

# Vargas Areco v. Paraguay

## ABSTRACT<sup>1</sup>

*This case is about the murder of a fifteen year old kid who had been drafted in the State Armed Forces, by a non-commissioner officer who wanted to punish him for not returning to his unit after a home leave. After a long and flawed prosecution of the officer, the case reached the Commission and the Court. The State admitted partial responsibility. The Court found the State violated the victim's right to life and right to physical, mental, and moral integrity, as well as his right to a hearing and to judicial protection. It also found violation of the Inter-American Convention to Prevent and Punish Torture, in particular the obligation the State has to take effective measures to prevent and punish torture, cruel and inhumane and degrading treatment and the obligation to prosecute.*

## I. FACTS

### A. Chronology of Events

**November 6, 1973:** Gerardo Vargas Areco is born in Bella Vista Norte, a border town in the northeast of the State, to Mr. Pedro Vargas and Mrs. De Belén Areco.<sup>2</sup>

**January 26, 1989:** The Armed Forces draft Gerardo for military service at fifteen years old.<sup>3</sup>

**August 24, 1989:** The State ratifies the American Convention.<sup>4</sup>

**November 10, 1989:** During his service at the Villarrica Infantry Divi-

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1. Ushma Vyas, Author; Dale Ogden, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Vargas Areco v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 155, ¶ 71(1) (Sept. 26, 2006).

3. *Id.* ¶ 71(2).

4. *Id.* ¶ 62.

sion, the Armed Forces grant Gerardo a leave of absence to visit his family; however, Gerardo decides to not return.<sup>5</sup> A non-commissioned officer arrives at the Vargas Areco residence to retrieve Gerardo.<sup>6</sup> Upon his return, Gerardo is punished for “failing to return to service.”<sup>7</sup>

**December 1989:** Gerardo is granted a five-day leave of absence to visit his family for Christmas.<sup>8</sup>

**December 30, 1989:** Gerardo is arrested for again failing to “voluntarily and timely return to his post” after his leave.<sup>9</sup> After suffering from a nosebleed, a non-commissioned officer, Corporal Aníbal López Insfrán, escorts Gerardo to the infirmary for treatment.<sup>10</sup> When Gerardo attempts to escape, Mr. López Insfrán shoots him from behind.<sup>11</sup>

**December 31, 1989:** At 6:00 a.m., Gerardo’s dead body is recovered from outside the infirmary.<sup>12</sup> The body’s recovery is overseen by Dr. David Obregón, a forensic physician, who rules the cause of death as “acute bleeding due to a gunshot wound.”<sup>13</sup> The Armed Forces deliver his body to his family in a sealed coffin.<sup>14</sup> Meanwhile, Brigadier General Mario Rodolfo Escobar Anzoategui orders a military investigation into Gerardo’s death.<sup>15</sup>

**January 1, 1990:** Dr. José de Ribamar Cruz e Silva performs an independent autopsy at the request of the Vargas Areco family.<sup>16</sup> Dr. Ribamar Cruz e Silva finds wounds consistent with severe torture before Gerardo ultimately died from the shot to his chest.<sup>17</sup>

**January 2, 1990:** Gerardo’s parents file a criminal complaint with the

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5. *Id.* ¶ 71(3).

6. *Id.*

7. *Id.*

8. *Id.* ¶ 71(4).

9. *Id.* ¶ 71(5).

10. *Id.* ¶¶ 71(5), 71(11)

11. *Id.* ¶ 71(6).

12. *Id.* ¶ 71(7).

13. *Id.*

14. *Id.* ¶ 71(8).

15. *Id.* ¶ 71(11).

16. *Id.* ¶ 71(9).

17. *Id.*

regional Justice of Peace.<sup>18</sup>

**January 5, 1990:** The First Instance Court on Juvenile Criminal and Correctional Matters orders an investigation into Gerardo's death.<sup>19</sup> Gerardo's parents submit photos of his corpse and Dr. Ribamar Cruz e Silva's autopsy reports into evidence.<sup>20</sup>

**January 10, 1990:** The military investigation closes and the Military Prosecutor files criminal charges against Mr. López Insfrán for homicide on February 1, 1990.<sup>21</sup>

**February 23, 1990:** The Military First Instance Court, Second Division, acquits Mr. López Insfrán, stating he acted "in the course of duty," so his actions are considered acceptable under the State military criminal code.<sup>22</sup>

**March 28, 1990:** After the Prosecutor's Office appeals the acquittal, the Supreme Military Court of Justice finds Mr. López Insfrán guilty of "homicide committed in the performance of duties," sentencing him to one year of military imprisonment.<sup>23</sup>

**September 10, 1990:** On appeal, the Supreme Court of Justice of Paraguay finds that the criminal charges against Mr. López Insfrán should have been heard before the First Instance Court on Juvenile Criminal and Correctional Matters.<sup>24</sup>

**1991 until 1997:** The case investigation is put on hold.<sup>25</sup>

**July 28, 1999:** Gerardo's parents, Mr. Vargas and Mrs. De Belén Areco, file a petition with the Inter-American Commission on Human Rights.<sup>26</sup>

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18. *Id.* ¶ 71(10).

19. *Id.* ¶ 71(13).

20. *Id.* ¶ 71(13).

21. *Id.* ¶ 71(11).

22. *Id.* ¶ 71(12), n. 12.

23. *Id.*

24. *Id.* ¶ 71(14). According to the Paraguayan Military Criminal Code, if a criminally-charged military officer is subject to both military and ordinary criminal courts, the latter holds jurisdictional preference.

25. *Id.* ¶ 71(15).

26. *Id.* ¶ 6.

**April 10, 2001:** The Criminal Assessment and Judgment Court of Villarrica Judicial District closes investigations and sets a trial date for Mr. López Insfrán.<sup>27</sup>

**November 27, 2001:** In light of new testimony from military officers requested ten years earlier, the Criminal Assessment and Judgment Court reopens investigation and adds Captain Eduardo Riveros Gavilán as a joint defendant.<sup>28</sup>

**May 31, 2002:** The Criminal Assessment and Judgment Court orders a third autopsy after noting discrepancies between the military's report from Dr. Obregón and Dr. Ribamar Cruz e Silva's findings of torture.<sup>29</sup>

**May 6, 2002:** Dr. Mario J. Vasquez Estigarribia confirms Gerardo's cause of death as a gunshot wound to the chest and explains that his "burns" were the result of putrefaction caused during decomposition.<sup>30</sup>

**September 22, 2003:** Dr. Octaviano Aquiles Franco Saggia submits an expert report confirming that the burn-like injuries seen in photos of Gerardo's corpse are consistent with putrefaction.<sup>31</sup>

**October 3, 2003:** Dr. Fausto Ricardo Paredes Pavón submits a second expert report confirming that the burn-like injuries were the result of decomposition.<sup>32</sup>

**October 13, 2003:** The Criminal Assessment and Judgment Court closes the discovery of evidence for Mr. López Insfrán's trial.<sup>33</sup>

**October 26, 2003:** Dr. Elida Salinas Ramirez submits a third expert report confirming that the burn-like injuries were the result of putrefaction.<sup>34</sup>

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27. *Id.* ¶ 71(17).

28. *Id.* ¶¶ 71(16)–(17), 71(21).

29. *Id.* ¶ 71(18); *see id.* ¶ 71(7).

30. *Id.* ¶ 71(18).

31. *Id.* ¶ 71(19).

32. *Id.*

33. *Id.* ¶ 71(21).

34. *Id.* ¶ 71(19).

**July 5, 2004:** Upon the State's request, Dr. Jose G. Bellasai Zayas submits a fourth expert report confirming the previous experts' findings and adding that the injuries are not the result of torture or assault.<sup>35</sup>

**August 6, 2004:** The Criminal Assessment and Judgment Court closes the discovery of evidence for Mr. Riveros Gavilán's trial.<sup>36</sup>

**March 2, 2005:** The Criminal Assessment and Judgment Court convicts Mr. López Insfrán and sentences him to one year of imprisonment.<sup>37</sup> However, because Mr. López Insfrán already served one year in the Peña Hermosa military prison pending trial, the court finds he already served the full sentence.<sup>38</sup> Similarly, the court acquits Mr. Riveros Gavilán upon finding Mr. López Insfrán solely liable.<sup>39</sup>

### *B. Other Relevant Facts*

The State undergoes over thirty-five years of martial law under Alfredo Stroessner, a period notorious for undermining individual liberties.<sup>40</sup> Even after Stroessner's death, human rights activists continue to denounce the forced conscription of child soldiers as young as twelve and organize against the use of excessive military disciplinary practices.<sup>41</sup>

In 2001, the State creates the Inter-Institutional Commission of Visits to Military Quarters to dismantle conscription policies and practices that target minors.<sup>42</sup>

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35. *Id.* ¶ 71(20).

36. *Id.* ¶ 71(21).

37. *Id.* ¶ 71(22).

38. *Id.*

39. *Id.*

40. *See generally* Diana Jean Schemo, *Stroessner, Paraguay's Enduring Dictator, Dies*, N.Y. TIMES (Aug. 16, 2006), [http://www.nytimes.com/2006/08/16/world/americas/16cnd-stroessner.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2006/08/16/world/americas/16cnd-stroessner.html?pagewanted=all&_r=0); *see also* United States Dep't of State, *Paraguay: Country Reports on Human Rights Practices, 2001*, Bureau of Democracy, Human Rights and Labor (Mar. 4, 2002), <http://www.state.gov/j/drl/rls/hrrpt/2001/wha/8297.htm>.

41. *See* Schemo, *supra* note 40; United States Dep't of State, *supra* note 40; Child Soldiers Int'l, *Child Soldiers Global Report 2004*.

42. *See* Schemo, *supra* note 40; United States Dep't of State, *supra* note 40; Child Soldiers Int'l, *supra* note 41.

## II. PROCEDURAL FACTS

A. *Before the Commission*

**July 28, 1999:** Gerardo's parents, the Center for Justice and International Law (CEJIL), and the Paraguayan Peace and Justice Service (*Servicio de Paz y Justicia de Paraguay*; "SERPAJ PY") (collectively "Petitioners") file a petition against the State over its prosecution of Mr. López Insfrán and Mr. Riveros Gavilán in Gerardo's death.<sup>43</sup>

**October 17, 2000:** The State expresses its willingness to reach a friendly settlement.<sup>44</sup>

**May 13, 2003:** Petitioners abandon the friendly settlement process after asserting the State failed to honor its part of the agreement.<sup>45</sup>

**October 19, 2004:** The Commission issues Admissibility and Merits Report No. 76/04, finding that the State violated Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 19 (Rights of the Child) of the American Convention to the victim's detriment, and Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) to the victim's family's detriment.<sup>46</sup> The Commission recommends that the State 1) publicly acknowledge international responsibility; 2) investigate the facts of the incident and identify, prosecute, and punish those responsible; 3) compensate the victim's relatives; and 4) pay the victim's representatives' legal costs and expenses.<sup>47</sup>

**February 24, 2005:** In response to the Commission's recommendations, the State promises that it will publicly acknowledge liability and pay the Vargas Areco family \$5,000 within a year, although it acknowledges its ability to pay up to \$20,000.<sup>48</sup> The State also ceremonially promotes Gerardo to "First Deputy Sergeant" in Decree No. 4399.<sup>49</sup>

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43. Vargas Areco v. Paraguay, Merits, Reparations and Costs, ¶ 6.

44. *Id.* ¶ 7.

45. *Id.* The Court did not specify the terms of the settlement agreement.

46. *Id.* ¶ 8.

47. Vargas Areco v. Paraguay, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.300, ¶ 26 (Mar. 27, 2005) (Available only in Spanish).

48. *Id.* ¶ 10.

49. *Id.*

**March 21, 2005:** Petitioners request the Commission submit its case to the Court.<sup>50</sup>

*B. Before the Court*

**March 26, 2005:** The Commission submits the case to the Court, after the State failed to adopt its recommendations.<sup>51</sup>

1. Violations Alleged By the Commission<sup>52</sup>

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 19 (Rights of the Child)

Article 25 (Right to Judicial Protection)

*all in relation to:*

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

2. Violations Alleged By Representatives of the Victims<sup>53</sup>

Same Violations Alleged by Commission, plus:

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

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture (hereinafter “Convention against Torture”)

*all in relation to:*

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

**October 28, 2005:** The State asserts its “unconditional acquiescence” to the Commission’s application, thus acknowledging its international lia-

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50. *Id.* ¶ 11.

51. *Id.* ¶ 12.

52. *Id.* ¶ 14.

53. *Id.* ¶ 19.

bility.<sup>54</sup> In response, the President of the Court requests that the State clarify the extent of its liability regarding the victim's death.<sup>55</sup>

**November 15, 2005:** The State responds that it will fully comply with the Commission's decisions regarding the Petitioners' claims.<sup>56</sup>

**November 23 and 24, 2005:** The Commission and Petitioners contend that the State's partial acknowledgement of its responsibility fails to address Article 5 (Right to Humane Treatment) and Article 19 (Rights of the Child) of the American Convention as related to Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhumane, and Degrading Treatment) and Article 8 (Obligation to Investigate and Prosecute) of the Convention against Torture.<sup>57</sup>

**June 21, 2006:** The State publically acknowledges its partial responsibility.<sup>58</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>59</sup>

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

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

#### B. *Decision on the Merits*

**September 26, 2006:** The Court issues its Judgment on Merits, Repara-

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54. *Id.* ¶ 20.

55. *Id.*

56. *Id.* ¶ 21.

57. *Id.* ¶ 22.

58. *Id.* ¶ 33.

59. Judge Oliver Jackman did not participate in the deliberation and signing of the judgment due to *force majeure*. *Id.* n.\*.



tions and Costs.<sup>60</sup>

The Court found unanimously that the State had violated:

Article 4 (Right to Life), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, and Article 6 (Obligation to Take Effective Measures To Prevent and Punish Torture and Cruel, Inhumane, and Degrading Treatment) and Article 8 (Obligation to Investigate and Prosecute) of the Convention to Prevent and Punish Torture, to the detriment of the relatives of Gerardo Vargas Areco,<sup>61</sup> because:

*The State failed to conduct thorough and effective investigations into criminal allegations of military malfeasance.<sup>62</sup> Article 4 (Right to Life) requires states to protect against the arbitrary deprivation of life.<sup>63</sup> It also requires states to take “any and all necessary measures to protect and preserve the right to life.”<sup>64</sup> Regarding extrajudicial killings, states must investigate incidents involving state agents as an added protection against impunity.<sup>65</sup>*

*Though the State’s objected that the murder of Gerardo Vargas Areco took place before it accepted the Court’s jurisdiction, the Court found that the State was obligated to investigate the victim’s extrajudicial killing since it took place after the State ratified both the American Convention and the Convention against Torture.<sup>66</sup>*

*Moreover, the State failed to evaluate inconsistencies between contradictory autopsy reports.<sup>67</sup> When such inconsistencies arise, states must exhume the corpse and perform another autopsy to provide clarity.<sup>68</sup> Citing the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, the Court further highlighted the State’s noncompliance with international protocols.<sup>69</sup> In*

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60. Vargas Areco v. Paraguay, Merits, Reparations and Costs.

61. *Id.* ¶ 94.

62. *Id.* ¶ 87.

63. *Id.* ¶ 75.

64. *Id.*

65. *Id.* ¶ 76.

66. Vargas Areco v. Paraguay, Merits, Reparations and Costs, ¶¶ 85–86.

67. *Id.* ¶ 87.

68. *Id.* ¶ 90.

69. *Id.* ¶ 91.

*outlining a framework for investigating suspicious deaths, the UN first requires that any prospective defendant be provided the minimal procedural safeguards and due process rights guaranteed by international law.<sup>70</sup> Then, with full access to the state's resources and upon request to international experts, an objective investigator must employ an adequate technical and administrative team to collect evidence for trial.<sup>71</sup> Based on these principles, the Court held that the State's investigations lacked forensic expertise and precision comparable to global standards; thus, the State had violated the victim's right to life under Article 4 (Right to Life) in relation to Articles 6 (Obligation to Take Effective Measures to Prevent and Punish Torture and Cruel, Inhumane, and Degrading Treatment) and 8 (Obligation to Investigate and Prosecute) of the Convention to Prevent and Punish Torture.<sup>72</sup>*

Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) of the Convention, to the detriment of the victim's next of kin,<sup>73</sup> because:

*Just as the State's incomplete, ineffective investigations of the victim's death violated the victim's right to life, its response to the victim's death and inadequate assessment regarding torture violated the Vargas Areco family's right to humane treatment.<sup>74</sup> Article 5(1) (Right to Physical, Mental, and Moral Integrity) obligates states to immediately begin investigating complaints alleging an extrajudicial killing, or when there are reasonable signs that torture has occurred ante-mortem.<sup>75</sup>*

*Given the State's acknowledgment of responsibility, the Court did not explore the nature of either triggering event; instead, it focused on the effects of the State's investigation.<sup>76</sup> The Court suggested that the next of kin's extreme medical and psychological trauma could be attributed to Gerardo's death and the State's ineffective investigation into the*

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70. UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 15 (U.S. Dep't of Justice, 1991), available at <http://www.ohchr.org/EN/Issues/Executions/Pages/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx>.

71. *Id.*

72. Vargas Areco v. Paraguay, Merits, Reparations and Costs, ¶ 94.

73. *Id.* ¶ 97.

74. *Id.*

75. *Id.* ¶ 79.

76. *Id.* ¶ 95.

death and potential torture.<sup>77</sup> The Court further explained that without exhuming the victim's body and performing a technical autopsy, the State unjustifiably ruled out the possibility of torture using inconclusive photographs of the victim's body.<sup>78</sup> As a result, the victim's family experienced psychological anguish from the State's failure to properly investigate the circumstances.<sup>79</sup> Thus, the Court held that the State had violated Article 5(1) (Right to Physical, Mental, and Moral Integrity to the detriment of Gerardo Vargas Areco's next of kin.<sup>80</sup>

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of Gerardo Vargas Areco's relatives,<sup>81</sup> because:

*The decade-long delay did not constitute a reasonable time to complete the criminal investigations.*<sup>82</sup> Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) requires states to guarantee the right to an equitable hearing within a reasonable time as measured by: (1) the case's complexity, (2) the relevant procedural activities, and (3) the judiciary's conduct.<sup>83</sup> More importantly, investigations into a state agency or agent should be conducted and enforced by states, even when punishing their own officers.<sup>84</sup>

*Here, the Court determined that the matter was not complex, nor were the proceedings delayed by any fault of the petitioners.*<sup>85</sup> The incident occurred at a military site, the victim's body was found within the site, and the State was allowed full access, rendering any investigation fairly simple.<sup>86</sup> However, the investigations continued for an unreasonable thirteen years.<sup>87</sup> The Court deemed the decade-long delay in the gathering of testimonies, both of the defendant López Insfrán and numerous

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77. *Id.* ¶¶ 95–96.

78. *Id.* ¶¶ 89–90.

79. *Id.* ¶¶ 95–96.

80. *Id.* ¶ 97.

81. *Id.* ¶ 110.

82. *Id.* ¶¶ 105, 109.

83. *Id.* ¶¶ 99, 102.

84. *Id.* ¶¶ 103, 106.

85. *Id.* ¶ 103.

86. *Id.*

87. *Id.* ¶ 105.

*other military officers, was unjustifiable.*<sup>88</sup> Thus, it found the State's failure to conduct "a complete and effective investigation" within a reasonable time violated the victim's relatives' right to a fair trial under Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).<sup>89</sup>

Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of the relatives of Gerardo Vargas Areco,<sup>90</sup> because:

*The one-year sentence given to Mr. López Insfrán was not a proportional sentence for murder.*<sup>91</sup> Article 25 (Right to Judicial Protection) requires that states punish offenders as both a deterrent and vindication of the rights of its citizens.<sup>92</sup> While the Court acknowledged its inability to prescribe specific forms of punishment, it does not give states free rein.<sup>93</sup>

*Accordingly, the Court held that although the State's Criminal Code deemed one-year imprisonment suitable punishment for "wrongful homicide," this was not a proportional punishment for Mr. López Insfrán.*<sup>94</sup> Proportionality should evaluate: (1) the amount of force used to subdue the victim against the victim's alleged insolence, and (2) the degree of the officer's misconduct against the child's right to life.<sup>95</sup> Using this balancing test, the Court held that the domestic courts failed to deliver a proportional punishment and thus, the State breached its duty to the victim and his relatives under Article 25 (Right to Judicial Protection).<sup>96</sup>

The Court unanimously rejected that the State had violated:

Article 19 (Rights of the Child), in relation to Article 1(1) (Obligation to Respect Rights), Article 2 (Obligation to Give Domestic Legal

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88. *Id.* ¶¶ 105, 109.

89. *Id.* ¶¶ 109–10.

90. *Id.* ¶ 110.

91. *Id.* ¶ 108.

92. *Id.* ¶ 106.

93. *Id.* ¶ 108.

94. *Id.* ¶¶ 107–08.

95. *Id.* ¶ 108.

96. *Id.* ¶ 109.

Effect to Rights), and Article 7 (Right to Personal Liberty) of the Convention, to the detriment of the State's children and the victim,<sup>97</sup> because:

*In spite of developing trends in domestic and international law, especially against the recruitment and conscription of minors, the relevant facts did not lie within the purview of the Court because they occurred prior to the State's submission to its jurisdiction.<sup>98</sup> Because the State acknowledged the violence, implemented domestic laws that increased the age for military service to eighteen years, and ratified the Optional Protocol to the Convention on the Rights of the Child, the Court determined Article 19 (Rights of the Child) could not be retroactively applied to the victim's death.<sup>99</sup>*

### C. Dissenting and Concurring Opinions

#### 1. Concurring Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez discussed the criminal nature of Gerardo Vargas Areco's deprivation of life.<sup>100</sup> Judge García Ramírez recognized that the Court's jurisdiction does not include factual and evidentiary assessments, or the ability to acquit or convict.<sup>101</sup> However, the Court may evaluate facts from a human rights perspective to guarantee the protection of those rights.<sup>102</sup> This allows the Court to evaluate a State's criminal jurisdiction by balancing the human rights violation with how the safeguards are enforced.<sup>103</sup> In this case, Judge García Ramírez felt that the lack of proportionality was especially relevant in effectively evaluating how to protect the victim's rights.<sup>104</sup>

## IV. REPARATIONS

The Court ruled unanimously that the State had the following obliga-

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97. *Id.* "Decides" ¶ 4.

98. *Id.* ¶¶ 61, 112–13.

99. *Id.* ¶¶ 63, 116, 134.

100. Vargas Areco v. Paraguay, Merits, Reparations, and Costs, Concurring Opinion of Judge García Ramírez, Inter-Am. Ct. H.R. (ser. C) No.155, ¶ 1 (Sept. 26, 2006).

101. *Id.* ¶ 7.

102. *Id.* ¶¶ 8–9.

103. *Id.* ¶ 11.

104. *Id.* ¶¶ 12, 16.

tions:

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

1. Conduct a Criminal Investigation and Prosecution

The Court ordered the State to reopen and complete a thorough investigation into the victim's death and to identify, prosecute, and punish those responsible.<sup>105</sup>

2. Publicly Acknowledge International Liability

The Court recognized that the State acknowledged its liability in the victim's death and issued a public apology to his family during a hearing at the National Chancery.<sup>106</sup> However, because the victim's family was unable to attend the hearing on June 21, 2006, the Court required the State redeliver its apology in their community.<sup>107</sup> During this ceremony before various politicians and military officers, the State must present a plaque memorializing the victim.<sup>108</sup>

3. Provide Medical and Psychological Treatment

The State must provide the Vargas Areco family with free medical and psychological therapy as needed.<sup>109</sup>

4. Establish Human Rights Educational Programs

The Court ordered the State to provide its military troops with regular courses and training in human rights.<sup>110</sup>

5. Publish the Judgment

The State must publish the full Judgment without footnotes in the

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105. *Vargas Areco v. Paraguay, Merits, Reparations and Costs*, ¶¶ 153, 155.

106. *Id.* ¶ 157.

107. *Id.* ¶ 158.

108. *Id.*

109. *Id.* ¶ 160.

110. *Id.* ¶ 161.

Official Gazette and in another newspaper with national circulation.<sup>111</sup>

## 6. Adapt Domestic Laws

The State must update its domestic legislation to reflect international standards on the appropriate age and manner for military recruitment and conscription.<sup>112</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$3,000 in pecuniary damages to compensate the Vargas Areco family's burial expenses.<sup>113</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$62,000 in non-pecuniary damages to the Vargas Areco family.<sup>114</sup> The Court stipulated that, of this amount, \$20,000 is to be distributed to the victim's mother, \$15,000 to his father, and \$3,000 to each of his siblings.<sup>115</sup>

#### 3. Costs and Expenses

The Court awarded \$8,000 as an estimated total of the petitioners' costs and expenses incurred in the domestic and Inter-American systems.<sup>116</sup>

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

\$ 73,000

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111. *Id.* ¶ 162.

112. *Id.* ¶ 164.

113. *Id.* ¶ 148.

114. *Id.* ¶ 151.

115. *Id.*

116. *Id.* ¶ 167.

### C. Deadlines

The State must compensate the victims, reimburse costs and expenses, deliver its public apology, and publish the Judgment within one year of receiving notification of the Judgment.<sup>117</sup>

The State must reopen the investigation and identify, prosecute, and punish the perpetrators within a reasonable time.<sup>118</sup>

The State must conform its domestic laws to international standards within a reasonable time.<sup>119</sup>

The State must provide medical, psychological, and psychiatric treatment to Gerardo Vargas Areco's family within one year of notice of the Judgment and for as long as necessary.<sup>120</sup>

## V. INTERPRETATION AND REVISION OF THE JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**October 30, 2008:** The State partially complied with its obligation to implement trainings and courses on human rights for its troops.<sup>121</sup> Although the Court recognized that the State had designed and received approval for a series of courses on international humanitarian and human rights law, a manual for military staff, a soldiers' guide and a new plan for training officers, the State had not actually implemented any of the changes.<sup>122</sup>

The State partially complied with its obligation to publish the Judgment in the Official Gazette and in another nationally circulated newspaper.<sup>123</sup> The Court found the State had yet to publish the Judgment in *La Nación*.<sup>124</sup>

The State partially complied with its obligation to adapt its legislation to prohibit the military recruitment of minors in accordance with

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117. *Id.* ¶ 168.

118. *Id.* "Operative Paragraphs" ¶ 9.

119. *Id.* ¶ 168.

120. *Id.*

121. *Vargas Areco v. Paraguay*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Oct. 30, 2008).

122. *Id.* ¶¶ 25–26.

123. *Id.* "Declares" ¶ 1.

124. *Id.* ¶ 32.



international standards.<sup>125</sup> The Court found the State had yet to pass Law No. 123/52 concerning the increased minimum age for military recruitment from fifteen to eighteen years old.<sup>126</sup>

The State partially complied with its obligation to compensate Gerardo Vargas Areco's next of kin and to reimburse costs and expenses.<sup>127</sup> The Court found the State had not yet paid the interest on the amounts owed.<sup>128</sup>

The Court continued to monitor the State's compliance in these pending areas.<sup>129</sup>

**November 24, 2010:** The Court found that the State fully complied with its obligation to issue a public apology in Gerardo Vargas Areco's community and to present a plaque in commemoration.<sup>130</sup> The State fully complied with its obligation to publish the Judgment in a nationally circulated newspaper.<sup>131</sup> The State fully complied with its obligation to adapt domestic legislation to comply with international standards regarding the recruitment of minors into the military.<sup>132</sup>

The State partially complied with its obligation to provide medical, psychological, and psychiatric treatment to Gerardo Vargas Areco's family.<sup>133</sup> The State partially complied with its obligation to provide human rights trainings to the military, and the Court requested further information about the State's compliance.<sup>134</sup> The State partially complied with its obligation to compensate Gerardo Vargas Areco's next of kin and to reimburse costs and expenses because it has yet to pay the accrued interest.<sup>135</sup>

The State failed to comply with its obligation to reopen the investigation and identify, prosecute, and punish those responsible.<sup>136</sup>

The Court will continue to monitor the State's compliance in these

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125. *Id.*

126. *Id.* ¶ 36.

127. *Id.* ¶ 1.

128. *Id.* ¶ 40.

129. *Id.* "Declares" ¶ 2.

130. Vargas Areco v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Decides" ¶ 1 (Nov. 24, 2010).

131. *Id.*

132. *Id.*

133. *Id.* ¶¶ 21–22.

134. *Id.* ¶ 25.

135. *Id.* ¶¶ 36, 39.

136. *Id.* ¶ 9.

pending areas.<sup>137</sup>

**September 4, 2012:** The Court found that the State fully complied with its obligation to implement human rights trainings and courses for its military troops.<sup>138</sup> The State further fully complied with its obligation to pay the interest accrued on the payment of damages, non-pecuniary damages, and costs and expenses.<sup>139</sup>

The State partially complied with its obligation to identify, prosecute, and punish those responsible in that the State initiated an investigation on May 4, 2011.<sup>140</sup> Nevertheless, the Court required that the State complete criminal investigations and administer subsequent punishments resulting from the victim's death.<sup>141</sup>

The State partially complied with its obligation to provide the victim's family with free medical and psychological treatment.<sup>142</sup>

The Court will continue to monitor the State's compliance in these pending areas.<sup>143</sup>

## VII. LIST OF DOCUMENTS

### *A. Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Merits, Reparations and Costs

[Vargas Areco v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 155 \(Sept. 26, 2006\).](#)

#### 3. Provisional Measures

[None]

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137. *Id.* "Decides" ¶ 2.

138. *Vargas Areco v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Sept. 4, 2012).*

139. *Id.*

140. *Id.* ¶ 6.

141. *Id.* "Declares" ¶ 2.

142. *Id.*

143. *Id.*

#### 4. Compliance Monitoring

[Vargas Areco v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Oct. 30, 2008\).](#)

[Vargas Areco v. Paraguay, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(July 20, 2010\).](#)

[Vargas Areco v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 24, 2010\).](#)

[Vargas Areco v. Paraguay, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 4, 2012\).](#)

#### 5. Review and Interpretation of Judgment

[None]

##### *B. Inter-American Commission*

#### 1. Petition to the Commission

[Not Available]

#### 2. Report on Admissibility

Vargas Areco v. Paraguay, Admissibility and Merits Report, Report No. 76/04, Inter-Am. Comm'n H.R., Case No. 12.300 (Oct. 19, 2004).

#### 3. Provisional Measures

[None]

#### 4. Report on Merits

Vargas Areco v. Paraguay, Admissibility and Merits Report, Report No. 76/04, Inter-Am. Comm'n H.R., Case No. 12.300 (Oct. 19, 2004).

## 5. Application to the Court

[Vargas Areco v. Paraguay, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.300 \(Mar. 27, 2005\) \(Available only in Spanish\).](#)

## VIII. BIBLIOGRAPHY

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United States Dep't of State, *Paraguay: Country Reports on Human Rights Practices*, 2001, Bureau of Democracy, Human Rights and Labor, (Mar. 4, 2002), <http://www.state.gov/j/drl/rls/hrrpt/2001/wha/8297.htm>.