

José Luis Hernández v. Argentina

ABSTRACT¹

This case is about a detainee who did not receive appropriate medical attention and treatment for a condition he developed while in custody.

Despite a judge repeatedly ordered the detainee to be treated and hospitalized, various State authorities failed to comply with the orders, resulting in permanent disability and, eventually, death of the victim.

The Court found the State in violation of several articles of the Convention, including the right to health, though Article 26 of the American Convention.

I. FACTS

A. Chronology of Events

February 7, 1989: Twenty-one years old José Luis Hernández is arrested for committing an attempted robbery with a firearm.² The crime he allegedly committed carries a six-year sentence without parole.³ Mr. Hernández is booked at the Monte Grande Police Station, in the Province of Buenos Aires. On the same day, Mr. Hernández receives a physical examination and is found to be in good condition.⁴

Mr. Hernández remains detained at the Monte Grande Police Station for approximately seventeen months.⁵

March 20, 1989: The Chief of the Police requests that the judge overseeing Mr. Hernández's case transfer him, due to overcrowding at the Monte Grande Police Station.⁶

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² José Luis Hernández v. Argentina, Report on Merits, Report No. 96/17, Inter-Am. Comm'n H.R., Case No. 12.818, ¶¶ 2, 8 (Sept. 5, 2017).

³ *Id.* ¶ 8.

⁴ *Id.*

⁵ *Id.* ¶ 23.

⁶ *Id.* ¶¶ 8-9.

March 29, 1989: The judge issues an order requesting that Mr. Hernández be transferred to a unit in the Penitentiary Service in the Province of Buenos Aires.⁷ However, the order is never carried out, and Mr. Hernández continues to suffer from the substandard detention conditions at the Monte Grande Police Station.⁸

July 6, 1989: Mr. Hernández's mother, Raquel San Martin de Hernández, reports to local authorities that her son is suffering from influenza and a severe ear infection and lacks adequate medical treatment.⁹ His mother requests that her son be transferred to a unit where he can receive better medical care.¹⁰

The judge overseeing Mr. Hernández's case issues an order, directing prison officials to conduct a medical examination, and to ensure that Mr. Hernández receives proper medical treatment.¹¹

January 16, 1990: After receiving multiple complaints, the Chief of Police, once again, requests that Mr. Hernández be transferred to a unit in the Penitentiary Service.¹²

August 1, 1990: The judge receives a report that Mr. Hernández has suffered head pain for a week.¹³ The judge orders that Mr. Hernández receives a physical examination and requests that the sanitary conditions of the station be verified, fearing an outbreak of hepatitis among the inmates.¹⁴

August 2, 1990: The Police Chief notifies the court that Mr. Hernández has been diagnosed with hepatitis, and the judge orders for his immediate transfer to the Provincial Prison Service Hospital.¹⁵

⁷ José Luis Hernández v. Argentina, Report on Merits, ¶¶ 8, 9.

⁸ *Id.* ¶ 9.

⁹ *Id.* ¶ 10.

¹⁰ *Id.*

¹¹ *Id.* ¶ 11.

¹² *Id.* ¶ 12.

¹³ José Luis Hernández v. Argentina, Report on Merits, ¶ 13.

¹⁴ *Id.*

¹⁵ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 395, ¶ 31 (Nov. 22, 2019).

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August 3, 1990: Mr. Hernández is transferred to Olmos Facility No. 1, in Buenos Aires.¹⁶

August 14, 1990: The Judge orders that Mr. Hernández receive medical treatment and requests updates on his health status.¹⁷

August 16, 1990: Mr. Hernández is admitted to the San Juan de Dios Hospital, and diagnosed with tuberculous meningitis.¹⁸

After August 16, 1990: A few days after the diagnosis, the San Juan de Dios Hospital refers Mr. Hernández to the Neuropsychiatric Ward at the Alejandro Korn de Melchor Romero Hospital, due to the lack of beds and treatment for his condition.¹⁹

September 18, 1990: Although he was not yet sufficiently treated, Mr. Hernández is transferred back to Prison Unit No. 1 of the Penitentiary Service.²⁰

September 28, 1990: Mr. Hernández is officially sentenced to five years in prison for armed robbery.²¹

October 2, 1990: Despite a judge request that Mr. Hernández is hospitalized again, the Director of the San Juan de Dios Hospital refuses his admission arguing that Mr. Hernández should be sent to an outpatient clinic instead.²² Mr. Hernández is also denied an ambulance because the Director of the Hospital deems his condition not to be an emergency.²³

October 9, 1990: Mr. Hernández begins to exhibit severe symptoms as his condition goes inadequately treated, and repeatedly requests transfer to a hospital to receive treatment.²⁴ Penitentiary Service denies his requests, despite conceding that it cannot adequately care for

¹⁶ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 31.

¹⁷ *Id.* ¶ 32.

¹⁸ José Luis Hernández v. Argentina, Report on Merits, ¶ 14.

¹⁹ *Id.* ¶ 15.

²⁰ *Id.*

²¹ *Id.* ¶ 16.

²² *Id.* ¶ 17.

²³ *Id.*

²⁴ José Luis Hernández v. Argentina, Report on Merits, ¶ 18.

Mr. Hernández.²⁵

October 17, 1990: The trial judge denies Mr. Hernández's motion for release due to the severity of Mr. Hernández's sentence, and because Mr. Hernández is already receiving adequate medical care.²⁶

October 19, 1990: Mr. Hernández's attorney files an appeal, but it is dismissed.²⁷ The judge orders that steps are taken to ensure Mr. Hernández is provided with necessary medical care, even if he must be transferred.²⁸

October 22, 1990: Mr. Hernández's attorney files an application for *habeus corpus*, which is denied on the grounds that Mr. Hernández's situation is not covered by Article 403(12) of the Code of Criminal Procedure.²⁹

October 24, 1990: The judge once again orders that Mr. Hernández be hospitalized.³⁰ The San Juan de Dios Hospital does not comply due to the lack of available beds.³¹

October 31, 1990: A forensic doctor reports that Mr. Hernández is suffering from an infectious, neurological pathology, and advises for Mr. Hernández to be admitted to the San Martin Polyclinic, or the Alejandro Korn Hospital.³²

November 2, 1990: Mr. Hernández is admitted to the San Martin de La Plata Hospital and undergoes surgery without his family being notified and without an authorization by a judge.³³ After the procedure, he is transferred back to his prison unit.³⁴

Due to his meningitis, Mr. Hernández permanently loses vision in one eye, becomes partially and permanently disabled in one arm, and

²⁵ José Luis Hernández v. Argentina, Report on Merits, ¶ 18.

²⁶ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 37.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* ¶ 38.

³⁰ José Luis Hernández v. Argentina, Report on Merits, ¶ 45.

³¹ *Id.*

³² *Id.* ¶ 46.

³³ *Id.* ¶ 19.

³⁴ *Id.*

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experiences intermittent memory loss.³⁵ A doctor from the San Martin Hospital opines that had Mr. Hernández been treated properly, he would not be suffering from these adverse conditions.³⁶

April 4, 1991: The Intervention Court No. 4 receives a report from the Penitentiary Service documenting the neurological symptoms that Mr. Hernández has suffered up to the present date.³⁷

May 21, 1991: Mr. Hernández appeals his sentence, but it is affirmed.³⁸

May 29, 1991: Mr. Hernández is allowed conditional release under parole. By now, he has already served over two-thirds of his sentence.³⁹

April 2, 1993: Mr. Hernández files a civil claim for damages against the Police Headquarters and Government of Buenos Aires, Carlos Alberto Pallero, and Lorenzo Alfredo Núñez, for failing to provide adequate and timely treatment of the meningitis he contracted during his detainment.⁴⁰

October 10, 1995: The trial judge rejects Mr. Hernández's claim.⁴¹ The judge applies the two-year statute of limitations from Article 4037 of the Civil Code used for tort liability cases, holding that the statute of limitations began to toll when Mr. Hernández received treatment in October 1990.⁴² The judge argues that Mr. Hernández was released in May 1991 and should have filed his claim.⁴³ The judge rejects Mr. Hernández's argument that he became aware of the neurological effects of his untreated meningitis only when the Penitentiary Service wrote its report in April 1991.⁴⁴

³⁵ José Luis Hernández v. Argentina, Report on Merits, ¶ 20.

³⁶ *Id.*

³⁷ *Id.* ¶ 48.

³⁸ *Id.* ¶ 16.

³⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 26.

⁴⁰ José Luis Hernández v. Argentina, Report on Merits, ¶ 51.

⁴¹ *Id.* ¶ 52.

⁴² *Id.* ¶ 53.

⁴³ *Id.*

⁴⁴ *Id.* ¶ 54.

September 12, 1996: Mr. Hernández appeals the judgment, arguing that the Administration is liable for the negligence and lack of care he received from authorities.⁴⁵ However, the court affirms the decision.⁴⁶

October 3, 1996: Mr. Hernández files a motion for special remedy before the Supreme Court of Justice of Buenos Aires, contesting the September 12, 1996 judgment.⁴⁷

December 17, 1996: The Supreme Court of Justice of Buenos Aires finds that the judgment of September 12, 1996 correct and dismisses the appeal for annulment.⁴⁸

April 8, 1997: The Supreme Court of Justice of the Nation reviews and rejects Mr. Hernández's motion for special remedy.⁴⁹

December 16, 1997: Mr. Hernández attempts to appeal the April 8, 1997 of the Supreme Court of Justice of the Nation.⁵⁰

December 24, 2015: As a result of his meningitis, Mr. Hernández passes away at 47 years old.⁵¹

B. Other Relevant Facts

[None]

⁴⁵ José Luis Hernández v. Argentina, Report on Merits, ¶ 55.

⁴⁶ *Id.* ¶ 56.

⁴⁷ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

⁴⁸ José Luis Hernández v. Argentina, Report on Merits, ¶ 59.

⁴⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61.

⁵⁰ José Luis Hernández v. Argentina, Report on Merits, ¶ 61.

⁵¹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 46.

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II. PROCEDURAL HISTORY

A. Before the Commission

June 30, 1998: Mr. Hernández, Mr. Ciro V. Annicchiarico, Tomás Ojea Quintana, and Rodolgo Ojea Quintana (“the petitioners”) file a petition before the Inter-American Commission on Human Rights.⁵²

January 21, 2004: The State claims the petition is inadmissible because Mr. Hernández’s due process rights were guaranteed, and the statute of limitations had passed.⁵³

July 21, 2011: The Commission issues Admissibility Report No. 82/10, which declares the petition admissible.⁵⁴

September 5, 2017: The Commission issues Merits Report No. 96/17.⁵⁵

The Commission concludes that the State is responsible for violating Article 5(1) (Right to Physical, Mental, and Moral Integrity); 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment); 7(1) (Right to Personal Liberty and Security); 7(3) (Prohibition of Arbitrary Arrest or Imprisonment); 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal); 8(2) (Right to Be Presumed Innocent); and 25(1) (Right of Recourse Before a Competent Court) of the American Court of Human Rights, in relation to Article 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the same instrument, to the detriment of Mr. Hernández.⁵⁶

In light of the foregoing violations, the Commission recommends the State to (1) offer Mr. Hernández reparations through pecuniary compensation measures that include pecuniary and non-pecuniary damages that he suffered; (2) provide free and immediate treatment for Mr. Hernández’s physical and mental health at his request and for however long as necessary; (3) ensure non-repetition measures that guarantee persons in the Province of

⁵² José Luis Hernández v. Argentina, Report on Merits, ¶ 1.

⁵³ *Id.* ¶ 24.

⁵⁴ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(b).

⁵⁵ *Id.*

⁵⁶ José Luis Hernández v. Argentina, Report on Merits, ¶ 4.

Buenos Aires receive timely diagnoses for their ailments, as well as the treatments, specialized care, and compliance with standards established in the Merits Report – specifically, the principle of equivalence.⁵⁷

B. Before the Court

February 8, 2018: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁵⁸

August 28, 2018: The State submits a preliminary objection claiming that domestic remedies have not been exhausted.⁵⁹

1. Violations Alleged by Commission⁶⁰

Article 5(1) (Right to Physical, Mental, and Moral Integrity)
 Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)
 Article 7(1) (Right to Personal Liberty and Security)
 Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)
 Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)
 Article 8(2) (Right to Be Presumed Innocent)
 Article 25(1) (Right of Recourse Before a Competent Court)
all in relation to:
 Article 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 Victims⁶¹

Same Violations Alleged by Commission.

⁵⁷ José Luis Hernández v. Argentina, Report on Merits, “Recommends” ¶¶1-3.

⁵⁸ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(f).

⁵⁹ *Id.* ¶¶ 6, 12.

⁶⁰ José Luis Hernández v. Argentina, Report on Merits, ¶ 4.

⁶¹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 5; José Luis Hernández v. Argentina, Admissibility Report, ¶ 1. Mr. Ciro V. Annicchiarico, Tomás Ojea Quintana, and Rodolfo Ojea Quintana served as representatives of Mr. Hernández.

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III. MERITS

*A. Composition of the Court*⁶²

Eduardo Ferrer Mac-Gregor Poisot, President
 Eduardo Vio Grossi, Vice President
 Humberto Antonio Sierra Porto, Judge
 Elizabeth Odio Benito, Judge
 L. Patricio Pazmiño Freire, Judge
 Ricardo C. Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

November 22, 2019: The Court issues its Judgment on Preliminary Objection, Merits, Reparations, and Costs.⁶³

The Court found unanimously:

To dismiss the preliminary objection⁶⁴ brought by Argentina, because:

Under Article 46(1)(a), a petition to the Commission requires that domestic remedies be exhausted.⁶⁵ A State may raise such a defense, but only as long as it is raised timely.⁶⁶ The Court rejected the State's assertion that domestic remedies were not properly exhausted because it was not raised at the appropriate procedural stage.⁶⁷ The State did not raise its objection until after the Admissibility Report was adopted.⁶⁸

The Court found by five votes to one that Argentina had violated:

⁶² José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, n.*. Judge Eugenio Raúl Zaffaroni, an Argentine national, did not participate in the deliberation of the judgment.

⁶³ *Id.* ¶ 183.

⁶⁴ *Id.* “Decides,” ¶ 1.

⁶⁵ *Id.* ¶ 15.

⁶⁶ *Id.*

⁶⁷ *Id.* ¶ 17.

⁶⁸ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 17.

Article 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 American Convention, to the detriment of Mr. Hernández,⁶⁹ because:

Although the right to personal integrity varies according to an individual's circumstances, it is a right that is so crucial that it should never be infringed upon.⁷⁰ When a person is imprisoned, they lose their liberty and ability to fulfil their basic needs; therefore, any person who is detained is entitled to detention conditions that allow him to retain his personal dignity.⁷¹ Thus, the State had a special duty to ensure that Mr. Hernandez did not suffer while detained.⁷²

The insufficient medical care did not meet the threshold for adequate treatment required by Mr. Hernández's right to integrity.⁷³ Even if the State did not possess the intent to harm or humiliate Mr. Hernández, the lack of medical care and resulting harm was cruel, inhumane, and degrading.⁷⁴ Such harm and suffering that is attributable to conditions of imprisonment, but is not a natural and direct consequence of imprisonment is, in itself, cruel punishment that infringes on one's physical, mental, and moral integrity.⁷⁵ Mr. Hernández was never properly examined despite the trial judge's orders, and these omissions constituted degrading treatment.⁷⁶

The Court concluded that Mr. Hernández's personal integrity had been violated because the authorities did not comply with orders issued by the trial judge and because the lack of accommodations at the detention center.⁷⁷ Accordingly, the State violated Article 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 American Convention.⁷⁸

⁶⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Declares," ¶ 2.

⁷⁰ *Id.* ¶ 55.

⁷¹ *Id.* ¶ 56.

⁷² *Id.*

⁷³ *Id.* ¶ 59.

⁷⁴ *Id.*

⁷⁵ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 60.

⁷⁶ *Id.* ¶ 61.

⁷⁷ *Id.* ¶ 96.

⁷⁸ *Id.*

The Court found by four votes to two that Argentina had violated:

Article 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Article 1(1) of the American Convention, to the detriment of Mr. Hernández,⁷⁹ because:

Although neither the Commission nor Mr. Hernández's counsel alleged that the State violated Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), the Court must consider all possible violations of the American Convention.⁸⁰ Consistently with the Court's previous jurisprudence (e.g. Lagos del Campo v. Peru and Poblete Vilches et. al. v. Chile), by virtue of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the Convention, the jurisdiction of the Court extends to violations of the right to health.⁸¹

The right to health is recognized in the OAS Charter,⁸² the American Declaration,⁸³ the Universal Declaration of Human Rights,⁸⁴ and other international legal instruments.⁸⁵ It recognizes everyone's right to attain the highest possible standard of health by which they can live without illness or disease, as well as to a lifestyle where individuals can reach a balance of physical, mental, and social security.⁸⁶ Thus, the State has the duty to provide access to health services, appropriate medical services, and promote its population's general health through the enforcement of specific regulations.⁸⁷ When confronted by an individual who contracts tuberculosis meningitis, the State must provide a prompt and accurate diagnosis; allow for standardized treatment and supervision.⁸⁸

⁷⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "Declares," ¶ 3.

⁸⁰ *Id.* ¶ 54.

⁸¹ *Id.* ¶ 62.

⁸² *Id.* ¶ 69.

⁸³ *Id.* ¶ 70.

⁸⁴ *Id.* ¶ 72.

⁸⁵ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 73.

⁸⁶ *Id.* ¶ 76.

⁸⁷ *Id.*

⁸⁸ *Id.* ¶ 79.

In the present case, the State did not show reasonable efforts to provide Mr. Hernández the required medical care, even after it became aware of his illness.⁸⁹ The Court rejected the State's argument that it was not aware of Mr. Hernández's condition since his mother had reported his conditions to the trial judge on two occasions, resulting in the judge requesting medical treatment.⁹⁰ The State is obligated to ensure that inmates receive health care that is culturally acceptable and provides facilities, goods, and services that are scientifically and medically acceptable.⁹¹ The State also should have ensured that there was enough space for the detainees in health-care facilities, but instead subjected Mr. Hernández to conditions that exacerbated his tuberculous meningitis and permanently impaired his physical and mental health.⁹² The State's omissions constitute a violation of Article 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Article 1(1) of the American Convention.⁹³

The Court found unanimously that Argentina had violated:

Article 7(1) (Right to Personal Liberty and Security), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) of the American Convention, to the detriment of Mr. Hernández,⁹⁴ because:

Article 7 (Right to Personal Liberty) protects against unlawful or arbitrary State interference of personal liberty.⁹⁵ Additionally, Article 8 (Right to Be Presumed Innocent) guarantees a presumption of innocent requiring a judge to review each case before declaring a conviction.⁹⁶ The trial court improperly detained Mr. Hernández prior to his trial, alleging a preventive detention right; however, the trial judge's

⁸⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 85.

⁹⁰ *Id.* ¶¶ 89, 91.

⁹¹ *Id.* ¶ 87.

⁹² *Id.* ¶ 96.

⁹³ *Id.*

⁹⁴ *Id.* "Declares," ¶ 4.

⁹⁵ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 100.

⁹⁶ *Id.* ¶ 109.

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*decision was not backed by a legitimate purpose because it did not claim that Mr. Hernández would obstruct his proceedings or escape justice but for his detainment.*⁹⁷

*For those reasons, although the preventive detention was technically legal, it was arbitrary and in violation of Article 7(1) (Right to Personal Liberty and Security), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) of the American Convention.*⁹⁸

Article 25 (Right to Judicial Protection) in relation to Article 1(1) of the American Convention, to the detriment of Mr. Hernández,⁹⁹ because:

*Article 25(1) (Right to Judicial Protection) requires States to ensure that all persons subject to their jurisdiction have access to an effective judicial remedy when their human rights are violated.*¹⁰⁰ *The Court analyzed the State's compliance with Article 25(1) as follows: (a) in relation to Mr. Hernández's mother's complaints; (b) in relation to Mr. Hernández's request for release on account of his health; and (c) in relation to Mr. Hernández's civil action for damages that was ruled inadmissible.*¹⁰¹

Ms. San Martín de Hernández's complaints:

*The Court determined that Ms. San Martín de Hernández filed complaints starting on July 6, 1989, which persuaded the trial judge to order a medical examination and eventual prison transfer for Mr. Hernández.*¹⁰² *However, the State failed to obey the judge's orders.*¹⁰³ *The State also failed to timely obey the judge's order on August 2, 1990 to provide Mr. Hernández a medical examination as well as verify the hygiene conditions of the police station.*¹⁰⁴ *Finally, the State failed to comply with the December 6, 1990 order to give weekly reports*

⁹⁷ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 109.

⁹⁸ *Id.* ¶ 117.

⁹⁹ *Id.* “Declares,” ¶ 5.

¹⁰⁰ *Id.* ¶ 121.

¹⁰¹ *Id.* ¶ 123.

¹⁰² *Id.* ¶ 126.

¹⁰³ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 126.

¹⁰⁴ *Id.* ¶ 131.

*on Mr. Hernández's health, and the April 1, 1991 order to provide a comprehensive health report.*¹⁰⁵

*By failing to comply with these orders, the State violated procedural rules and its duty to guarantee judicial protection.*¹⁰⁶

Mr. Hernández's request for release:

The Court noted that when requesting Mr. Hernández's release on October 17, 1990, his representatives based the request on 1 grounds outlined in Article 2 of Law 10,484, otherwise known as the Law on Prison Release and Waiver.¹⁰⁷ Mr. Hernández had argued for his release on the grounds that his appeal was not final and his need for adequate medical care.¹⁰⁸

Competent authorities have the obligation to make substantive decisions, backed by clear reasoning.¹⁰⁹ On September 28, 1990, the trial judge sentenced Mr. Hernández to five years, later denying his request for special release in October 1990 due to the gravity of his offense and the belief that he had adequate medical care.¹¹⁰ The Law on Prison Release and Waiver exists so that an accused person can be free while awaiting a judgment on his proceedings; therefore, this provision was not applicable to Mr. Hernández's case because he had already been convicted.¹¹¹

Regarding the request for special release, the Court held that the State did not violate Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) of the American Convention.¹¹²

Mr. Hernández's civil action for damages:

¹⁰⁵ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 132.

¹⁰⁶ *Id.* ¶ 134.

¹⁰⁷ *Id.* ¶¶ 135, n. 205.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* ¶ 137.

¹¹⁰ *Id.* ¶ 138.

¹¹¹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs ¶ 139.

¹¹² *Id.* ¶ 140.

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The Court held that the judicial authorities were also reasonable barring Mr. Hernández's civil action for damages that he filed on April 2, 1993 due to the statute of limitations expiring.¹¹³ Mr. Hernández's representatives failed to prove that Mr. Hernández was unaware of his disease while he was in detainment or that he could have known the effects of his tuberculosis meningitis by October 8, 1990 after the medical report he received on October 19 of the same year.¹¹⁴ Additionally, denying Mr. Hernández's request for leave did not constitute a violation of his right to an effective judicial remedy.¹¹⁵

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of Ms. Raquel San Martín de Hernández,¹¹⁶ because:

When a State violates a person's human rights, the person's family members can also be victims.¹¹⁷ Family members are afflicted when they experience the suffering of their loved ones as a result of a State's actions or omissions that result in human rights violations.¹¹⁸ Thus, the Court considered the personal integrity of Mr. Hernández's family members.¹¹⁹

Ms. San Martín de Hernández had a close relationship with her son, evidenced by how she cared for her son's health issues and her letter on October 23, 1990, requesting the trial judge to release him.¹²⁰ She was constantly involved in Mr. Hernández's court proceedings and his treatment by prison authorities, as shown by her frequent reports to the trial judge on her son's condition and requests that he receive proper care.¹²¹

The Court noted Ms. San Martín de Hernández's clear feelings of anguish and desperation due to the pain that her son suffered, which

¹¹³ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 144.

¹¹⁴ *Id.*

¹¹⁵ *Id.* ¶ 146.

¹¹⁶ *Id.* "Declares" ¶ 6.

¹¹⁷ *Id.* ¶ 148.

¹¹⁸ *Id.*

¹¹⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 148.

¹²⁰ *Id.* ¶ 149.

¹²¹ *Id.* ¶ 150.

were revealed in another one of her letters from August 23, 1990.¹²² Thus, the Court found that the State violated Ms. San Martín de Hernández's personal integrity by failing to procure appropriate medical care for Mr. Hernández.¹²³

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Poisot considers that Mr. Hernández's case continues a trend in the Court's jurisprudence of treating the right to health as a distinct right that comes under the Court's jurisdiction via Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention, even though its contents are not described therein.¹²⁴ The right to health entails the State's duty to ensure health care access, quality medical treatment, and promote better health for everyone in their jurisdiction.¹²⁵ Article 26 creates State duties concerning health that can be enforced immediately, and not just progressively.¹²⁶ Mr. Hernández's case establishes that when a State has control over a detained person, it has the burden of proving that it met its obligations through medical reports, evidence of detention conditions, etc.¹²⁷

Due to the ongoing social issues that face South America, such as social inequality and poverty, Judge Poisot expects the Inter-American Court to continuously revisit Article 26 in relation to the right to health.¹²⁸

2. Dissenting Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi argues that good faith requires that Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) be analyzed on its own merits, and not in relation to

¹²² José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 150.

¹²³ *Id.* ¶ 151.

¹²⁴ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, ¶ 8.

¹²⁵ *Id.* ¶ 9.

¹²⁶ *Id.* ¶ 10.

¹²⁷ *Id.* ¶ 13.

¹²⁸ *Id.* ¶¶ 37-38.

any other rights listed in the Convention.¹²⁹ On its face, Article 26 does not establish a human right that can support a claim.¹³⁰ Instead, it imposes obligations onto States.¹³¹ Furthermore, Judge Vio Grossi does not believe that the economic, social, cultural and environmental rights, although derived from the OAS Charter, are recognized in the Convention, which protects only civil and political rights.¹³² According to Judge Vio Grossi, the expansive interpretation of Article 26 that has become a feature of the Court's jurisprudence is a departure from the intentions of the Convention. A further protocol is needed for the Court to properly exercise jurisdiction over ESCER.¹³³

3. Dissenting Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Sierra Porto deems the right to health as a social benefit and is in favor of an “individual” analysis of the right to health in relation to other civil and political rights.¹³⁴ This would allow the Court to better identify when a State's actions concerning health care violate a person's right to personal integrity.¹³⁵

In the case at hand, the State had the burden to prove that Mr. Hernández received adequate and timely health care while he was detained.¹³⁶ Judge Sierra Porto calls for a reversal of the burden of proof when it comes to a State's international responsibility only under special circumstances, such as Mr. Hernández' case.¹³⁷

Considering how abruptly the right to personal integrity was placed in relation to the right to health, Judge Porto disapproves of analyzing Article 26 of the American Convention independently without also analyzing the right to personal integrity.¹³⁸

¹²⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 395, ¶ 27 (Nov. 22, 2019).

¹³⁰ *Id.* ¶ 26.

¹³¹ *Id.* ¶ 28.

¹³² *Id.* ¶ 37.

¹³³ *Id.* ¶ 52.

¹³⁴ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 395, ¶ 13 (Nov. 22, 2019).

¹³⁵ *Id.*

¹³⁶ *Id.* ¶ 15.

¹³⁷ *Id.*

¹³⁸ *Id.* ¶ 17.

4. Dissenting Opinion of Judge Patricio Pazmiño Freire

In a separate opinion, Judge Freire urged the Court to maintain consistency with prior case law that construes the right to health as an autonomous right.¹³⁹ Judge Freire opines that the Court should have emphasized the need for a direct and immediate enforcement of Article 26, rather than implicitly tolerating a slow and gradual adoption of measures to ensure the population's right to health.¹⁴⁰ This act would also require an express statement that non-compliance will result in a State's international responsibility.¹⁴¹

5. Concurring Opinion of Judge Ricardo C. Pérez Manrique

In a separate opinion, Judge Manrique agrees with the Court's decision that the State violated Articles 5(1), 5(2), and 26 in relation to the right to personal integrity and health.¹⁴² However, he does not believe it necessary to consider a separate violation of Article 26, and argued that Article 26 should have been examined together with Article 5.¹⁴³ He supports this view with the "thesis of simultaneity," which would make the investigation of the availability and quality of healthcare (Article 26) contingent on the broader, guiding principle of the right to personal integrity (Article 5).¹⁴⁴ The judgment would have benefited from a limited and brief discussion of how the right to health was violated due to the lack of access to medical treatment, where the circumstances of deprivation of health contributed to a violation of personal integrity.¹⁴⁵

IV. REPARATIONS

The Court ruled that the State had the following obligations:

¹³⁹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Patricio Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 395, ¶ 11 (Nov. 22, 2019).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Ricardo C. Pérez Manrique, Inter-Am. Ct. H.R. (ser. C) No. 395, ¶ 12 (Nov. 22, 2019).

¹⁴³ *Id.*

¹⁴⁴ *Id.* ¶ 13.

¹⁴⁵ *Id.*

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

1. Publish the Judgment

The Court ordered that the State publish the summary of the Judgment in the Official Gazette and in another national newspaper within six months, and that the entire Judgment be made available for at least one year on an official State website.¹⁴⁶

2. Guarantees of Non-Repetition

The Court ordered the State to adopt legislation and policies to ensure that persons detained in Buenos Aires be able to receive timely diagnoses as well as medical treatment for their illnesses.¹⁴⁷ The Court also supported initiatives to prevent the spread of tuberculosis meningitis, and to provide medical care to victims.¹⁴⁸ To carry out these measures of non-repetition, the Court ordered the State to train public officials and detention center employees on: early signs and symptoms of tuberculosis meningitis; following precautionary measures such as providing medical examinations and tests in the presence of tuberculosis meningitis symptoms; and hygienic standards to prevent the spread of disease upon detainees.¹⁴⁹

The Court also ordered the State to give a report within six months to demonstrate its compliance with the Judgment, and that it took actions that comport with standards of human dignity, personal integrity, and health.¹⁵⁰

B. Compensation

The Court awarded the following amounts:

¹⁴⁶ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 158.

¹⁴⁷ *Id.* ¶ 163.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* ¶ 164.

1. Pecuniary Damages

The Court awarded \$20,000 for Mr. Hernández's damages, which included loss of income, life expectancy, and incapacity he suffered as a result of his disease.¹⁵¹

2. Non-Pecuniary Damages

The Court awarded \$30,000 to Mr. Hernández for his non-pecuniary damages, which included the suffering, affliction, and deteriorated living conditions that the State caused to him and his family.¹⁵² The Court additionally awarded \$15,000 to Ms. Raquel San Martín de Hernández, who suffered a violation of her personal integrity as a result of watching her son suffer.¹⁵³

3. Costs and Expenses

The Court awarded \$10,000 to Mr. Hernández for the costs and expenses owed to his legal representatives.¹⁵⁴

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

\$ 75,000

C. Deadlines

The State must comply with the order of the Court to provide monetary compensation to Ms. Raquel San Martín de Hernández, in her capacity as Mr. Hernández's heir, within one year of the notification of the Judgment.¹⁵⁵

The State must publish a summary of the judgment within six months of notification of the Judgment.¹⁵⁶

¹⁵¹ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 169-70.

¹⁵² *Id.* ¶ 171.

¹⁵³ *Id.* ¶ 172.

¹⁵⁴ *Id.* ¶ 176.

¹⁵⁵ *Id.* ¶ 177.

¹⁵⁶ *Id.* ¶ 158.

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The State must begin training public officials and detention center employees on the precautionary measures and procedures concerning tuberculosis meningitis within six months of notification of the Judgment.¹⁵⁷

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

May 27, 2021: The State fully complied with its obligation to publish the Judgment in the Official Gazette and *Ámbito Financiero*, another national newspaper.¹⁵⁸ The Court ordered that the State continue to be supervised to ensure its compliance with the other orders of the Judgment referring to the training of officials.¹⁵⁹

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 395 (Nov. 22, 2019).

2. Decisions on Merits, Reparations and Costs

José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 395 (Nov. 22, 2019).

¹⁵⁷ José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "And Establishes," ¶ 8.

¹⁵⁸ José Luis Hernández v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considerations of the Court," ¶ 5 (May 27, 2021).

¹⁵⁹ *Id.* "Resolves" ¶ 2.

3. Separate Opinion of Judge Poisot

José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 395 (Nov. 22, 2019).

4. Dissenting Opinion of Judge Grossi

José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 395 (Nov. 22, 2019).

5. Dissenting Opinion of Judge Porto

José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 395 (Nov. 22, 2019).

6. Dissenting Opinion of Judge Freire

José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Opinion of Judge Patricio Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 395 (Nov. 22, 2019)

7. Concurring Opinion of Judge Manrique

José Luis Hernández v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge Ricardo C. Pérez Manrique, Inter-Am. Ct. H.R. (ser. C) No. 395 (Nov. 22, 2019)

8. Provisional Measures

[None]

9. Compliance Monitoring

José Luis Hernández v. Argentina, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (May 27, 2021).

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10. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

José Luis Hernández v. Argentina, Admissibility Report, Report No. 82/11, Inter-Am. Comm'n H.R., Pet. No. 616-98 (July 21, 2011).

3. Report on Merits

José Luis Hernández v. Argentina, Report on Merits, Report No. 96/17, Inter-Am. Comm'n H.R., Case No. 12.818 (Sept. 5, 2017).

4. Application to the Court

[None]

VIII. BIBLIOGRAPHY

[NONE]