

Almeida v. Argentina

ABSTRACT¹

This case is about a couple who was arbitrarily arrested, detained and tortured in the 1970s during Argentina’s dictatorship. After release from detention, the victims were put under surveillance, de facto. When Argentina returned to democracy, a law was passed to compensate all those who suffered under the dictatorship. However, because the victims’ surveillance was only de facto and not de jure, they were denied compensation even though in later decisions the State’s judiciary extended the scope of the law to cases similar to theirs. Eventually, the State admitted international responsibility and the Court found it in violation of the American Convention.

I. FACTS

A. Chronology of Events

March 1976: A *coup d’état* ushers in a dictatorship in Argentina, lasting until December 1983. During the dictatorship widespread human rights violations occur.²

June 5, 1978: Mr. Rufino Jorge Almeida and his wife, Mrs. Claudia Graciela Esteves, are kidnapped by members of Argentina’s military.³ They are transferred to a federal detention center known as “El Banco,” where they are tortured and held captive for fifty-four days.⁴

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² Almeida v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. ¶ 29 (Nov. 17, 2020).

³ Almeida v. Argentina, Report on Merits, Report No. 147/18, Inter-Am. Comm’n H.R., Case No. 12.950, ¶ 22 (Dec. 7, 2018).

⁴ *Id.*

July 29, 1978: Mr. Almeida and Ms. Esteves are released from “El Banco,” and placed on supervised release.⁵

1978-1981: From the moment of his release, Mr. Almeida is subjected to a monitoring system where members of the military or police from *El Banco* check in on him at his house on numerous occasions, asking for personal information.⁶ Mr. Almeida is not given a schedule for these visits, which initially took place every week before becoming more sporadic.⁷ After each visit, Mr. Almeida is given a phone number where he has to make check-in calls.⁸ In addition to reporting to the federal police, Mr. Almeida is asked to provide photographs, and is threatened when he interacts with politicians or human rights defenders.⁹

April 30, 1983: Mr. Almeida’s release-under-surveillance situation ends.¹⁰

1984: After the country returns to a democratic system, victims of the many human rights violations that took place under martial law begin filing legal actions demanding compensation.¹¹ Due to the difficult nature of addressing claims for compensation due to the secretive nature of the human rights violations and restrictive deadline for filing lawsuits,¹² the Argentine State establishes reparation measures.¹³

December 1991: Argentina issues Law 24.043, providing compensation to individuals whose liberties were unlawfully restricted by the National Executive Branch until December 10, 1983, as well as individuals who were unlawfully detained by order of military courts.¹⁴

February 21, 1995: Mr. Almeida files a request for compensation for illegal detention, as provided by Law 24.043.¹⁵

⁵ Almeida v. Argentina, Report on Merits, ¶ 22.

⁶ *Id.* ¶ 26.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* ¶ 6.

¹⁰ *Id.*

¹¹ Almeida v. Argentina, Report on Merits, ¶ 30.

¹² Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 30.

¹³ *Id.*

¹⁴ *Id.* ¶ 31.

¹⁵ *Id.* ¶ 35.

October 3, 1996: By resolution 2638/96, the Ministry on Interior Affairs recognizes Mr. Almeida's right to compensation for the 54 days he was in illegal detention.¹⁶

November 6, 1996: Mr. Almeida appeals resolution 2638/96, arguing that it does not compensate him for the 1,795 days that he was under surveillance.¹⁷ He argues that despite no longer being imprisoned at "El Banco," he did not have full freedom of movement after his release, and the Ministry's denial of his request for reparations violates his right to equal protection.¹⁸

March 25, 1999: The National Federal Contentious Administrative Chamber affirms resolution 263/96 because Mr. Almeida's supervised release did not come under the scope of Law 21.650, which defines release-under-surveillance and provides reparations for those who suffered under the regime in Argentina.¹⁹ On appeal, the National Court of Appeals for Federal Administrative Matters ("CNACAF") concludes that because Mr. Almeida was a victim of *de facto* supervised release, meaning there was no formal order establishing a measure restricting his freedom, he is considered to be unprotected by Law 24.043.²⁰

April 22, 1999: Mr. Almeida files a special appeal against the decision of the National Federal Contentious Administrative Chamber, arguing that the Supreme Court of Justice uses a broader interpretation of "supervised release,"²¹ citing the decision from *Noro, Horacio José v. Ministry of Interior Affairs*.²² The *Noro* decision expands the definition of "supervised release" to allow compensation for individuals that were subjected to both formal and informal government surveillance.²³ Mr. Almeida argues that his circumstances are similar to the claimant in *Noro* who, after being released from federal detainment, was required to

¹⁶ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 35.

¹⁷ *Id.* ¶ 36.

¹⁸ Almeida v. Argentina, Report on Merits, ¶ 29

¹⁹ *Id.* ¶ 30.

²⁰ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 49.

²¹ *Id.* ¶ 37.

²² *Id.* ¶ 38.

²³ *Id.* ¶ 38 ("supervised release' should include both those cases that fell formally under the regulations of the *de facto* government [...] and other cases in which the individual was subjected to control and monitoring without guarantees or without the full exercise thereof, demonstrable on the merits, representing comparable harm to their liberty").

obtain authorization to leave his city of residence, infringing on his personal liberty.²⁴

June 8, 1999: The National Federal Contentious Administrative Chamber (“the Chamber”) denies Mr. Almeida’s special appeal and finds Mr. Almeida’s later motion for reconsideration inadmissible.²⁵ The dismissal is due to Mr. Almeida’s failure to show the judgment had flawed logic or lack of legal grounds.²⁶

March 28, 2004: Mr. Almeida files an appeal before the Ministry of Justice and Human Rights for revocation of decision and the amendment of administrative resolution 2638/96 because of the expanded decision of *Robasto, Jorge Enrique v. Ministry of Justice and Human Rights* re affirming *Noro*.²⁷

August 14, 2006: The Ministry of Justice and Human Rights issues Resolution 1243/2006, rejecting Mr. Almeida’s appeal and refusing to modify a judicial judgment.²⁸

August 29, 2006: Mr. Almeida files a motion for reconsideration with the Ministry of Justice and Human Rights.²⁹

September 25, 2006: The Ministry of Justice and Human Rights rejects Mr. Almeida’s motion for reconsideration.³⁰

May 22, 2015: The Ministry of Justice and Human Rights compensates Ms. Esteves for the 1,709 days that she was also subjected to supervised release.³¹ The Ministry applies the precedents of *Noro* and *Robasto* in forming its decision, despite refusing to do so during Mr. Almeida’s appeals in 1999 and 2004.³²

B. Other Relevant Facts

[NONE]

²⁴ Almeida v. Argentina, Report on Merits, ¶ 33.

²⁵ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 39.

²⁶ *Id.*

²⁷ *Id.* ¶ 41.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 42.

³² *Id.* ¶¶ 41, 52.

II. PROCEDURAL HISTORY

A. *Before the Commission*

July 3, 2000: Mr. Almeida, Myriam Carsen, and Octavio Carsen (“the petitioners”) file a petition before the Commission.³³

July 18, 2014: The Commission issues Admissibility Report No. 45/14, which declares the petition admissible.³⁴

December 7, 2018: The Commission issues Merits Report No. 147/18.³⁵ The Commission concludes that the State is responsible for violating Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal); Article 24 (Right Equal Protection); and Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention on Human Rights, in relation to Article 1(1) (Obligation of Non-Discrimination) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the same instrument, to the detriment of Mr. Almeida.³⁶

In light of the foregoing violations, the Commission recommends the State to: (1) offer Mr. Almeida a prompt and proper system for reconsideration;³⁷ (2) take into account the arguments that Mr. Almeida raised during the first administrative proceedings and the appeals, as well as the petitions he filed after the precedent set in *Robasto*;³⁸ (3) comply with its international obligations regarding equal protection, and allow Mr. Almeida to prove his claim under Law 24.043, with all the necessary information, without objecting on the basis of *res judicata*.³⁹

February 7, 2019: The Commission notifies the State of the Merits Report and provides the State with two months to comply with the above recommendations.⁴⁰

³³ Almeida v. Argentina, Admissibility Report, Report No. 45/14, Inter-Am Comm’n H.R., Pet. No. 325-00, ¶ 1 (July 18, 2014).

³⁴ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 2.

³⁵ *Id.*

³⁶ Almeida v. Argentina, Report on Merits, ¶ 5.

³⁷ *Id.* “Recommends” ¶ 1.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 3.

B. Before the Court

August 7, 2019: The Commission submits the case to the Court, after the State fails to adopt its recommendations.⁴¹

February 5, 2020: The State submits a brief, accepting international responsibility for the violations alleged by the Commission in Merits Report No. 147/18.⁴² The State also notes that the exceptional character of Mr. Almeida's case does not reflect the recent changes made in the Argentine justice system that is now better equipped to handle similar situations.⁴³

1. Violations Alleged by Commission⁴⁴

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

Article 24 (Right to Equal Protection)

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

all in relation to:

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

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

2. Violations Alleged by Representatives of the Victims⁴⁵

Same Violations Alleged by the Commission.

III. MERITS

*A. Composition of the Court*⁴⁶

Elizabeth Odio Benito, President

L. Patricio Pazmiño Freire, Judge

Humberto Antonio Sierra Porto, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge, and

⁴¹ *Almeida v. Argentina*, Merits, Reparations, and Costs, ¶¶ 4, 5.

⁴² *Id.* ¶ 8.

⁴³ *Id.* ¶ 15.

⁴⁴ *Almeida v. Argentina*, Report on Merits, ¶ 5.

⁴⁵ *Almeida v. Argentina*, Merits, Reparations, and Costs, n. 3. Mr. Octavio Carsen, Ms. Myriam Carsen, and the Secretariat of the court served as representatives of the victims.

⁴⁶ Judge Eduardo Vio Gross, by reasons of *force majeure*, was unable to take part in deliberations and Judge Raúl Zaffaroni, in accordance with Article 19(1) and (2) of the Court's Rules, was unable to take part in deliberations. *Id.* n.*.

Ricardo C. Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

November 17, 2020: The Court issues its Judgment on Merits, Reparations and Costs.⁴⁷

The Court found unanimously that Argentina had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 24 (Right to Equal Protection), and Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) and Article (2) (Obligation to Give Domestic Legal Effect to Rights) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Almeida,⁴⁸ because:

*The Court acknowledged the State's acceptance of international responsibility for the violations alleged by the Commission.*⁴⁹

While the Court acknowledges that cases of de facto release-under-surveillance such as that of Mr. Almeida were originally beyond the scope of Law 24.043, precedent was later established that modified its interpretation.⁵⁰ This interpretation was established by the Supreme Court of Justice in Noro and adopted by the Chamber in Robasto, expanding the law to include compensation for individuals who were subjected to surveillance under supervised release.⁵¹

Therefore, although Mr. Almeida filed his original claim for the human rights violations before Noro took place, the Chamber unjustifiably denied Mr. Almeida's following special appeal that utilized the newly established precedent.⁵² Similarly, Mr. Almeida's appeal to the Ministry of Justice and Human Rights for revocation of decision in response to

⁴⁷ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 12.

⁴⁸ *Id.* "Decides" ¶ 2.

⁴⁹ *Id.* ¶ 20.

⁵⁰ *Id.* ¶ 51.

⁵¹ *Id.*

⁵² *Id.*

Robasto was denied on the grounds of *res judicata*.⁵³ The State unjustifiably denied Mr. Almeida a judicial mechanism to apply the new criteria of Law 24.043 to his case, while simultaneously providing such a mechanism to others with similar *de facto* situations – including Ms. Estevez, who had factually identical circumstances.⁵⁴

The Court recognizes the State's acknowledgment of responsibility for leaving Mr. Almeida without a proper remedy at law, and the inequality he suffered by refusing to compensate him for his time under the release-under-surveillance regime.⁵⁵ By failing to calculate the days Mr. Almeida was under supervised release into his compensation provided for under 24.043, the State did not fulfill its responsibility to make reparations for the inequality he suffered.⁵⁶ Thus, the Court concluded that the State violated Articles 8(1), 24, and 25(1) of the Convention.⁵⁷

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 ordered that the Judgment itself should act as a form of reparation.⁵⁸

2. Publish the Judgment

The Court ordered that the State publish the summary of the Judgment in the Official Gazette, and that the entire Judgment be made available for one year on a State website.⁵⁹

⁵³ Almeida v. Argentina, Merits, Reparations, and Costs, ¶¶ 45, 51.

⁵⁴ *Id.* ¶ 52.

⁵⁵ *Id.* ¶ 53.

⁵⁶ *Id.* ¶ 3.

⁵⁷ *Id.*

⁵⁸ *Id.* “Decides” ¶ 3.

⁵⁹ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 65.

3. Guarantees of Non-Repetition

The Court ordered that the State conduct administrative review of other individuals under the same circumstances as Mr. Almeida at their request.⁶⁰ The State must publicize its announcement of the administrative review to put such individuals on notice, and allow them 12 months to request compensation starting three months after the published announcement.⁶¹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$5,000 for the expenses that Mr. Almeida incurred over the 20 years waiting for his petition to be processed.⁶² These expenses include the costs of gathering testimony from other victims and family members and participating in judicial procedures.⁶³

2. Non-Pecuniary Damages

The Court awarded \$20,000 for Mr. Almeida as compensation for non-pecuniary damages.⁶⁴ In addition, the Court ordered the State to pay Mr. Almeida \$125,000 to compensate him for the time he was subjected to supervised release.⁶⁵

3. Costs and Expenses

The Court awarded \$20,000 to Mr. Almeida's representative, Ms. Myriam Carsen.⁶⁶

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

\$170,000

⁶⁰ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 68.

⁶¹ *Id.*

⁶² *Id.* ¶ 76.

⁶³ *Id.*

⁶⁴ *Id.* ¶ 82.

⁶⁵ *Id.* ¶ 62.

⁶⁶ Almeida v. Argentina, Merits, Reparations, and Costs, ¶ 86.

C. Deadlines

The State must comply with the order of the court to provide monetary compensation to Mr. Almeida within one year of the notification of the Judgment.⁶⁷

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

Almeida v. Argentina, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 416 (Nov. 17, 2020).

3. Provisional Measures

Almeida v. Argentina, Resolution of the President, Inter-Am. Ct. H.R. (ser. C) No. 416 (July 30, 2020).

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

⁶⁷ *Almeida v. Argentina, Merits, Reparations, and Costs*, ¶ 87.

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Almeida v. Argentina, Admissibility Report, Report No. 45/14, Inter-Am Comm'n H.R., Pet. No. 325-00 (July 18, 2014).

3. Provisional Measures

[None]

4. Report on Merits

Almeida v. Argentina, Report on Merits, Report No. 147/18, Inter-Am. Comm'n H.R., Case No. 12.950 (Dec. 7, 2018).

5. Application to the Court

Almeida v. Argentina, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 12.950 (Aug. 7, 2019).

VIII. BIBLIOGRAPHY

[None]

