *Id.*

31. *Id.*

32. *Id.*

33. *Id.* ¶ 31.

34. Mohamed v. Argentina, Admissibility Report, ¶¶ 22-23.

35. *Id.* ¶ 32.

36. Mohamed v. Argentina, Report on Merits.

37. *Id.* ¶ 5.

38. *Id.* ¶ 110(1-3).

B. Before the Court

April 13, 2011: The Commission submits the case to the Court after the State failed to adopt its recommendations.³⁹

1. Violations Alleged by Commission⁴⁰

Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense)

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

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

Article 25(1) (Right of Recourse Before a Competent Court)

all in relation to:

Articles 1(1) (Obligation of Non-Discrimination) and

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

2. Violations Alleged by Representatives of the Victims⁴¹

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)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel)

Article 8(2)(e) (Right to Assistance of Counsel Provided by the State)

Article 8(4) (Right to a Fair Trial)

Article 25(2)(a) (Rights Must Be Enforced by Competent Authorities)

Article 25(2)(b) (Right to Judicial Protection) of the American Convention.

February 28, 2012: The State submits a brief to the Court with its preliminary objection, stating that the victims' alleged Article 8(4) (Prohibition of Double Jeopardy) violation had not been previously heard.⁴²

June 4, 2012: The President of the Court ("President") issues an order, in which he allows Mr. Mohamed's representatives to access the Victim's

39. Mohamed, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.618, ¶ 1 (April 13, 2011).

40. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 3.

41. *Id.* ¶¶ 7, 9. Mr. Gustavo Vitale and Mr. Marcelo Torres Bóveda, public defenders from Argentina and Paraguay, are assigned as to defend Mr. Mohamed. *Id.* ¶ 7.

42. *Id.* ¶¶ 10, 20.

Legal Assistance Fund.⁴³

June 28, 2012: The Secretariat of the Court, by demand of the President, requires the State to submit “documents on domestic legislation,” and the complete “record of the criminal proceedings against Mohamed” to aid the court in reaching a judgment.⁴⁴

July 6, 2012: The Chair of Human Rights of the Faculty of Law of the National University of Cuyo, Argentina, submits an *amicus curiae* brief.⁴⁵

III. MERITS

A. Composition of the Court⁴⁶

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

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 23, 2012: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁴⁷

The Court found unanimously to:

Dismiss the State’s preliminary objection, which argued that, because the alleged violation of Article 8(4) (Prohibition of Double Jeopardy) had not been previously heard in prior proceedings, it could not

43. *Id.* ¶ 12.

44. *Id.* ¶ 15.

45. *Id.* ¶ 16.

46. Judge Leonardo A. Franco, who shares the same nationality as the State, did not participate in the case. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, n.1

47. See generally Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs.

now be raised.⁴⁸

*The Court reasoned that the State's argument failed, because, although the violation had not been raised in the prior proceedings, the violation relied on facts that had been raised before.*⁴⁹

Not rule in regards to a potential violation of Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense),⁵⁰ because:

The Court reasoned that the representatives relied on "rules of criminal procedure" that they had failed to enter into evidence⁵¹ and also that the potential harms from this were the product of the violation of Article 8(2)(h) (Right to Appeal).⁵²

Not rule in regards to potential violations of Articles (8)(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), 8(2)(e) (Right to Assistance by Counsel Provided by State), 25(2)(a) (Rights Must Be Enforced by Competent Authorities) and 25(2)(b) (Possibility of Judicial Remedy),⁵³ because:

*The Court reasoned that the representatives did not set forth facts or arguments regarding these potential violations.*⁵⁴

Not rule in regards to potential violations of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court),⁵⁵ because:

The Court reasoned that the harms caused by these potential violations were the product of the violation of Article 8(2)(h) (Right to Appeal).⁵⁶

48. *Id.* "Decides" ¶ 1.

49. *Id.* ¶¶ 20-21, 27-28.

50. *Id.* "Declares" ¶ 3.

51. *Id.* ¶ 85.

52. *Id.* ¶¶ 118-19.

53. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, "Declares" ¶ 1.

54. *Id.* ¶ 85.

55. *Id.* "Declares" ¶ 3.

56. *Id.* ¶ 118-19.

The Court found unanimously the State had violated:

Article 8(2)(h) (Right to Appeal) in relation to Article 1(1) and Article 2 of the Convention, to the detriment of Mr. Mohamed,⁵⁷ because:

*Mr. Mohamed had a right to appeal his manslaughter conviction from the First Chamber.*⁵⁸ *Article 8(2)(h) (Right to Appeal) requires that an individual have access to an appeal as an effective remedy.*⁵⁹ *An effective appeal is one that deals with all the disputed evidence, facts, and law a judgment is based on.*⁶⁰ *The Court found the special appeal here was not an effective remedy because it is not meant to challenge a conviction in and of itself; rather it is meant to provide a limited option to challenge a law's "validity" or an arbitrary judgment.*⁶¹ *Similarly, the Court found that because the rejection of Mr. Mantione's motion for review was based on the same limited grounds as the special appeal, it was equally ineffective.*⁶² *Thus, the State violated Article 8(2)(h) (Right to Appeal) of the Convention.*⁶³

The Court found unanimously the State had not violated:

Article 8(4) (Prohibition of Double Jeopardy),⁶⁴ because:

*The original proceeding against Mr. Mohamed and the subsequent appeal were part of the same criminal judicial proceeding.*⁶⁵ *Article 8(4)(Prohibition of Double Jeopardy) contains the "principle of ne bis in idem" which prevents a person from being subjected to a new trial when they have already gone through a trial that has entered a final judgment.*⁶⁶ *The Court had previously ruled that all stages of a criminal judicial proceeding are part of one trial.*⁶⁷ *Thus, the State did not violate Article 8(4) (Prohibition of Double Jeopardy) of the Convention.*⁶⁸

The Court found by four votes to two to:

57. *Id.* "Declares" ¶ 2.

58. *Id.* ¶ 95.

59. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 99.

60. *Id.* ¶ 100.

61. *Id.* ¶ 104.

62. *Id.* ¶¶ 105-06.

63. *Id.* ¶ 117.

64. *Id.* "Declares" ¶ 4.

65. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 123.

66. *Id.* ¶ 125.

67. *Id.* ¶ 122.

68. *Id.* ¶ 126.

Not rule in regards to the possible violation of Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) of the Convention,⁶⁹ because:

*The matter dealt with criminal issues, which would be heard in the appeal mandated by the finding of a violation of Article 8(2)(h) (Right to Appeal).*⁷⁰

C. Dissenting and Concurring Opinions

1. Partial Dissenting Opinion of Judge Alberto Pérez Pérez

In a separate opinion, Judge Alberto Pérez partially dissented with the Court's dismissal of the potential violation of Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) (Obligation to Non-Discrimination) of the Convention.⁷¹ Judge Alberto Pérez Pérez backed the decision of the First Chamber convicting Mr. Mohamed because sufficient norms and State laws for criminal manslaughter and recklessness already existed at the time of the accident.⁷² He found the First Chamber's citation of a regulation embodied in Decree 692/92, although erroneous, was not fatal to the First Chamber's ruling.⁷³

IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The Court explained that the judgment itself was "*per se* a form of reparation."⁷⁴

69. *Id.* "Declares" ¶ 5.

70. *Id.* ¶ 139.

71. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partial Dissent by Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. (ser. C) No. 255, ¶ 1 (Nov. 23, 2012).

72. *Id.* ¶¶ 4-5.

73. *Id.* ¶ 6.

74. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, "And Orders" ¶ 1.

2. Allow Mohamed to Appeal

The Court ordered the State to take steps to allow Mr. Mohamed to appeal the conviction that he was given by the First Chamber.⁷⁵

3. Postpone the Legal Consequences of Mohammed's Conviction

The Court ordered the State to take steps to postpone the legal consequences of Mr. Mohamed's conviction until his right to appeal has been ensured.⁷⁶

4. Publish Judgment

The Court ordered the State to publish the Court's judgment once in the Official Gazette, once in a newspaper with national reach, and on an official website for one year.⁷⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded a combined amount of pecuniary and non-pecuniary damages of \$50,000 to Mr. Mohamed.⁷⁸ The Court considered Mr. Mohamed's lost wages⁷⁹ and his bar to the social security system over the eight years from when his driving prohibition was imposed in reaching the combined damage amount.⁸⁰

2. Non-Pecuniary Damages

The Court awarded a combined amount of pecuniary and non-pecuniary damages of \$50,000 to Mohamed.⁸¹

75. *Id.* "And Orders" ¶ 2.

76. *Id.* "And Orders" ¶ 3.

77. *Id.* ¶ 155, "And Orders" ¶ 4.

78. *Id.* ¶ 171.

79. *Id.* ¶¶ 17,0 n.136.

80. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 170.

81. *Id.* ¶ 171.

3. Costs and Expenses

The Court awarded \$3,000 to Mr. Mohamed for the costs and expenses he incurred presenting his case to the Commission, despite the lack of evidence regarding those expenses.⁸²

4. Victim's Legal Assistance Fund

The Court awarded \$7,539.42 to the Victim's Legal Assistance Fund for costs and expenses that were incurred by the Inter-American defenders in prosecuting Mohamed's case.⁸³

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

\$60,539.42

C. Deadlines

The State has six months to take steps to grant Mr. Mohamed an appeal.⁸⁴

The State must immediately suspend the legal consequences of Mr. Mohamed's conviction and ensure they remain suspended until he has obtained an appeal.⁸⁵

The State must comply with judgment publication orders within six months.⁸⁶

The State must pay the combined amount of pecuniary and non-pecuniary damages and the costs and expenses to Mohamed within one year.⁸⁷

The State must repay the Victim's Legal Assistance Fund within 90 days.⁸⁸

The State must submit a report on its compliance with the Judgment within one year.⁸⁹

82. *Id.* ¶ 177.

83. *Id.* ¶¶ 178, 180.

84. *Id.* ¶ 152(a).

85. *Id.* ¶ 152(b).

86. Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, ¶ 155.

87. *Id.* ¶¶ 171, 177.

88. *Id.* ¶ 180.

89. *Id.* "And Orders" ¶ 6.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

January 26, 2015: The State fulfilled its obligation to pay the Victim's Legal Assistance Fund.⁹⁰

November 13, 2015: The State was in the process of fulfilling its obligation to grant Mr. Mohamed an appeal, but he requested that the process be stopped.⁹¹ The Court granted Mr. Mohamed's request to stop the appeal and ruled that the State had fully complied.⁹² The State fulfilled its obligation to publish the Judgment in the Gazette, a newspaper with national reach, and online.⁹³ The State fully met its obligation to pay the combined amount owed for pecuniary and non-pecuniary damages.⁹⁴ The Court closed the proceedings.⁹⁵

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 255, \(Nov. 23, 2012\).](#)

2. Decisions on Merits, Reparations and Costs

[Mohamed v. Argentina, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 255, \(Nov. 23, 2012\).](#)

[Mohamed v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partial Dissent by Judge Alberto Pérez Pérez, Inter-Am. Ct. H.R. \(ser. C\) No. 255, \(Nov. 23, 2012\).](#)

90. Mohamed v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Resolved" ¶ 1 (Jan. 26, 2015).

91. Mohamed v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶ 7 (Nov. 13, 2015).

92. *Id.* ¶ 9.

93. *Id.* ¶¶ 12-14.

94. *Id.* ¶¶ 16-17.

95. *Id.* "Resolved" ¶ 6.

3. Provisional Measures

[Mohamed v. Argentina, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(June 4, 2012\).](#)

[Mohamed v. Argentina, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(June 18, 2012\).](#)

4. Compliance Monitoring

[Mohamed v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Jan. 26, 2015\) \(Available only in Spanish\).](#)

[Mohamed v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 13, 2015\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Mohamed v. Argentina, Admissibility Report, Report No. 2/05, Inter-Am. Comm'n H.R., Case No. 25.014, \(Feb. 22, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Mohamed v. Argentina, Report on Merits, Report No. 173/10, Inter-Am. Comm'n H.R., Case No. 11.618, \(Nov. 2, 2010\).](#)

5. Application to the Court

[Mohamed, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.618, \(April 13, 2011\).](#)

VIII. BIBLIOGRAPHY

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[Gustavo Vitale, Artículo de Gustavo Vitale sobre el Caso Mohamed vs. Argentina, <http://www.cdh.uchile.cl/noticias/detalle.tpl?id=20131105110737> \(last visited July 30, 2016, 8:23 AM\).](#)

[Valentin Thury Cornejo, Mohamed vs Argentina: no hay dos sin tres \(si de condenar se trata\), \(February 19, 2013\), <http://todosobrelacorte.com/2013/02/19/mohamed-vs-argentina-no-hay-dos-sin-tres-si-de-condenar-se-trata/>.](#)