

Gelman v. Uruguay

ABSTRACT¹

This case stems from the “dirty war” carried out by Argentina and Uruguay, amongst others, during the 1970s against suspected leftists. During the war, tens of thousands were disappeared. Pregnant women were killed after having given birth and their children given to families, often of military and police personnel, who wanted to raise a child. In this case, the main victim, because of the perseverance of her grandparents who kept on looking for her, eventually discovered her mother and father had been killed and she had been adopted by another family. Domestic legal proceedings to prosecute those responsible and provide the victim and her family with remedies were blocked by an Amnesty Law that had been enacted by parliament and twice reaffirmed by popular vote. In this case, the Court found a long list of violations of the American Convention and, crucially, the Amnesty Law in violation of Uruguay’s international legal obligations arising under the American Convention. In 2011, Uruguay’s parliament adopted Law 18831, which repealed the Amnesty Law, but in 2013 the Supreme Court of Justice ruled Law 18831 unconstitutional, preventing Uruguay’s full compliance with the decision of the Court.

I. FACTS

A. Chronology of Events

June 27, 1973: President-elect of Uruguay, Mr. Juan María Bordaberry, with the support of the Armed Forces, seizes power in a coup d’état, creating a civilian-military dictatorship characterized by daily forms of surveillance, control of society, and repression of leftist political organizations.²

November 30, 1975: Representatives from Argentina, Bolivia, Chile,

1. Sascha Meisel & Zach Tripodes, Authors; Sean Lask & Zach Tripodes, Editors; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Gelman v. Uruguay, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 45 (Feb. 24, 2011).

Paraguay, and Uruguay sign an agreement in Santiago, Chile, creating Operation Cóndor.³ The purpose of Operation Cóndor is to coordinate clandestine military activity of the five countries against leftist subversives by conducting surveillance, counterinsurgency actions, and assassinations.⁴ In particular, Operation Cóndor is “very sophisticated and organized” with parallel military structures that act secretly and with great autonomy, most notably “clandestine prisons and torture centers.”⁵ Operation Cóndor is characterized by kidnappings, extrajudicial executions, torture, and abduction of infants.⁶

August 24, 1976: At dawn, Argentine and Uruguayan military comandos detain Mrs. María Claudia García Iruretagoyena Casinelli and her husband, Mr. Marcelo Ariel Gelman Schubaroff, at their home in Buenos Aires, Argentina.⁷ Mrs. Iruretagoyena Casinelli is nineteen years old and seven months pregnant.⁸ She is a student at the University of Buenos Aires studying humanities, and she also works in a shoe factory.⁹

August – late September or early October 1976: Mrs. Iruretagoyena Casinelli and Mr. Gelman Schubaroff are transferred to Automotives Orletti, a secret detention facility in Buenos Aires.¹⁰ The two remain together for several days, but are subsequently separated.¹¹ Throughout his detention, Mr. Gelman Schubaroff is frequently tortured.¹²

Late September or early October: Mr. Gelman Schubaroff is transferred out of Automotives Orletti.¹³

Early October 1976: Mrs. Iruretagoyena Casinelli is secretly transferred to the headquarters of the Defense Information Service (*Servicio de Información de Defensa*, “SID”) in Montevideo by State authorities and is kept separated from other prisoners.¹⁴

3. *Id.* ¶ 50 n.42.

4. *Id.* ¶¶ 49–41.

5. *Id.* ¶¶ 49, 52.

6. *Id.* ¶¶ 56, 58, 60.

7. *Id.* ¶ 81.

8. *Id.* ¶ 80.

9. *Id.* ¶ 79.

10. *Id.* ¶ 82.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* ¶¶ 84–85.

Late October 1976: Mr. Gelman Schubaroff is killed and his remains are secretly buried along with those of seven other persons in a cemetery in the suburbs of Buenos Aires.¹⁵

Late October or early November 1976: Mrs. Iruretagoyena Casinelli is transferred to a military hospital where she gives birth to a baby girl, María Macarena Gelman García.¹⁶

November 1976: Mrs. Iruretagoyena Casinelli, along with her daughter, is returned to the SID headquarters and is again separated from other prisoners.¹⁷

December 22, 1976: All the prisoners in the SID headquarters are evacuated.¹⁸ Mrs. Iruretagoyena Casinelli is taken to the Valparaíso Base, another clandestine detention center.¹⁹ At some point before or after this transfer, State authorities remove Mrs. Iruretagoyena Casinelli's daughter from her.²⁰ Thereafter, the precise fate of Mrs. Iruretagoyena Casinelli is unknown, although she is likely killed.²¹ According to one version of events, she is killed by State authorities at a military base, and according to another version, she is transported back to Argentina and killed there.²²

January 14, 1977: Mrs. Iruretagoyena Casinelli's daughter, María, is placed in a basket and left on the doorstep of a home in the Punta Carretas neighborhood of Montevideo along with a note stating the baby was born on November 1, 1976 and that her mother could not care for her.²³ The home belonged to Mr. Ángel Julián Tauriño, a State police officer, and his wife, Mrs. Vivián Tauriño.²⁴ Mr. and Mrs. Tauriño decide to keep the baby girl.²⁵ Neighbors are surprised by the new addition to the Tauriño family because it is well known that the couple desperately

15. *Gelman v. Uruguay*, Admissibility Report, Report No. 30/07, Inter-Am. Comm'n H.R., Case No. 12.607, ¶ 13 (Mar. 9, 2007).

16. *Gelman v. Uruguay*, Merits and Reparations, ¶ 85.

17. *Id.* ¶ 86.

18. *Id.* ¶ 87.

19. *Id.*

20. *Id.* ¶ 88.

21. *Gelman v. Uruguay*, Admissibility Report, Report No. 30/07, Inter-Am. Comm'n H.R., Case No. 12.607, ¶ 14 (Mar. 9, 2007).

22. *Gelman v. Uruguay*, Merits and Reparations, ¶ 89.

23. *Id.* ¶ 106.

24. *Id.* ¶¶ 106, 111.

25. *Id.* ¶ 107.

wanted children, but had been unsuccessful in their attempts.²⁶

1979: Mr. and Mrs. Tauriño baptize and register the baby girl as their daughter under the name “María Macarena Tauriño.”²⁷

March 1, 1985: The State begins its transition to constitutional government, following the end of the dictatorship.²⁸

April 19, 1985: The State ratifies the American Convention on Human Rights.²⁹

December 22, 1986: The State legislature approves Law No. 15.848 (“Amnesty Law”).³⁰ The law grants amnesty to members and agents of the dictatorship that lasted until 1985.³¹

May 2, 1988: The Supreme Court of Justice upholds the constitutionality of the Amnesty Law by a three-to-two majority vote.³²

April 16, 1989: In a national referendum, the electorate votes to retain the Amnesty Law, with fifty-eight percent voting in favor.³³

1989: Forensic anthropologists discover Mr. Gelman Schubaroff’s remains and determine that he was killed in October 1976.³⁴

1997: Mr. Juan Gelman and his wife, Mrs. Mara Elda Magdalena La Madrid Daltoe, who had been investigating the disappearance of their son, Mr. Gelman Schubaroff, and their daughter-in-law, Mrs. Iruretagoyena Casinelli, learn of the existence of their granddaughter, María, who had been born while her mother was in State custody.³⁵

1997 – November 1999: Mr. Gelman and his wife, who live in Mexico, travel repeatedly to Buenos Aires and Montevideo to investigate the

26. *Id.* ¶ 110.

27. *Id.* ¶ 107.

28. Gelman v. Uruguay, Admissibility Report, Report No. 30/07, Inter-Am. Comm’n H.R., Case No. 12.607, ¶ 13 (Mar. 9, 2007).

29. Gelman v. Uruguay, Merits and Reparations, ¶ 18.

30. Gelman v. Uruguay, Admissibility Report, ¶ 16.

31. *Id.* ¶ 35.

32. Gelman v. Uruguay, Merits and Reparations, ¶ 146.

33. *Id.* ¶ 147.

34. *Id.* ¶ 83.

35. *Id.* ¶ 108.

whereabouts of their granddaughter.³⁶

October 1999: Mr. Tauriño dies.³⁷

November 1999: A couple from Montevideo, who were neighbors of Mr. and Mrs. Tauriño, contacts Mr. Gelman and tell him of a two-month-old baby girl who appeared on Mr. Tauriño's doorstep.³⁸

January 2000: The Bishop of San Jose, Monsignor Pablo Galimberti, contacts Mrs. Tauriño on behalf of Mr. Gelman to explain the situation. In response, Mrs. Tauriño reveals to María how she came into the care of the Tauriño family.³⁹

March 31, 2000: María meets Mr. Gelman, her paternal grandfather, for the first time and learns about the events surrounding the disappearance of her biological parents.⁴⁰ Later in the year, María agrees to take a DNA test that results in a 99.998% positive identification between her and the Gelman family.⁴¹

August 9, 2000: President Jorge Batlle Ibáñez creates the Commission for Peace to receive, analyze, classify, and compile information about the forced disappearances that occurred during the dictatorship.⁴²

June 19, 2002: Mr. Gelman files a criminal complaint in the Fourth Criminal Court in Montevideo regarding the kidnapping and disappearance of Mrs. Iruretagoyena Casinelli, the abduction of her daughter, and the subsequent suppression of the child's civil status.⁴³ The case is later transferred to the Court of First Instance of the Second Criminal Court ("Second Criminal Court"), which is determined to be the proper venue.⁴⁴

December 13, 2002: The Second Criminal Court officially opens the

36. *Id.* ¶ 109.

37. *Id.* ¶ 111.

38. *Id.* ¶ 110.

39. *Id.* ¶ 112.

40. *Id.* ¶ 113.

41. *Id.* ¶ 114.

42. *Gelman v. Uruguay*, Admissibility Report, Report No. 30/07, Inter-Am. Comm'n H.R., Case No. 12.607, ¶ 16 (Mar. 9, 2007).

43. *Gelman v. Uruguay*, Merits and Reparations, ¶ 163.

44. *Id.*

case.⁴⁵ The Public Prosecutor's Office seeks to have the case closed due to the applicability of the Amnesty Law. However, the Second Criminal Court decides that only the Executive branch can decide to close a case pursuant to the Amnesty Law and, accordingly, directs the Executive to make that determination.⁴⁶

April 10, 2003: The official report of the Commission for Peace is published.⁴⁷ The report establishes that Mrs. Iruretagoyena Casinelli was detained in Argentina at Automotives Orletti, was transferred to the State, detained at SID headquarters, gave birth to a baby girl at a military hospital, was then either killed by State or Argentine authorities, and that her child was taken from her and given to an Uruguayan family.⁴⁸ President Batlle accepts the report as "the official version of the facts regarding the detainees and disappeared persons" during the period of the dictatorship.⁴⁹

November 28, 2003: The Executive branch informs the Second Criminal Court that the case falls within the scope of the Amnesty Law and is therefore inadmissible.⁵⁰

December 2, 2003: The Second Criminal Court closes the case.⁵¹

November 15, 2004: The Supreme Court of Justice issues a judgment denying a motion from Mr. Gelman to have portions of the Amnesty Law declared unconstitutional.⁵²

March 1, 2005: President Tabaré Vázquez assumes office and declares, in his inaugural speech, that the Gelman case is excluded from the scope of the Amnesty Law.⁵³ President Vázquez also announces that an investigation will begin immediately to search for the remains disappeared persons, including those of Mrs. Iruretagoyena Casinelli.⁵⁴

March 8, 2005: The Seventeenth Family Court in Montevideo orders

45. *Id.*

46. *Id.* ¶¶ 164-165.

47. *Gelman v. Uruguay*, Admissibility Report, ¶ 16.

48. *Id.*

49. *Gelman v. Uruguay*, Merits and Reparations, ¶ 155.

50. *Id.* ¶ 166.

51. *Id.* ¶ 168.

52. *Id.* ¶ 169.

53. *Gelman v. Uruguay*, Admissibility Report, ¶ 17.

54. *Id.*

the nullification of María's birth certificate that stated she was the biological child of Mr. and Mrs. Tauriño, and issues a new birth certificate that registers her as the daughter of Mr. Gelman Schubaroff and Mrs. Iruretagoyena Casinelli.⁵⁵ Thereafter, her name is legally changed from "María Macarena Tauriño" to "María Macarena Gelman García Iruretagoyena," (hereinafter "Ms. García Iruretagoyena").⁵⁶

June 10, 2005: Mr. Gelman petitions the Court of Second Round in Montevideo to reopen the investigation into the disappearance of Mrs. Iruretagoyena Casinelli.⁵⁷

June 23, 2005: In response to a request by the Court of Second Round, the Executive branch expressly states that the case is excluded from the scope of the Amnesty Law, enabling the investigation to proceed.⁵⁸

August 8, 2005: The Public Prosecutor's Office requests that the investigation be closed because of its view that the case falls within the scope of the Amnesty Law.⁵⁹ The request is denied.⁶⁰

August 11, 2005: Pursuant to a judicial order in the case, the State submits to the Court of Second Round a report compiled by the General Military Commander at the request of the President regarding the fate of disappeared persons.⁶¹ The report describes Operation Zanahoria ("Carrot"), which was carried out in 1984 to exhume and destroy the remains of executed prisoners buried on military bases.⁶² The report found that Mrs. Iruretagoyena Casinelli was killed and buried at a military base.⁶³ The report concluded that her remains were likely still interred at the site because no exhumations occurred there during Operation Zanahoria.⁶⁴

October 19, 2005: Citing the discretionary powers of Public Prosecutor's Office, the Court of Appeals rules that the case falls within the scope of the Amnesty Law and orders that the Second Criminal Court

55. *Gelman v. Uruguay*, Merits and Reparations, ¶ 115.

56. *Id.* ¶ 116.

57. *Id.* ¶ 170.

58. *Gelman v. Uruguay*, Admissibility Report, ¶ 29.

59. *Gelman v. Uruguay*, Merits and Reparations, ¶ 174.

60. *Id.* ¶ 177.

61. *Id.* ¶ 175.

62. *Id.* ¶ 176.

63. *Id.*

64. *Id.*

close the case.⁶⁵

August 4, 2008: Following a request by Ms. García Iruretagoyena and the approval of the Public Prosecutor's Office, the Second Criminal Court reopens the case originally filed by Mr. Gelman.⁶⁶ The Second Criminal Court reasons that since there were two contradicting Executive decisions regarding the applicability of the Amnesty Law, the latter should control.⁶⁷

September 18, 2009: The State enacts Law No. 18.596, which acknowledges the illegitimacy of certain State actions that occurred between June 13, 1968 and February 28, 1985 and gives the victims of these State acts the right to receive reparations from the State.⁶⁸

October 19, 2009: The Supreme Court of Justice declares portions of the Amnesty Law unconstitutional.⁶⁹

October 25, 2009: For the second time, the Amnesty Law is the subject of a referendum and, for a second time, the electorate votes in favor of it, by fifty-two percent.⁷⁰

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

May 8, 2006: Mr. José Luis González and the Center for Justice and International Law ("CEJIL") present a petition on behalf of Mr. Gelman, Ms. García Iruretagoyena, and Mrs. Iruretagoyena Casinelli to the Inter-American Commission on Human Rights.⁷¹

March 9, 2007: The Commission delivers Report on Admissibility No.

65. *Id.* ¶ 177.

66. *Id.* ¶ 178.

67. *Id.*

68. *Id.* ¶ 20.

69. *Id.* ¶ 148.

70. *Id.* ¶ 149.

71. *Gelman v. Uruguay*, Admissibility Report, Report No. 30/07, Inter-Am. Comm'n H.R., Case No. 12.607, ¶ 1 (Mar. 9, 2007).

30/07, declaring the case admissible.⁷² The State claims that it did not violate the rights of the purported victims, that it was actively investigating the disappearance of Mrs. Iruretagoyena Casinelli, and that former State officials had been charged with participating in Operation Cóndor.⁷³ Although the State did not specifically claim the petition was inadmissible due to the failure to exhaust domestic remedies, the Commission concludes that the State's response reflects such a position.⁷⁴ The Commission states that domestic remedies were exhausted when the judiciary issued its decision on October 19, 2005 applying the Amnesty Law to the criminal case regarding the disappearance of Mrs. Iruretagoyena Casinelli.⁷⁵

July 18, 2008: The Commission delivers Report on the Merits No. 42/08.⁷⁶ The Commission concludes that the Amnesty Law is incompatible with the American Convention.⁷⁷ The Commission considers that the Amnesty Law prevented the victim's next of kin from being heard by a tribunal, prevented criminal prosecutions related to the detention and disappearance of Mrs. Iruretagoyena Casinelli, and obstructed an investigation of the facts of the case.⁷⁸ The State responded that the petitioners had not brought an action for the unconstitutionality of the Amnesty Law before the Supreme Court of Justice; however the Commission dismisses that argument as illogical because the Supreme Court of Justice had already affirmed the constitutionality of the Amnesty Law in 1988.⁷⁹

The Commission recommends that the State take the necessary measures to acknowledge its international responsibility for the violations in the case by carrying out a public act.⁸⁰ It also recommends that the State promptly conduct an effective criminal investigation to establish the facts and punish persons responsible for the forced disappearance of Mrs. Iruretagoyena Casinelli and the kidnapping of Ms. García Iruretagoyena.⁸¹ Lastly, the Commission recommends that the State determine the whereabouts of Mrs. Iruretagoyena Casinelli or her re-

72. *Id.* ¶ 45.

73. *Id.* ¶ 20.

74. *Id.*

75. *Id.* ¶ 35.

76. *Gelman v. Uruguay*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 1 (Feb. 24, 2011).

77. *Juan Gelman, et al. v. Uruguay*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.607, ¶ 32 (Jan. 21, 2010).

78. *Id.* ¶ 70.

79. *Id.* ¶ 95.

80. *Id.* ¶ 138.

81. *Id.*

mains.⁸²

B. Before the Court

January 21, 2010: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸³

1. Violations Alleged by Commission⁸⁴

To the detriment of Mr. Gelman, Ms. García Iruretagoyena, Mrs. Iruretagoyena Casinelli, and their next of kin:

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

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

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

Article 1(b) (Duty to Punish Forced Disappearances)

Article 3 (Obligation to Adopt Legislative Measures)

Article 4 (Jurisdiction over Forced Disappearances)

Article 5(Obligation of Extradition) of the Inter-American Convention on Forced Disappearance of Persons

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute)

Article 11 (Obligation to Extradite) of the Inter-American Convention to Prevent and Punish Torture.

To the detriment of Mrs. Iruretagoyena Casinelli:

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

82. *Id.*

83. *Gelman v. Uruguay, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶¶ 3(a)-(e) (Feb. 24, 2011).*

84. *Id.* ¶ 3.

Article 7 (Right to Personal Liberty)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Ms. García Iruretagoyena:

Article 3 (Right to Juridical Personality)

Article 11 (Right to Privacy)

Article 18 (Right to a Name and to Surname of Parents)

Article 19 (Rights of the Child)

Article 20 (Right to Nationality)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

To the detriment of Mr. Gelman, Ms. García Iruretagoyena, and their next of kin:

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 17 (Rights of the Family)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention
Article 12 (Duty to Assist Other States in Search and Identification of Victims) of the Inter-American Convention on Forced Disappearance of Persons.

2. Violations Alleged by Representatives of the Victims⁸⁵

Same Violations Alleged by Commission, plus:

To the detriment of Mrs. Iruretagoyena Casinelli:

Article 7(b) (Duty to Prevent, Investigate, and Punish Violence) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.

85. *Id.* ¶ 4. Mr. José Luis González, Ms. Viviana Krsticevic, Ms. Ariela Peralta, Ms. Liliana Tojo, Ms. Alejandra Arancedo, and Ms. Martine Lemmens of CEJIL serve as representatives of Mr. Gelman, Ms. García Iruretagoyena, and Mrs. Iruretagoyena Casinelli. *Id.* ¶ 4 n.5.

To the detriment of Mr. Gelman and Ms. García Iruretagoyena:⁸⁶

Article 8 (Right to a Fair Trial)

Article 13 (Freedom of Thought and Expression)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

August 12, 2010: The State submits a brief in which it recognized the violation of the rights of Mrs. Iruretagoyena Casinelli and Ms. García Iruretagoyena “during the de facto government in Uruguay between June 1973 and February 1985.”⁸⁷

September 27, 2010: The State submits a brief recognizing Mr. Gelman “as a victim in the proceedings.”⁸⁸

December 1–2, 2010: Mr. Jorge Errandonea, Mr. Carlos María Pelayo, and Ms. Carolina Villadiego Burbano, in collaboration with the International Clinic for the Defense of Human Rights of the University of Quebec in Montreal, and the Latin American and Caribbean Committee for the Defense of Women’s Rights (*Comité de América Latina y el Caribe para la Defensa de los Derechos Humanos de la Mujer*, “CLADEM”) submit an *amicus curiae* brief.⁸⁹

III. MERITS

A. *Composition of the Court*⁹⁰

Diego García-Sayán, President

Leonardo A. Franco, Vice-President

Manuel E. Ventura Robles, Judge

Margarette May Macaulay, Judge

Rhadys Abreu Blondet, Judge

Eduardo Vio Grossi, Judge

86. The representatives of the victims collectively refer to these violations as a “violation of the right to the truth” to the detriment of the next of kin of Mrs. Iruretagoyena Casinelli and “Uruguayan society.” *Id.* ¶ 4.

87. *Id.* ¶ 5.

88. *Id.* ¶ 11.

89. *Id.* ¶ 15.

90. Judge Alberto Pérez Pérez, a Uruguayan national, recuses himself in accordance with the Rules of Procedure, *Id.* at 1.

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

February 24, 2011: The Court issues its Judgment on Merits and Reparations.⁹¹

As a preliminary matter, the Court found that the State's statements contained within its briefs of August 12 and September 27, 2010 constitute "a partial admission of the facts, as well as a partial acquiescence to the claims set forth in the Commission's application and the in the representatives' brief of pleadings and motions."⁹² However, the Court found it necessary to establish the facts of the case in the Judgment and to determine reparations.⁹³

The Court found unanimously that Uruguay had violated:

Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty), all in relation to Article 1(1) of the American Convention and Articles 1 (Obligation to Adopt Measures) and 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on the Forced Disappearance of Persons to the detriment of Mrs. Iruretagoyena Casinelli,⁹⁴ because:

The Court ruled that an enforced disappearance is "a complex violation of rights"⁹⁵ and is conducted as a "systematic practice of 'State-sponsored terrorism.'"⁹⁶ In the context of such a violation, a victim is stuck in an uncertain situation preventing her from exercising her rights, making forced disappearance one of the most serious breaches of the State's obligation to guarantee human rights.⁹⁷ Moreover, the State has an obligation to hold detainees in known locations and to present them before a court.⁹⁸ The Court found that Mrs. Iruretagoyena

91. Gelman v. Uruguay, Merits and Reparations.

92. *Id.* ¶ 28.

93. *Id.* ¶ 31.

94. *Id.* ¶ 101.

95. *Id.* ¶ 91.

96. *Id.* ¶ 99.

97. *Id.* ¶ 92.

98. *Id.* ¶ 91.

Casinelli's transport from Argentina to Uruguay was intended to remove her legal protections.⁹⁹ The Court also found that her prolonged detention and solitary confinement constituted cruel and inhumane treatment.¹⁰⁰ The mere fact that she was detained pursuant to a State plan constituted a violation of her rights to personal integrity and life, irrespective of whether or not she was tortured or murdered.¹⁰¹

Overall, the Court noted Mrs. Iruretagoyena Casinelli's heightened vulnerability because of her state of pregnancy.¹⁰² The Court determined that the acts committed against her constitute "one of the most serious and reprehensive forms of violence against women."¹⁰³ The facts show a threat to the freedoms entailed in motherhood that prevented the development of the victim's female identity.¹⁰⁴

The Court concluded that State responsibility is unavoidable because such acts require knowledge or orders of the State.¹⁰⁵ The State therefore failed to meet its obligation to prevent such violations and refrain from using its resources to perpetrate violations.¹⁰⁶

Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5(1) (Right to Physical, Mental, and Moral Integrity), 7 (Right to Personal Liberty), 17 (Rights of the Family), 18 (Right to a Name and to Surname of Parents), 19 (Rights of the Child), 20(3) (Prohibition of Arbitrary Deprivation of Nationality), all in relation to Article 1(1) the American Convention, and Articles 1 (Obligation to Adopt Measures) and 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on the Forced Disappearance of Persons to the detriment of Ms. García Iruretagoyena,¹⁰⁷ because:

The Court noted that the situation regarding Ms. García Iruretagoyena's birth and upbringing is an intricate sequence of events and violations of rights.¹⁰⁸ The Court further noted that learning the truth of

99. *Id.* ¶ 92.

100. *Id.* ¶ 94.

101. *Id.* ¶ 95.

102. *Id.* ¶ 97.

103. *Id.* ¶ 98.

104. *Id.* ¶¶ 97-98.

105. *Id.* ¶ 100.

106. *Id.*

107. *Id.* ¶ 137.

108. *Id.* ¶ 120.

her parentage has profoundly changed her life.¹⁰⁹ The Court found that the State made it impossible for her to know her family or establish relations with them.¹¹⁰ Further, by its actions, the State suppressed her identity.¹¹¹ Finally, it deprived her of her true nationality by preventing her birth in Argentina,¹¹² and that it also deprived her of juridical personality.¹¹³ The Court further found that her separation from her biological mother constituted a violation of personal liberty because in the context of childhood, such a separation inherently violates a child's liberty,¹¹⁴ and a violation of her right to life, because such a separation endangers a child's survival and development.¹¹⁵

Additionally, the Court noted that the violations of her rights enshrined in the American Convention occurred within the context of her "right to identity," which the Court defined as "the collection of attributes and characteristics that allow for the individualization of the person in a society, and, in that sense, encompasses a number of other rights according to the subject it treats and the circumstances of the case."¹¹⁶ Likewise, the Court recognized that many of the violations of Ms. García Iruretagoyena's rights occurred while she was a child, and she was therefore afforded special measures of protection.¹¹⁷

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 17 (Rights of the Family), all in relation to Article 1(1) of the American Convention, to the detriment of Mr. Gelman,¹¹⁸ because:

The Court first notes that the next of kin of victims of human rights violations are themselves victims of violations.¹¹⁹ The Court further found that Mr. Gelman's psychological and moral integrity was severely damaged in several respects. First, the disappearance of his pregnant daughter-in-law caused direct suffering to Mr. Gelman, which was only worsened by the State's refusal to provide information about her whereabouts or to conduct an investigation.¹²⁰ Additionally, failure to

109. *Id.* ¶ 118-119.

110. *Id.* ¶ 126.

111. *Id.* ¶ 127.

112. *Id.* ¶ 128.

113. *Id.* ¶ 131.

114. *Id.* ¶ 129.

115. *Id.* ¶ 130.

116. *Id.* ¶ 122.

117. *Id.* ¶ 121.

118. *Id.* ¶ 138.

119. *Id.* ¶ 133.

120. *Id.*

provide the truth of the facts constituted a form of cruel and inhumane treatment.¹²¹ Lastly, Mr. Gelman's personal integrity was violated because he was unaware of Ms. García Iruretagoyena's existence, which "created a feeling of emptiness."¹²² With regard to the right to protection of the family, the Court concluded that the State made it difficult or impossible for Mr. Gelman "to be with his family and reestablish a relationship with it."¹²³

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), all in relation to Article 1(1) of the American Convention, and Articles 1(b) (Duty to Punish Forced Disappearances), 3 (Obligation to Adopt Legislative Measures), 4 (Jurisdiction over Forced Disappearances), and 5 (Obligation of Extradition) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Gelman and Ms. García Iruretagoyena,¹²⁴ because:

The Court recalled that it previously ruled that amnesty laws are incompatible with a State's obligations under the American Convention.¹²⁵ The Court accordingly determined that the provisions of the Amnesty Law that impeded the investigation of the facts in this case are incompatible with the American Convention.¹²⁶ The Court also ruled that although the State's Amnesty Law was approved by a democratic system, such approval does not legitimize the Amnesty Law under international law.¹²⁷ Specifically, the Court decided that as a matter of international law the referenda are to be considered as acts which give rise to the state responsibility.¹²⁸ The Court observed that although the Executive branch determined the Amnesty Law was inapplicable, the law was still the main obstruction to the investigation.¹²⁹ Lastly, the Court noted that the next of kin of victims of human rights violations have a right to the truth, which in this case is access to justice and an investigation into the disappearance."¹³⁰

121. *Id.*

122. *Id.* ¶ 134.

123. *Id.* ¶ 135.

124. *Id.* ¶¶ 244-245.

125. *Id.* ¶ 196.

126. *Id.* ¶ 232.

127. *Id.* ¶ 237.

128. *Id.* ¶ 238.

129. *Id.* ¶ 241.

130. *Id.* ¶ 243.

The Court did not rule on:

Article 11 (Right to Privacy) in relation to Article 1(1) of the American Convention,¹³¹ because:

*The Commission and the representatives of the victims did not provide arguments unique to this right or that relate to the Court's understanding of the right.*¹³²

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi commented on several aspects of the Judgment. First, he noted that it would have been appropriate to characterize the events of the case as one international illegal act and that the situation of Ms. García Iruretagoyena could be deemed an enforced disappearance, since she was deprived of her liberty, put in a situation in which her whereabouts were unknown, and was unable to seek legal recourse.¹³³

Judge Vio Grossi also noted that it would have been helpful to bifurcate the events attributable to the State into those events that occurred during the dictatorship and those that occurred afterwards since the State readily acknowledged the events that occurred during the dictatorship.¹³⁴ Furthermore, Judge Vio Grossi took note that, although Argentina was not a party to the litigation, international law addresses the situation where states jointly participate in an illegal act.¹³⁵ Lastly, Judge Vio Grossi recalled that although the Judgment mentioned the “right to identity,” it did not find that the State violated such a right because it is absent from the American Convention.¹³⁶ Judge Vio Grossi therefore invited the Organization of American States and the State Parties to the American Convention to develop a clearer definition of such a right so that the Court can better apply it in the future.¹³⁷

131. *Id.* ¶ 136.

132. *Id.*

133. Gelman v. Uruguay, Merits and Reparations, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶¶ 2-3 (Feb 24, 2011).

134. *Id.* ¶¶ 4-5.

135. *Id.* ¶ 7.

136. *Id.* ¶ 8.

137. *Id.*

IV. REPARATIONS

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

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

1. Identify, Prosecute, and Punish Those Responsible

The Court decided that the State must conduct a prompt investigation into the facts of this case to identify, prosecute, and punish those responsible for the enforced disappearance of Mrs. Iruretagoyena Casinelli and the abduction and suppression of the identity of Ms. García Iruretagoyena.¹³⁸ Furthermore, in addition to the Amnesty Law, the State must ensure that no legal rules or procedures, such as statutes of limitations, non-retroactivity of criminal law, *res judicata*, or “other analogous norms” act to obstruct the investigation.¹³⁹ The Court also rules that the next of kin must have full access to the investigation.¹⁴⁰

2. Determine the Whereabouts of Mrs. Iruretagoyena Casinelli

The Court ordered the State to continue its investigation into the whereabouts of Mrs. Iruretagoyena Casinelli’s remains in accordance with international standards.¹⁴¹ If her remains are found, the State must give them to the next of kin as soon as possible along with genetic evidence demonstrating that they are her remains.¹⁴² Furthermore, if such remains are found, the State must pay for funeral expenses if requested by the next of kin.¹⁴³

3. Install a Memorial Plaque

The Court decided that the State must unveil a plaque at the SID headquarters containing the names of the persons detained there and the periods for which they were detained.¹⁴⁴

138. *Gelman v. Uruguay, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, ¶ 252 (Feb. 24, 2011).*

139. *Id.* ¶ 254.

140. *Id.* ¶ 256.

141. *Id.* ¶ 258.

142. *Id.* ¶ 260.

143. *Id.*

144. *Id.* ¶ 267.

4. Publish the Judgment

The Court determined that the State must publish the entire judgment in the *Official Gazette* and on an official website, and it must publish the official summary of the judgment in one issue of a newspaper of national circulation.¹⁴⁵

5. Create Public Access to State Files Regarding Disappearances

The Court ordered the State to adopt measures to guarantee public access to archives which contain information of human rights violations of the State.¹⁴⁶

6. Train Judicial Personnel in Human Rights

The Court ordered the State to implement a training program at the Center for Judicial Studies of Uruguay to be offered to prosecutors and judges that outlines the proper methods of investigating and ruling on enforced disappearances and abductions of minors.¹⁴⁷

*B. Compensation*¹⁴⁸

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$5,000 to Ms. García Iruretagoyena for expenses incurred searching for her mother.¹⁴⁹ The Court also awarded to Ms. García Iruretagoyena, as the sole beneficiary, \$300,000 for the loss in expected lifetime income of Mrs. Iruretagoyena Casinelli.¹⁵⁰

2. Non-Pecuniary Damages

The Court awarded \$100,000 to Mrs. Iruretagoyena Casinelli (to be paid to her sole beneficiary, Ms. García Iruretagoyena) and \$80,000 to

145. *Id.* ¶ 271.

146. *Id.* ¶ 282.

147. *Id.* ¶ 278.

148. The Court granted Mr. Gelman's request that he be excluded as a beneficiary with regards to compensation. *Id.* ¶ 286.

149. *Id.* ¶ 291.

150. *Id.* ¶ 293.

Ms. García Iruretagoyena as compensation for non-pecuniary damages.¹⁵¹

3. Costs and Expenses

The Court awarded \$28,000 to the representatives of the victims for the costs incurred in this case and decided that it may order additional reimbursements if expenses are incurred during the monitoring compliance stage of the proceedings.¹⁵²

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

\$ 508,000

C. Deadlines

The Court determined that the State must install and unveil the plaque at the SID headquarters within one year.¹⁵³

The Court further determined that the State must publish the Judgment within a period of six months.¹⁵⁴ The Judgment that is to be published on an official website of the State must remain accessible to the public for a period of one year.¹⁵⁵

Although the Court did not establish a definite deadline for the implementation of a training program and the Center for Judicial Studies of Uruguay, it ordered such a program to be implemented within a reasonable period of time.¹⁵⁶

With regard the compensation, the Court ordered the State to make the payments within one year after the notice of the Judgment and, if it fails to do so, the State will pay interest on the amount owed set at the State's banking interest rate.¹⁵⁷

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

151. *Id.* ¶ 296.

152. *Id.* ¶ 304.

153. *Id.* ¶ 267.

154. *Id.* ¶ 271.

155. *Id.*

156. *Id.* ¶ 278.

157. *Id.* ¶¶ 305, 311.

VI. COMPLIANCE AND FOLLOW-UP

June 30, 2011: The President issued an order stating that the Executive branch will no longer apply the Amnesty Law to cases.¹⁵⁸

August 11, 2011: The State published the official summary of the Judgment in two newspapers of national circulation: *El País* and *La República*.¹⁵⁹

August 31, 2011: The President issued a presidential decree creating an inter-ministerial commission for the purposes of monitoring the State's compliance with the Court's judgment.¹⁶⁰

October 27, 2011: The legislature passed Law 18831, which effectively repeals the Amnesty Law.¹⁶¹ That same day, a magistrate opened a criminal case regarding the murder of Mrs. Iruretagoyena Casinelli, with five individuals under investigation.¹⁶²

March 21, 2012: The State held a public ceremony acknowledging its responsibility, which was led by President José Mujica, the Vice-President, and the President of the Supreme Court of Justice, and conducted in the presence of Ms. García Iruretagoyena and Mr. Gelman.¹⁶³ The same day, the State unveiled a plaque at the SID headquarters in memory of Mrs. Iruretagoyena Casinelli, Ms. García Iruretagoyena, and other victims held there.¹⁶⁴

February 22, 2013: The Supreme Court of Justice ruled that Law 18831, which repealed the Amnesty Law, is unconstitutional.¹⁶⁵

March 20, 2013: The Court issued an order determining that the State had complied with several of its obligations, but had not complied with others.¹⁶⁶ The Court found that the State complied with the requirement

158. Gelman v. Uruguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considerando Que" ¶ 28 (Mar. 20, 2013) (Available only in Spanish).

159. *Id.* "Considerando Que" ¶ 9.

160. *Id.* "Considerando Que" ¶ 23.

161. *Id.* "Considerando Que" ¶¶ 28, 46.

162. *Id.* "Considerando Que" ¶ 29.

163. *Id.* "Considerando Que" ¶¶ 5, 8.

164. *Id.* "Considerando Que" ¶ 5.

165. *Id.* "Considerando Que" ¶¶ 31, 46.

166. See generally Gelman v. Uruguay, Monitoring Compliance with Judgment (Mar. 20, 2013).

of making a public act and installing a plaque at the SID headquarters.¹⁶⁷ The Court also found that the State fully complied with its obligation to publish the Judgment.¹⁶⁸ Lastly, the Court found that the State paid all amounts of compensation for damages and reimbursement for costs and expenses ordered in the Judgment.¹⁶⁹

With respect to the obligation to make public State archives regarding human rights violations, the Court noted that the State was making progress, but that in its next progress report, the State must give more specific information regarding compliance.¹⁷⁰ Furthermore, the Court noted that although the State appeared to have implemented a human rights program to train judicial personnel, the information provided did not contain enough detail about the program and the Court therefore called on the State to provide more detailed information in its next report.¹⁷¹ Additionally, the Court stated that, while it acknowledged the steps taken towards exhuming the remains of Mrs. Iruretagoyena Casinelli, her remains have still not been found and the State has not yet submitted a structured plan with appropriate information on compliance in this regard.¹⁷² Therefore, the State must elaborate on what measures it is taking in its next report.¹⁷³

Lastly, the Court noted that the State had taken steps to comply with the obligation to remove barriers to the investigation of the disappearance of Ms. Iruretagoyena Casinelli, such as the presidential decree of June 30, 2011 and the passage of Law 18831 on October 27, 2011.¹⁷⁴ However, the Court found that the Supreme Court of Justice's ruling was inconsistent with the State's international obligations and international law.¹⁷⁵ The Court noted that the ruling hinders compliance with the Court's Judgment in this case and that such actions could represent a mechanism to perpetuate State impunity that the Court found in this case.¹⁷⁶ The Court concluded that all of the State's bodies must comply with the measures ordered by the Court in its Judgment.¹⁷⁷

Judge Eduardo Ferrer Mac-Gregor Poisot appended a separate opinion to the Court's order on monitoring compliance with the Judgment in

167. *Id.* "Considerando Que" ¶ 8.

168. *Id.* "Considerando Que" ¶ 12.

169. *Id.* "Considerando Que" ¶ 13.

170. *Id.* "Considerando Que" ¶¶ 17, 19.

171. *Id.* "Considerando Que" ¶ 22.

172. *Id.* "Considerando Que" ¶¶ 27, 25.

173. *Id.* "Considerando Que" ¶ 27.

174. *Id.* "Considerando Que" ¶ 103.

175. *Id.*

176. *Id.*

177. *Id.* "Considerando Que" ¶ 104.

which he noted that actions of the State's Executive and Legislative branches clearly revealed the State's commitment to comply with its obligations.¹⁷⁸ However, the ruling of the Supreme Court of Justice on February 22, 2013 affected timely compliance with the Judgment.¹⁷⁹ Judge Mac-Gregor Poisot therefore wrote separately to emphasize the impact that the Supreme Court of Justice's ruling can have on the authority of the Court, the effectiveness of the Inter-American system, and the State Parties to the American Convention.¹⁸⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Gelman v. Uruguay, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 221 \(Feb. 24, 2011\).](#)

[Gelman v. Uruguay, Merits and Reparations, Concurring Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 221 \(Feb. 24, 2011\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Gelman v. Uruguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Mar. 20, 2013\) \(Available only in Spanish\).](#)

[Gelman v. Uruguay, Monitoring Compliance with Judgment, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct.](#)

178. *Gelman v. Uruguay, Monitoring Compliance with Judgment, Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R.* ¶ 5 (Mar. 20, 2013).

179. *Id.* ¶ 9.

180. *Id.* ¶ 10.

[H.R. \(Mar. 20, 2013\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Juan Gelman, et al. v. Uruguay, Petition No. 438-06, Inter-Am. Comm'n H.R. (May 8, 2006).

2. Report on Admissibility

[Gelman v. Uruguay, Admissibility Report, Report No. 30/07, Inter-Am. Comm'n H.R., Case No. 12.607 \(Mar. 9, 2007\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Gelman v. Uruguay, Report on Merits, Report No. 32/08, Inter-Am. Comm'n H.R., Case No. 32/08 (July 18, 2008).

5. Application to the Court

Gelman v. Uruguay, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.607 (Jan. 21 2010).

VIII. BIBLIOGRAPHY

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A. R. Harrington, *Life As We Know It: The Expansion of the Right to Life Under the Jurisprudence of the Inter-American Court of Human Rights*, 35 LOYOLA L.A. INT'L & COMP. L. REV. 313 (2013).

F. Michelini, *Reflections on Uruguayan Law No. 18831 a Year after Its Enactment*, 20 HUM. RTS. BRIEF 2 (2012).

R. I. Sijniensky & N. Alexander Aizenstatd, *Towards a Uniform Basis for the Right to Identity in the Normative Framework of the American Convention on Human Rights*, 7 INTER-AM. & EUR. HUM. RTS. J. 75 (2014).

D. Soltman, Note, *Applauding Uruguay's Quest for Justice: Dictatorship, Amnesty, and Repeal of Uruguay Law No. 15.848*, 12 WASH. U. GLOBAL STUD. L. REV. 829 (2013).