

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF RICO V. ARGENTINA

JUDGMENT OF SEPTEMBER 2, 2019

(Preliminary Objection and Merits)

In the case of *Rico v. Argentina*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court" or "the Tribunal"), composed of the following Judges*:

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

also present,

Pablo Saavedra Alessandri, Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter also "the Rules of Procedure"), delivers the present Judgment.

* Judge Eugenio Raúl Zaffaroni, from Argentina, did not participate in the deliberation of the present Judgment, pursuant to Articles 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court. Judge Ricardo Pérez Manrique did not participate in the hearing or the deliberation of the case.

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I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* - On November 10, 2017, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court, pursuant to the provisions of Articles 51 and 61 of the American Convention, the case of "Rico" against the Argentine Republic (hereinafter "the State", "the Argentine State" or "Argentina"). The dispute concerns the alleged international responsibility of the State for the dismissal of Eduardo Rico (hereinafter also "the alleged victim" or "Mr. Rico") as Judge of Labor Court No. 6 of the San Isidro Judicial Department in Argentina, as well as his ineligibility from holding another office in the Judiciary for allegedly having committed disciplinary offenses. The Commission considered that the State violated the right to appeal the judgment in relation to the obligation to respect rights and the obligation to give domestic legal effects to the Convention, because Mr. Rico would not be able to obtain a review of that ruling. In addition, it concluded that the State violated the right to have duly motivated decisions and the principle of legality, as well as the rights to judicial protection and to participate in government to the detriment of Mr. Rico.

2. *Proceedings before the Commission.* - The procedure before the Commission was as follows:

a. *Petition.* - On March 4, 2002, the Commission received a petition from Susana María Barneix and Adrián Leopoldo Azzi (hereinafter "the petitioners") against Argentina.¹

b. *Admissibility Report.* - On April 13, 2016, the Commission adopted Admissibility Report No. 9/16.²

c. *Merits Report.* On July 5, 2017, the Commission adopted Merits Report No. 72/17, pursuant to Article 50 of the Convention (hereinafter "Merits Report"), in which it reached a series of conclusions³ and made several recommendations to the State.

d. *Notification to the State.* - The Merits Report was notified to the State on August 9, 2017, granting a period of two months to report on compliance with the recommendations. Argentina requested two extensions, which were granted by the Commission. After assessing the information submitted by the State, the Commission considered that no substantial progress had been made in complying with the recommendations.

3. *Submission to the Court.* - On November 10, 2017, the Commission submitted to the jurisdiction of the Inter-American Court the facts and alleged human rights violations described in the Merits Report "in view of the need to obtain justice for the victim in the particular case". Thus, it requested the Court to conclude and declare the international responsibility of Argentina for the violation of the rights indicated in the conclusions of the Merits Report. It also requested that the State be ordered to implement certain reparation measures.

¹ On October 22, 2004, attorney Carlos Federico Bossi Ballester joined as petitioner.

² In that report, the Commission declared the petition admissible for the purpose of examining the possible violation of the rights contained in Articles 8, 9 and 25 of the Convention. In turn, it declared the petition inadmissible in relation to Articles 11, 21 and 24 of the Convention.

³ It concluded that Argentina was responsible for the violation of the rights established in Articles 8(1), 8(2)(h), 9, 23 and 25(1) of the Convention.

II PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and the representatives.*⁴ - The submission of the case was notified to the representatives and the State on January 11, 2018.
5. *Brief with pleadings, motions and evidence.* - On March 9, 2018, the representatives filed their brief of pleadings, motions and evidence (hereinafter "pleadings and motions brief"), pursuant to of Articles 25 and 40 of the Court's Rules of Procedure.
6. *Answering brief.*⁵ - On May 19, 2018, the State filed its response to the submission of the case and to the pleadings and motions brief (hereinafter "Response" or "Answering Brief"), in which it raised a preliminary objection, pursuant to Article 42 of the Rules of Procedure.
7. *Observations on the preliminary objection.* - On June 19 and 21, 2018, the Commission and the representatives presented their observations to the preliminary objection filed by the State.
8. *Public hearing.* - In an order of July 9, 2018, the President of the Court summoned the parties and the Commission to a public hearing, which was held on August 28, 2018, during the Court's 59th Special Session, which took place in the city of San Salvador.⁶
9. *Amicus curiae brief submitted by Mr. Eduardo S. Barcesat.*- The Court received an *amicus curiae* brief on July 26, 2018, filed by Mr. Eduardo S. Barcesat. On the other hand, on April 26, 2019, Mr. Rico submitted a note in which he ratified that he will be represented by Mr. Eduardo S. Barcesat. With respect to the foregoing, the Court recalls that Article 2(3) of its Rules of Procedure specifies that the expression "amicus curiae" means the person or institution outside the litigation and the proceeding who submits to the Court reasoning on the facts contained in the submission of the case or formulates legal considerations on the subject matter of the proceeding, through a document or a pleading at a hearing. Therefore, the Court considers that from the moment Mr. Eduardo S. Barcesat was appointed as Mr. Rico's representative in the present case, he ceased to be a person "outside the litigation". Therefore, the *amicus curiae* submitted filed by Mr. Barcesat on July 26, 2018 is inadmissible.
10. *Final written arguments and observations.* - On October 1, 2018, the Commission, the State and the representatives submitted their final written observations and final written arguments, respectively.
11. *Deliberation of the instant case.* - The Court began deliberation of this Judgment on September 2, 2019.

III JURISDICTION

12. The Court has jurisdiction to hear the present case pursuant to Article 62(3) of the Convention, since Argentina has been a State Party to the Convention since September 5, 1984, and accepted the contentious jurisdiction of the Court on the same date.

⁴ The representatives of the alleged victim are: Susana María Barneix and Carlos Federico Bossi Ballester. On April 26, 2019, Mr. Rico submitted a note in which he ratified the submissions made by Dr. Eduardo S. Barcesat, whom he also recognizes as his representative.

⁵ The State appointed Alberto Javier Salgado as its Agent in this case, and Ramiro Cristóbal Badía as Alternate Agent.

⁶ The following persons appeared at this hearing: a) for the Inter-American Commission: Luis Ernesto Vargas Silva, Christian González Chacón and Silvia Serrano Guzmán; b) on behalf of the alleged victim: Eduardo Rico and Carlos Federico Bossi Ballester, and c) for the State of Argentina: Alberto Javier Salgado and Ramiro Cristóbal Badía.

IV PRELIMINARY OBJECTION

A. Arguments of the parties and the Commission

13. The *State* filed a preliminary objection of non-exhaustion of domestic remedies. It alleged that the remedies filed by the alleged victim, the Federal Extraordinary Appeal (hereinafter also "REF") and the motion of reconsideration, were rejected for lack of compliance with the admissibility requirements. It stated that case law from the Supreme Court of Justice of the Nation (hereinafter also "CSJN") enabled the judicial review of decisions to remove judges from office through the REF, with two admissibility requirements: a) to prove a violation of due process, and b) to exhaust the available instances at the provincial level (in this case, before the Supreme Court of the Province of Buenos Aires - hereinafter "SCJBA"). The State argued that Mr. Rico had not complied with the first requirement since, according to the SCJBA and the CSJN, he had not reliably proven the violation of his right to judicial guarantees, and had limited himself to arguing his own hypothesis regarding the facts. It was argued that Mr. Rico only raised his discrepancy in relation to the assessment of the evidence made by the Impeachment Jury, and with respect to the seriousness that the Jury attributed to the facts by virtue of which his dismissal was decided.

14. The *Commission* found that the objection raised was inadmissible. It recalled that these arguments had already been raised during the admissibility stage, and it had concluded that the domestic remedies had been exhausted since the various judicial instances had the opportunity to hear the arguments regarding alleged violations of due process and a review of the judgment. It added that although the possibility of challenging the decisions of the Impeachment Jury was recognized, such review only proceeded when violations of due process were found. In addition, the accreditation of due process violations to enable judicial review was related to the debate on the merits of the case, and such a requirement demonstrated that the judicial protection, as required by the Convention, was illusory, lacked simplicity and effectiveness. The *representatives* agreed with the Commission's position.

B. Considerations of the Court

15. With regards to the objection of failure to exhaust domestic remedies, this Court refers to the guidelines for analyzing a preliminary objection based on an alleged failure to comply with the requirement of exhaustion of domestic remedies.⁷

16. In the instant case, the State filed a preliminary objection of failure to exhaust domestic remedies. During the processing of the case before the Commission, at the admissibility stage, the State submitted several written observations on the initial petition and, in particular, pointed out that the exhaustion of domestic remedies "has taken place without observing the legal requirements that the domestic procedural rules provide for [...], circumstances that imply that such domestic remedies have not been duly and properly exhausted".

⁷ *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, paras. 85 and 88, and *Case of Amrhein et al. v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of April 25, 2018. Series C No. 354, para. 39. Likewise, *Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 1, 2015. Series C No. 298, para. 28, *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 15, 2018. Series C No. 353, para. 51, and *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 23. Similarly, see *Case of Furlan and Family Members v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 16, 2017. Series C No. 333, para. 78.

17. Regarding the admissibility requirements of the REF mentioned by the State in its pleadings on preliminary objections, the Court notes that, in accordance with the jurisprudence of the CSJN, "decisions in matters of so-called political trials or impeachment of judges in the provincial sphere, issued by bodies outside the local powers, constitute a justiciable matter when a violation of due process is invoked by the interested party" and that "such decisions do not escape judicial review by those powers nor the subsequent intervention of the Court by means of the extraordinary appeal".⁸ In turn, the CSJN held that "whoever seeks the exercise of such scrutiny must demonstrate in a clear, unequivocal and conclusive manner, flagrantly, a serious breach to due process norms and the guarantee of due process and legal defense which, also, carries sufficient relevance to vary the fate of the case based on the direct and immediate relationship that the federal issue invoked must have with the subject matter of the trial".⁹

18. Notwithstanding the foregoing, this Court observes that in the instant case, the State did not explain why the remedies filed were manifestly ill-founded. It only referred to what was stated by the SCJBA and the CSJN, indicating that these courts had concluded that the appeal filed was inadmissible because a violation of the rules of due process had not been proven or demonstrated, in accordance with their jurisprudence on the matter (*supra* para. 13).

19. Consequently, this Court agrees with the Commission when it points out that a pronouncement on the State's argument regarding the preliminary objection would result in answering one of the points of merit in this case, and therefore the State's objection cannot be resolved as a preliminary objection, as it would require an examination of the merits of those issues. In this sense, the Court dismisses the preliminary objection submitted by the State with respect to the admissibility requirement of the REF related to the proof of due process violation.

20. On the other hand, this Court points out, as noted by the SCJBA and the CSJN, that Mr. Rico did not challenge the constitutionality of the ineligibility sanction imposed on him provided for in Law 8085 (*infra* para. 36) when he filed the REF; he only did so when he filed the Special Appeal for Nullity (*infra* para. 34). The motion for annulment filed on that occasion was related to the impossibility of appealing the judgment and not to the ancillary penalty imposed on him. To that extent, both the SCJBA and the CSJN indicated that the REF was inadmissible with regard to the unconstitutionality that had been alleged in that second appeal, due to the fact that this allegation was submitted out of time (*infra* para. 37). Therefore, this Court finds that the argument related to the non-exhaustion of domestic remedies is admissible on this point only, since the State never had the possibility of effectively remedying the alleged violations regarding the non-appealability of the judgment or the ancillary penalty imposed on Mr. Rico. In view of the foregoing, the Court declares the preliminary objection submitted by the State in relation to the motion for annulment related to the alleged unconstitutionality of Law 8085 to be admissible.

⁸ CSJN. Case of "Graffigna Latino" (Judgments: 308:961). Case referenced by the Representatives and the State in their main briefs.

⁹ CSJN. Cases "Paredes, Eduardo y Pessoa, Nelson" (Judgments: 329:3027); "Acuña" (Judgments: 328:3148); "De la Cruz" (Judgments: 331:810); "Rodríguez" (Judgments: 331:2156); "Rojas" (Judgments: 331:2195); "Trova" (Judgments: 332:2504); cases CSJ936/20.09 (45-A) /CS1 "Agente Fiscal s/ solicita instrucción de sumario", of June 1, 2010; "Parrilli" (Judgments: 335:1779) and CSJ 1070/2012 (48-B)/CS1 "Bordón, Miguel Ángel s/causa n°69115/10", judgment of August 27, 2013 and citations therein; "Fiscal de Estado Guillermo H. De Sanctis and another" (Judgments: 339:1048); "Procurador General Corte Suprema de Justicia Dr. Jorge Alberto Barraguirre" (Judgments: 339:1463 and citations therein). Likewise, see "Ramírez, Ramón Francisco Tomás s/ acusación por mal desempeño del cargo de juez de instrucción y correccional de la ciudad de Saladas - Pcia. de Corrientes" of May 8, 2018. Case referenced by the Representatives and the State in their main briefs.

V EVIDENCE

21. The Court admits the documents submitted at the appropriate time by the parties and the Commission (Article 57 of the Rules of Procedure), whose admissibility was not contested or objected to, nor whose authenticity was questioned.¹⁰ The Court also finds it pertinent to admit the statements rendered at the public hearing and by affidavit, insofar as they are in accordance with the purpose defined by the Order that required them and with the object of the present case.¹¹

22. With respect to the procedural moment for the submission of documentary evidence, pursuant to Article 57(2) of the Rules of Procedure, such evidence must be submitted, in general, along with the briefs of submission of the case, of pleadings and motions, or of response, as appropriate. The Court recalls that evidence submitted outside the appropriate procedural opportunities is not admissible, unless, exceptionally as established in the aforementioned Article 57(2) of the Rules of Procedure, due to, namely, *force majeure*, serious impediment or if it refers to an event which occurred after the procedural moments indicated.¹²

23. In accordance with the above, with respect to the documents submitted by the representatives together with their closing arguments,¹³ the Court clarifies that only those documents that refer to the income and fees that allegedly ceased to be received after the submission of the pleadings and motions will be taken into account. With regard to the documents submitted by the representatives on costs and expenses provided with the final written arguments, the Court will only consider those documents that refer to the costs and expenses incurred during the proceedings before this Court, that is, those incurred after the submission of the pleadings and motions brief. The Court will take into account the observations of the State in this regard, which were requested by the Presidency.¹⁴

24. Regarding the documents submitted by the State together with its final arguments,¹⁵ the Court notes that three of them were requested by this Court during the public hearing and that the document "Acuerdo Gallo, Careaga, Maluf" was also referenced by the Commission during said hearing. Consequently, the Court admits these four annexes.

¹⁰ *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Martínez Coronado v. Guatemala. Merits, Reparations and Costs.* Judgment of May 10, 2019. Series C No. 376, para. 20.

¹¹ The statements were rendered by: Eduardo Rico, Gerardo Ignacio Eugenio Martínez Grijalba and Fernando Daniel Bardinella, proposed by the representatives, and Rodrigo Uprimny Yepes, proposed by the Commission. The object of each statements is set forth in the Order of the President of the Court of July 9, 2018. In that Order, the President requested the statements of one (1) witness and one (1) expert witness proposed by the representatives to be rendered before a notary public (*affidavit*).

¹² *Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs.* Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Arrom Suhurt et al. v. Paraguay. Merits.* Judgment of May 13, 2019. Series C No. 377, para. 53.

¹³ These documents consisted of: i) Details of the income that would have been received from 2000 to date; ii) Report from Instituto Previsión Social: Period of August 2017 to July 2018; iii) Bar Association of the Province of Buenos Aires, period of June 2015 to August 2018; iv) Difference between the sum provided by the Inst. Prev. Social and the Bar Association of the Province of Buenos Aires; v) invoices related to lodging expenses, transportation, food and fees of the expert accountant; and vi) receipt of the Certified Public Accountant Fernando Bardinella.

¹⁴ The State requested the rejection of the receipt of the public accountant Fernando Bardinella for not explaining the parameters on which he based his fees and for being excessive.

¹⁵ These documents consisted of: i) Debates Ley 8085; ii) A.T.E. San Juan Juicio Político; iii) Acuerdo Gallo, Careaga, Maluf, and iv) Gutiérrez, Patricia. Impeachment.

VI FACTS

25. The facts of the present case refer to the proceeding of dismissal of Eduardo Rico as Judge of Labor Court No. 6 of the Judicial Department of San Isidro in Argentina, as well as his ineligibility to hold another judicial position for having incurred in disciplinary offenses. In this chapter the Court will establish the facts that will be considered proven in the present case, based on the evidence that has been admitted and according to the factual framework established in the Merits Report. In addition, it will include those facts presented by the parties that serve to explain, clarify or dismiss this factual framework.¹⁶ Next, the facts of the present case will be presented in the following order: a) background; b) the facts that occurred in the proceedings before the Provincial Impeachment Jury, and c) the appeals filed by Mr. Rico.

A. Background

26. Mr. Rico began his judicial career in the 1970s in the Judicial Branch of the Province of Buenos Aires, serving as a judge. In August 1976, as a result of the suspension of constitutional guarantees that occurred as a consequence of the advent of the military regime in March 1976, he was dismissed. In 1996 he was reinstated in the Judicial Branch and was appointed judge of the Labor Court N° 6 of the Judicial Department of San Isidro in the Province of Buenos Aires.

27. In 1999, a complaint was filed against the alleged victim before the Council of the Magistracy, and as a result, he was subjected to a proceeding before a Provincial Jury for the Impeachment of Magistrates and Officials, which was processed in accordance with the provisions of Articles 182 to 188 of the Constitution of the Province of Buenos Aires and in accordance with the procedural rules for the impeachment of magistrates set forth in Law 8085.

B. The facts of the proceedings before the Provincial Impeachment Jury

¹⁶ Cf. *Case of "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Villamizar et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2018. Series C No. 364, para. 57.

28. At the time of the facts of this case, the disciplinary process was regulated¹⁷ by the Constitution of the Province of Buenos Aires¹⁸ and in Law 8085, Rules of Procedure for the Prosecution of Magistrates¹⁹ (hereinafter "Law 8085").

¹⁷ In turn, the Court notes that Article 115 of the Argentine Constitution states: "The judges of the lower courts of the Nation shall be removed on the grounds stated in Section 53, by a special jury composed of legislators, judges, and lawyers with federal registration. The decision, which cannot be appealed, shall have no other effect than the removal of the accused. But the condemned party shall nevertheless be subject to accusation, trial, and punishment according to law before the ordinary courts. If no decision was taken after the term of one hundred and eighty days since the opening of the proceedings for removal, said proceedings are to be filed and, in that event, the suspended judge shall be reinstated. The composition and procedure of this jury shall be stated in the special law mentioned in Section 114."

¹⁸ Article 182 of the Constitution of the Province of Buenos Aires stipulates: "Judges of appellate courts and courts of first instance, as well as members of the Office of the Attorney General may be denounced or accused by any Argentine national for criminal offenses or minor offenses committed in the performance of their official duties before a jury of 11 members that may function with a complement of no fewer than six, which shall be composed of the President of the Supreme Court of Justice, who shall preside over it; five registered lawyers who satisfy the conditions to be members of said tribunal; and up to five lawyer-legislators. The legislators and lawyers who are to sit on the jury shall be appointed by lot, in a public act, in each case; the legislators [in a procedure organised] by the President of the Senate and the lawyers by the Supreme Court of Justice, which shall be in charge of drawing up the list of all the lawyers who meet the conditions to be co-judges." Article 184 states: "The jury shall render its verdict according to the law, declaring the accused judge guilty or not guilty of the fact or facts imputed to him."

¹⁹ Article 1: In the first regular session of each year, the President of the Senate shall draw up a list of all the lawyer-legislators who have been installed in their respective bodies. The list shall be lengthened or shortened in line with the addition or withdrawal of lawyer-legislators, which fact shall be communicated to the Supreme Court of Justice and both legislative chambers for the purposes of any claims that might arise owing to any undue exclusions or inclusions (...) Article 3: Whenever an indictment or a court summons is issued against the judges or officials referred to in Articles 159 and 182 of the Constitution, the President of the Supreme Court of Justice shall immediately notify this Tribunal and the President of the Senate of that fact. The proceedings shall remain confidential until the Tribunal is notified of the complaint or accusation. Article 4: Having been notified, the President of the Senate shall proceed to hold a public drawing of lots to select from legislators on the list mentioned in Article 1, five members of the Impeachment Jury, of which the parties (plaintiff and accused) shall be advised with at least three days' notice, with a special citation sent to the Chairs of the Committees for Constitutional Affairs and Agreements and for General Legislation. The president of the Impeachment Jury and both Chambers shall be informed of the results of the drawing of lots. Article 21: They may also be accused on the following grounds: (a) Not satisfying the conditions that the Constitution and laws specify for holding the post; (e) Reiterated incompetence or negligence demonstrated in the performance of official duties; (f) Reiterated failure to perform the official duties inherent to the post; (g) Engaging in acts or activities unbecoming the dignity and austerity that judicial post demands; (j) Reiterated acts of manifest bias; (k) Reiterated allowance of procedural deadlines to lapse without pronouncing on the matters submitted for a decision or an opinion, which cannot be excused on the grounds of excessive workload or absence of a claim by the interested party; (l) Reiterated gross irregularities in the proceeding; (m) Active intervention in politics; (n) For judicial officers, to exercise the legal profession or representation, even in another jurisdiction, except in the defense of one's wife or of one's descendants and ascendants; (o) Accept the position of arbitrator; (p) Contract civil obligations with the litigants or professionals acting in his/her Court or Tribunal; (q) Exercise any trade or industry; (r) Perform any other public function not entrusted by law, except teaching; (s) Be part in a civil bankruptcy for a cause attributable to the official. Article 28: Before adopting a decision on the propriety of the notice to which the preceding article refers, the Jury shall have a preliminary discovery period to obtain information about the facts on which the accusation is based. That discovery period shall conclude within 15 days after the Jury is formed. That term having expired, it shall pronounce a decision on the propriety of the notice based on the information in its possession. Article 42: Once the Jury is constituted in a reserved session for the purpose of pronouncing the verdict, the President shall adopt the pertinent measures so that none of the jurors may leave the room until the verdict is pronounced, and shall immediately submit to the jury the following questions: a) Is the deed proven as charged? (b) Does the deed amount to the criminal offense established in Article 20, paragraph... of the Impeachment Law? (c) Does the deed amount to the minor offense established in Article 21, paragraph... of the Impeachment Law? (d) Is the accused responsible for the criminal offense that has been declared proven? (e) Is the accused responsible for the minor offense that has been declared proven? These questions shall be put for however many serious or minor offenses that each accused is charged with. The President will also ask the Jury the following questions: f) Should the accused be dismissed? g) Should the accused be made to bear the costs? h) Should the plaintiff be made to bear the costs? Article 56: The provisions of the Code of Criminal Procedure shall be applicable supplementarily, insofar as they do not oppose those contained in this law.

29. On June 1, 1999, the Bar Association of San Isidro filed a complaint against the alleged victim before the Council of the Magistracy for the commission of violations established in Article 21 (a), (e), (f), (g), (j), (k) and (l) of Law 8085.

30. As a result of the complaint, on October 5, 1999, a Jury of Impeachment was formed to try Mr. Rico.²⁰ Said Jury extended for 15 days the term of the procedure provided for in Article 28 of the Impeachment Law. In addition, it admitted all of the testimony and informative evidence offered by the plaintiff and partially admitted the evidence offered by the alleged victim.²¹ Mr. Rico filed a motion for nullity against the decision that partially denied the evidence offered, arguing a series of due process violations. In view of this claim, on June 1, 2000, the Impeachment Jury decided to dismiss the motions for nullity filed by the defendant and to continue with the process.²²

31. Subsequently, on June 15, 2000, the Impeachment Jury decided to dismiss the alleged victim from his post and declare him ineligible to hold any other judicial office on the grounds that he had incurred in various violations of Law 8085. The content of the judgment notes that the decision process was composed of two parts, the first consisted of an individual vote on matters put to the members of the Jury, which in this case consisted of 16 questions with various sub-questions,²³ and the second contains the judgment itself.²⁴

32. Mr. Rico was sanctioned by the Impeachment Jury for "incurring in the grounds envisaged in Article 21, paragraphs (e), (f) and (k) of Law 8085".²⁵ Those grounds refer to:

²⁰ The Impeachment Jury that convicted the alleged victim was comprised of the President of the Supreme Court of Justice, four co-Judges, and four legislators. *Cf.* Decision of June 1, 2000 of the Jury of Impeachment of Magistrates and Officials of the Province of Buenos Aires (evidence file, folios 3 to 7).

²¹ *Cf.* Decision of April 13, 2000 of the Jury of Impeachment of Magistrates and Officials of the Province of Buenos Aires (evidence file, folios 177 to 190).

²² Decision of June 1, 2000 of the Jury of Impeachment of Magistrates and Officials of the Province of Buenos Aires (evidence file, folios 3 to 7).

²³ The questions were the following: 1.1 Is it proven that Judge Eduardo Rico refused to sign the agreement formalizing the change of presidency by reason of expiration of the annual term limit legally prescribed in Article 54 of Law 5827, and that he referred to his peers as "de facto President and de facto Vice-President"? 1.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 1.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 1.4 Is the accused responsible for the criminal offense that has been declared proven? 1.5 Is the accused responsible for the minor offense that has been declared proven? 2.1 Is it proven that Dr. Rico obstructed the holding of hearings, with such conduct entailing clear adverse effects to the parties? 2.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 2.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 2.4 Is the accused responsible for the criminal offense that has been declared proven? 2.5 Is the accused responsible for the minor offense that has been declared proven? 3.1 Is it proven that Dr. Rico ordered all proceedings in which G.R. was involved as counsel to be held in reserve until psychiatrists issued an evaluation of the faculties of the aforesaid professional and/or the illicit acts committed by him? 3.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 3.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 3.4 Is the accused responsible for the criminal offense that has been declared proven? 3.5 Is the accused responsible for the minor offense that has been declared proven? 4.1 Is it proven that he prominently displayed in the interior of two vehicles that he used a judiciary permit that he was not authorized to use? 4.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 4.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 4.4 Is the accused responsible for the criminal offense that has been declared proven? 4.5 Is the accused responsible for the minor offense that has been declared proven? 5.1 Is it proven that he refused to swear an oath of loyalty to the Buenos Aires flag before the President of the Tribunal? 5.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 5.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 5.4 Is the accused responsible for the criminal offense that has been declared proven? 5.5 Is the accused responsible for the minor offense that has been declared proven? 6.1 Is it proven that he requested his peers to recuse themselves and thereby abstain from intervening in those proceedings in which he had been recused for "having been found to meet the grounds for recusal and/or for reasons of the utmost decorum and sensitivity"? 6.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 6.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 6.4 Is the accused responsible for the criminal offense that has been declared proven? 6.5 Is the accused responsible for the minor offense that has been declared proven? 7.1 Is it proven that he was repeatedly absent from his place of work without justification? 7.2 Does this fact constitute one of the criminal offenses envisaged

"(e) reiterated incompetence or negligence demonstrated in the performance of official duties"; "(f) reiterated failure to perform the official duties inherent to the post", and (k) "reiterated allowance of procedural deadlines to lapse without pronouncing on the matters submitted for a decision or an opinion, which cannot be excused on the grounds of excessive workload or absence of a claim by the interested party".²⁶

C. Appeals filed by Mr. Rico

33. Mr. Rico filed two appeals before the SCJBA and one before the CSJN against the Judgment issued by the Impeachment Jury, which are detailed below:

C.1. Special Appeal for Nullity ("REN") before the Supreme Court of the Province of Buenos Aires ("SCJBA")

34. Mr. Rico filed this appeal on July 6, 2000 before the SCJBA. He argued that the principle of legality and due process were violated by the forced framing of the facts into the conducts

in Article 20 of the Impeachment Law? 7.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 7.4 Is the accused responsible for the criminal offense that has been declared proven? 7.5 Is the accused responsible for the minor offense that has been declared proven? 8.1 Is it proven that he refused to cast a vote in cases in which he had a legal obligation to do so? 8.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 8.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 8.4 Is the accused responsible for the criminal offense that has been declared proven? 8.5 Is the accused responsible for the minor offense that has been declared proven? 9.1 Is it proven that he attempted to intervene in a proceeding from which he was excused? 9.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 9.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 9.4 Is the accused responsible for the criminal offense that has been declared proven? 9.5 Is the accused responsible for the minor offense that has been declared proven? 10.1 Is it proven that Dr. Eduardo Rico dispensed preferential treatment in cases in which Dr. C. was involved as counsel? 10.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 10.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 10.4 Is the accused responsible for the criminal offense that has been declared proven? 10.5 Is the accused responsible for the minor offense that has been declared proven? 11.1 Is it proven that he stated that he would not comply with the decision of the Court? 11.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 11.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 11.4 Is the accused responsible for the criminal offense that has been declared proven? 11.5 Is the accused responsible for the minor offense that has been declared proven? 12.1 Is it proven that he has treated employees of this tribunal and lawyers improperly? 12.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 12.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 12.4 Is the accused responsible for the criminal offense that has been declared proven? 12.5 Is the accused responsible for the minor offense that has been declared proven? 13.1 Is it proven that he allowed procedural deadlines for delivering judgments to expire and has issued pronouncements after requests were made for prompt dispatch? 13.2 Does this fact constitute one of the criminal offenses envisaged in Article 20 of the Impeachment Law? 13.3 Does this fact constitute one of the minor offenses envisaged in Article 21 of the Impeachment Law? 13.4 Is the accused responsible for the criminal offense that has been declared proven? 13.5 Is the accused responsible for the minor offense that has been declared proven? 14. Should the accused be dismissed? 15. Should the accused be ordered to pay costs? 16. Should the plaintiff be ordered to pay costs?

²⁴ Cf. Judgment of the Impeachment Jury of June 15, 2000 (merits file, folios 174-176).

²⁵ Cf. Judgment of the Impeachment Jury of June 15, 2000 (merits file, folios 174-176).

²⁶ The Jury considered it proven that he incurred in the following conducts: 1. Refusal to sign the agreement formalizing the change of presidency due to the expiration of the annual term limit legally prescribed; 2. Ordering all proceedings in which Dr. G.R. was involved as counsel to be held in reserve until psychiatrists issued an evaluation of the faculties of the aforesaid professional; 3. Refusal to swear an oath of loyalty to the Buenos Aires flag before the President of the Tribunal; 4. Refusal to cast a vote in cases in which he had a legal obligation to do so; 5. Improper treatment of employees of the tribunal and lawyers; 6. Obstructed the holding of hearings; 7. Requested his peers to recuse themselves and thereby abstain from intervening in those proceedings in which he had been recused; and 8. Allowed procedural deadlines for delivering judgments to expire and has issued pronouncements after requests were made for prompt dispatch. Cf. Judgment of the Impeachment Jury of June 15, 2000 (merits file, folios 174-176), and Votes of the Impeachment Jury of June 15, 2000 (merits file, folios 8 to 173).

provided in Law 8085, the unconstitutionality of the sanction of ineligibility to hold another judicial position, and the denial of two testimonies.

35. On August 30, 2000, the SCJBA dismissed the appeal, arguing that the Jury created by Article 182 of said Constitution for the impeachment of judges is not an ordinary judicial court lower than the Supreme Court, but a special and independent body that exercises powers of a political nature related to the responsibility of those who are subject to it, which escapes judicial oversight.

C.2. Federal extraordinary appeal ("REF") before the Supreme Court of the Province of Buenos Aires ("SCJBA")

36. On September 22, 2000, Mr. Rico filed this appeal before the SCJBA. He reiterated that the decision of the Impeachment Jury violated due process and referred to the unconstitutionality of Law 8085, which denies the possibility of review of the rulings by impeachment juries.

37. On November 29, 2000, the SCJBA denied the federal appeal filed in all its aspects, holding that the appeal did not meet the minimum requirements. In particular, it indicated that "it only reflects his personal disagreement with [the criteria] of the sentencing court". Regarding the alleged unconstitutionality, it found that this argument had not been alleged in the special appeal for nullity filed previously (*supra* para. 34).

C.3. Motion for reconsideration of dismissal of appeal before the Supreme Court of Justice of the Nation ("CSJN")

38. This appeal was filed on February 7, 2001 before the CSJN in response to the denial of the REF. In this appeal, the alleged victim argued that the Federal extraordinary appeal before the SCJBA had been "wrongly denied". He also reiterated his request for a declaration of unconstitutionality of Article 45 of Law 8085 and reiterated that he suffered a series of due process violations, such as the refusal to receive evidence in his defense.

39. The appeal was dismissed by the CSJN, arguing that the appellant had not demonstrated the violation of Article 18 of the National Constitution. Regarding the request for unconstitutionality, the Court reiterated that Mr. Rico had omitted to formulate such unconstitutionality in the first appeal for nullity. Consequently, it considered that the "federal question is belated insofar as the grievance invoked is due to the appellant's discretionary conduct". Regarding the allegations related to the grievances caused by the evaluation of the evidence by the Impeachment Jury, the CSJN referred to the "procedural and local nature of the issue raised and the lack of clear, unequivocal and conclusive demonstration of the impairment of constitutional guarantees".

VII MERITS

40. In the instant case, the Court must analyze the international responsibility of the State for the alleged violation of various conventional rights in relation to the process of impeachment of Mr. Eduardo Rico by an Impeachment Jury. According to the allegations, the State violated the principles of judicial independence, impartiality, the right to appeal the decision, the right to defense, the right to have duly motivated decisions, the principle of legality, the right to judicial protection and the right to participate in government. Next, the Court will consider and resolve the merits of the dispute. To do so, it will analyze the alleged

violations as follows: a) Mr. Rico's right to judicial guarantees; b) Mr. Rico's right to judicial protection; and c) Principle of legality and Mr. Rico's right to participate in government.

VII.1 MR. RICO'S RIGHT TO JUDICIAL GUARANTEES

A. Arguments of the Commission and the parties

41. The *representatives* considered that the process carried out for the purpose of removing Eduardo Rico from his office violated the guarantees contained in Articles 8(1) and 8(2) of the Convention, in particular, the right to a competent, independent and impartial tribunal; the right to a defense and other judicial guarantees; the right to a reasoned judgment, and the right to appeal the judgment before a higher judge or court to the detriment of Mr. Rico. For its part, the *Commission* considered that the State was responsible for violating the right to a reasoned judgment, and the right to appeal the judgment before a higher judge or court to the detriment of Mr. Rico.

a) Right to a competent, independent and impartial tribunal

42. Regarding the alleged violation of the right to have an independent tribunal, the *Commission* pointed out that the decisive say of the legislative branch in punitive proceedings against judges is problematic and constitutes, per se, a source of risk to the independent exercise of such a function. However, the Commission acknowledged that in this case there is no evidence to infer a real infringement of this right. It indicated that in the present case the rules on composition of the Impeachment Jury were previously established by law. With respect to the guarantee of impartiality, it found no concrete elements that point to the fact that the Impeachment Jury that heard the case acted politically motivated in such a way that its subjective impartiality was compromised.

43. For their part, the *representatives* argued that the Impeachment Jury is not a court of justice that issues acts of a jurisdictional nature due to its composition and decision-making criteria. In addition, they argued that this right was affected because the mechanism by which the Jury is composed, by drawing lots after the complaint, generated difficulties in resisting external pressures. Regarding the right to an impartial judge, they alleged the violation based on the positions held by some members of the jury, as the person who brought the accusation and was the Vice-President of the Council of the Magistracy, and the President of the Jury was also the President of the Council of the Magistracy.

44. The *State* reiterated the Commission's position in relation to the absence of evidence to prove the violation of impartiality or the impairment of independence due to the presence of legislators on the jury. It also emphasized that the existence of a political element in the composition of the tribunal is due to reasons of institutional balance, which is a subject outside the material competence of this Court and cannot constitute a violation of the Convention.

b) Right to defense and other judicial guarantees

45. The *representatives* affirmed that, in the framework of the disciplinary proceedings against Mr. Rico, his right to a defense established in Article 8(2) of the Convention was violated, due to the arbitrary extension of the deadline for discovery to the detriment of the accused party and the denial of essential evidence for his defense based on merely formalistic arguments. On this point, the *Commission* found no violation, affirming that throughout the proceedings there was an extension of the time limit for preliminary discovery, but it considered that this possibility was envisaged in law and that the petitioner did not explain

how that extension adversely affected his right of defense. Regarding the denial of evidence, it held that the reasons for the rejection were not manifestly unreasonable or incompatible with the applicable standards. The *State agreed* with the Commission's position.

c) Right to a reasoned decision

46. The *Commission* and the *representatives* indicated that the way the reasoning was presented impaired the possibility of knowing with any clarity and certainty which facts the jury considered proven, and the reasons why they were consistent with the disciplinary grounds that were established. The *State* reviewed the answers of the jurors to some of the questions asked in the debate prior to the verdict and, on this basis, argued that there was a reasoning based both on the facts and on the applicable rules of law. Finally, it also pointed out that the way the verdict was structured or the wording of the verdict is not within the jurisdiction of the Court.

d) Right to appeal the judgment to a higher judge or court

47. The *Commission* and the *representatives* considered that the jurisprudence of the Court recognizes the application of Article 8(2)(h) to trials of a non-criminal punitive nature, providing the possibility of appealing to a higher hierarchical authority to obtain a review of the established facts, the evidence used or the causes applied. However, they found it proven that the sanction imposed by the Impeachment Jury did not allow the possibility of judicial review, except in cases of violation of due process, which does not satisfy this guarantee.

48. The *State* pointed out that there are no grounds for extending the scope of application of Article 8(2)(h) of the Convention to proceedings in which the conduct of a judge is evaluated and his or her removal from office is eventually decided. It mentioned that there is a remedy in place, through case law, the REF, by virtue of which the decision can be judicially reviewed. Furthermore, Argentina argued that the text of the UN Basic Principles on the Independence of the Judiciary does not contain any express reference to a review of the decision of dismissal by a hierarchical superior in the terms of Article 8(2)(h) of the Convention, but refers to "an independent review", a requirement that is perfectly covered by a judicial review. The State added that the position taken by the Commission implies an undue involvement in aspects beyond its competence, such as the institutional design of this type of mechanisms aimed at the determination of political and not judicial responsibilities as such.

B. Considerations of the Court

49. The Court has defined due process of law, based on the provisions of Article 8 of the Convention, as the set of requirements that must be observed in procedural instances so that individuals are in a position to adequately defend their rights in the face of any type of act of the State that may affect them.²⁷ According to Article 8.1 of the Convention, in the determination of the rights and obligations of all persons, whether criminal, civil, labor, fiscal or of any other nature, "due guarantees" must be observed to ensure, depending on the procedure in question, the right to a fair trial. Failure to comply with one of these guarantees entails a violation of said conventional provision.²⁸

²⁷ Cf. *Case of the Constitutional Court v. Peru. Merits, Reparations and Costs*. Judgment of January 31, 2001. Series C No. 71, para. 69, and *Case of Colindres Schonenberg v. El Salvador. Merits, Reparations and Costs. Judgment of February 4, 2019. Series C No. 373*, para. 63.

²⁸ Cf. *Exceptions to the Exhaustion of Domestic Remedies (arts. 46.1, 46.2.a and 46.2.b, American Convention on Human Rights)*. Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28, *Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs*. Judgment of September 19, 2006. Series C No. 151, para. 119, and *Case of Colindres Schonenberg v. El Salvador*, para. 64.

50. This Court has pointed out that the guarantees contemplated in Article 8(1) of the Convention are also applicable to cases in which a non-judicial authority adopts decisions that affect the determination of the rights of individuals, taking into account that it is not required to comply with the guarantees of a jurisdictional body, but it must comply with those intended to ensure that the decision is not arbitrary.²⁹

51. The Court will proceed to examine the arguments of the parties in this order: 1. The alleged violation of the right to a competent and independent tribunal; 2. The alleged violation of the right to an impartial tribunal; 3. The alleged violation of the right to a reasoned judgment; 4. The alleged violation of the right to defense, to other judicial guarantees and to appeal the judgment; and 5. Conclusion.

B.1. The alleged violation of the right to a competent and independent tribunal

52. This Court has indicated that the scope of judicial guarantees and effective judicial protection in proceedings against judicial authorities must be analyzed in relation to the standards on judicial independence. The Court has specified that judges have specific guarantees due to the necessary independence of the Judiciary, which the Court has understood as "essential for the exercise of the judicial function". From judicial independence derive the guarantees of an adequate appointment process, tenure in the post and protection from external pressure.³⁰

53. In addition, the Court has stated that one of the main objectives of the separation of public powers is the guarantee of judicial independence.³¹ This autonomous exercise shall be guaranteed by the State both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges who exercise duties of revision or appeal.³²

54. Based on the foregoing, it is incumbent upon the Court to analyze the possible effects on the right to an independent judge from two different perspectives. On the one hand, it must determine whether the proceedings before the Impeachment Jury affect, *in abstracto*, the judicial independence and the guarantee of tenure in office and, secondly, whether the proceeding that was carried out against Mr. Rico violated the principle of independence.

55. The Court has said that the guarantee of tenure in the post as a component of judicial independence is composed of several elements: (i) their removal must be exclusively the result of permitted reasons, either by means of a procedure that respects judicial guarantees or because their mandate has ended; (ii) judges may only be dismissed owing to serious disciplinary offenses or incompetence; (iii) any disciplinary procedure against a judge must be decided in accordance with the established norms for judicial conduct in fair proceedings that ensure objectivity and impartiality pursuant to the Constitution or the law, since the free

²⁹ Cf. *Case of the Constitutional Court v. Peru*, para. 71, and *Case of Colindres Schonenberg v. El Salvador*, para. 65.

³⁰ *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 67, and *Case of Colindres Schonenberg v. El Salvador*, para. 68.

³¹ Cf. *Case of the Constitutional Court v. Peru*, para. 73, and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of February 5, 2019. Series C No. 374, para. 83.

³² Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela*, para. 55, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348, para. 207.

removal of judges gives rise to objective concerns about the real possibility of judges deciding specific disputes without fear of reprisals.³³

56. Along the same lines, the Court has analyzed impeachment procedures and its possible interference with the principle of judicial independence. In the *Constitutional Court v. Peru case*, the Court specified the content of impeachment procedures and affirmed that it is a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature, the purpose of which is that an organ that represents the people may examine and take decisions on the actions of senior officials.³⁴

57. Despite the foregoing, the Court did not find that, *in abstracto*, the mechanism of removal of judges via impeachment was contrary to the Convention and, in particular, to the principle of judicial independence, but analyzed to what extent the factual circumstances constituted violations of the guarantees foreseen in Article 8(1).³⁵ Impeachments in which the removal of members of the Judiciary are discussed are not contrary to the Convention *per se*, as long as Article 8 is complied with and there are criteria to limit the discretion of the judge with a view to protecting the guarantee of independence.

58. This, in turn, finds meaning in the fact that this Court has not established a particular procedural system that "correctly" satisfies the framework of guarantees contained in the Convention, but has instead respected the freedom of State-parties to determine what they consider appropriate, as long as those guarantees are complied with within the framework of the former.³⁶

59. In this regard, it is important to mention the specific meaning of impeachment in Argentine law. As indicated by the State: "the democratically representative element of the composition of the [jury] is in keeping with the nature of its competence and with the principles that emerge from republican democracy. [...] the system of 'checks and balances' inherent to the republican constitutional framework suggests that the body in charge of the proceedings should be different from the one being questioned".³⁷

60. In the instant case, the representatives alleged a violation of the right to an independent tribunal due to the composition of the Impeachment Jury and the political discretion on the basis of which it rules. Based on the foregoing, the Court must establish whether the proceedings before the Impeachment Jury of the Province of Buenos Aires violate Article 8(1) and, in particular, the principle of judicial independence.

61. First, regarding the composition of the Impeachment Jury, the Court notes that "the political element" or the proportion of jurors coming from the Legislative Branch is not a majority and is modulated by the requirement that they are elected from a list composed only of those members who are lawyers and meet the requirements to be a member of the SCJBA.³⁸ Thus, Article 182 of the Constitution of the Province of Buenos Aires provides that: "[t]he judges of appellate courts and courts of first instance [...] may be denounced or accused by any Argentine national for criminal offenses or minor offenses committed in the

³³ Cf. *Case of López Lone et al. v. Honduras*, paras. 198 and 200, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 29, 2016. Series C No. 327, para. 105.

³⁴ Cf. *Case of the Constitutional Court v. Peru*, para. 63.

³⁵ Cf. *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2013. Series C No. 266. para. 180.

³⁶ Cf. *Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs*. Judgment of June 20, 2005. Series C No. 126, para. 66, *Case of V.R.P., V.P.C. et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 350, para. 219, and *Case of Arrom Suhurt et al. v. Paraguay*, para. 149.

³⁷ State's brief of final arguments (merits file, folios 563 and 568, referring to the explanatory memorandum of Law 13.661, on amendments to Law 8085, of April 24, 2007.

³⁸ Cf. Articles 2 of Law 8085.

performance of their official duties before a jury of 11 members that may function with a composition of no fewer than six, which shall be composed of the President of the Supreme Court of Justice, who shall preside over it; five registered lawyers who satisfy the conditions to be members of said tribunal; and up to five lawyer-legislators".

62. This was verified in the instant case, where four of the nine members of the jury were legislators chosen by drawings of lots from the list of lawyers set up by the Council of the Magistracy (*supra* para. 30).

63. Second, the Court notes that there is a limit in relation to the exercise of the powers of the Impeachment Jury. In particular, Article 184 of the Constitution of the Province of Buenos Aires provides that: "[t]he jury shall render its verdict in accordance with the law, declaring the accused judge guilty or not guilty of the act or acts with which they are charged".

64. In developing this mandate, Law 8085 contains explicit grounds for indictment and subsequent conviction. Among those mentioned are: not satisfying the conditions that the Constitution and laws specify for holding the post, having a physical or mental disability, receiving a retirement benefit or enjoying a national, provincial or municipal pension, reiterated incompetence or negligence demonstrated in the performance of official duties, reiterated failure to perform the official duties inherent to the post, among others.³⁹

65. In turn, Law 8085 provides that immediately after the pleadings, the President will summon the jury to a reserved session to issue the verdict,⁴⁰ which will be the product of the answers given by each of the jurors to the questions established in Law 8085.⁴¹ These questions, which guide the private deliberation carried out by the jury, are elements that frame their judgment, and ultimately can be classified as an element of legal control. Additionally, the law provides for the participation of a lawyer for the correct exercise of the right to defense⁴² and also provides for an oral hearing for the parties to present evidence and final arguments, all of this within prescribed times.⁴³

66. In view of the foregoing, the Court finds that it is not possible to affirm that the process before an Impeachment Jury does not provide procedural mechanisms to ensure the guarantees of due process because of the composition of the jury. On the contrary, in the opinion of this Court, the elements to which reference has been made allow affirming that the functions of the Jury are not exercised in a subjective manner or based on political discretion, since there are prior, clear and objective criteria contained in the law and the Constitution of the Province that limit the activity of the jury and reinforce the control exercised. In view of the foregoing, the Court considers that it has not been proved that the procedure before the Impeachment Jury violated the principle of judicial independence, in its normative configuration or in the specific case.

67. With regard to the protection from external pressure as an element of judicial independence, this implies that the State must refrain from undue interference in the Judiciary

³⁹ Cf. Articles 20 and 21 of Law 8085.

⁴⁰ Cf. Article 41 of Law 8085.

⁴¹ Article 42 of Law 8085 states: "Once the Jury is constituted in a reserved session for the purpose of rendering the verdict, the President shall take the pertinent measures so that none of the jurors may leave the house until the verdict is rendered, and shall immediately submit to the jury the following questions: a. Is the deed proven as charged? b. Does the deed amount to the criminal offense established in Article 20, paragraph...of the Impeachment Law? c. Does the deed amount to the minor offense established in Article 21, paragraph... of the Impeachment Law? d. Is the accused responsible for the criminal offense that has been declared proven? e. Is the accused responsible for the minor offense that has been declared proven? f. These questions shall be put for however many serious or minor offenses that each accused is charged with. The President will also ask the Jury the following questions: g. Should the accused be dismissed? h. Should the accused be made to bear the costs? i. Should the plaintiff be made to bear the costs?".

⁴² Cf. Article 33 of Law 8085.

⁴³ Cf. Articles 34 to 44 of Law 8085.

or its members. This implies that in relation to the specific judge, the State must prevent such interference.⁴⁴

68. Regarding the alleged violation of the principle of judicial independence due to the mechanism of selection of jury members, the representatives stated that "the Impeachment Jury does not have the nature of an impartial or independent tribunal, given that its members are chosen for each case and do not enjoy stability in their posts, from which it follows that they are not in a position to resist the pressures exerted on them or not to fall into momentary arrangements".⁴⁵

69. With respect to this allegation, the Court finds that Mr. Rico only made generic allegations that members of the Impeachment Jury were not protected against external pressures due to the way they were appointed, without explaining what type of pressures they had received or how they could have influenced the decision. Therefore, the Court considers that the right to an independent tribunal was not violated in this case.

B.2. The alleged violation of the right to an impartial tribunal

70. This Court has established that impartiality requires that the judge acting in a specific dispute approaches the facts of the case subjectively, free of all prejudice, and also offers sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.⁴⁶ In this sense, recusals and disqualifications are procedural instruments that protect the right to be tried by an impartial body. The guarantee of impartiality means that the members of the court have no direct interest, preconceived position, preference for one or other of the parties, are not involved in the dispute, and inspire the necessary confidence in the parties to the case, as well as in the citizens in a democratic society. Personal or subjective impartiality is presumed unless there is evidence to the contrary consisting, for example, in demonstrating that a member of a tribunal or a judge has personal prejudice or bias against the litigants. Meanwhile, objective impartiality consists in determining whether the contested judge has offered convincing proof that eliminates legitimate fears or well-founded suspicions of his partiality.⁴⁷ These standards are also applicable to the members of the jury.⁴⁸

71. The representatives argued that the right to an impartial tribunal was violated, given the existing relationships between members of the jury and the Bar Association. Specifically, they stated that G.E.S., who brought the accusation, was at the same time the Vice-President of the Council of the Magistracy, a person who combined the power of all the Bar Associations of the Province; and that G.D.S.M., the President of the Impeachment Jury, was at the same time the President of the Council of the Magistracy.

72. Regarding this allegation, the Court notes that there is no evidence that G.E.S.'s membership in both the Council of the Magistracy and the Bar Association of the Province had tainted the appointment of the jurors. Therefore, the Court agrees with the Commission and considers that based on the evidence in the case file, it is not possible to affirm that any of the jurors had a direct interest or a prior position with respect to Mr. Rico, and to that extent the presumption of subjective impartiality is not rebutted. The Court also concludes that no

⁴⁴ *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 146, and *Case of Villaseñor Velarde et al. v. Guatemala*, para. 91.

⁴⁵ Cf. Brief of pleadings, motions and evidence of March 9, 2018 (merits file, folio 102).

⁴⁶ Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 5, 2008. Series C No. 182, para. 56, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 239.

⁴⁷ Cf. *Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela*, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 239.

⁴⁸ Cf. *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 239.

interference has been demonstrated by reason of the positions held by G.D.S.M., given that no elements were identified that could be considered to have influenced the impartiality of the jury. No evidence was identified linking G.D.S.M., in the exercise of his functions as President of the Council of the Magistracy, to the process of dismissal of the alleged victim. Finally, no document was submitted to this Court stating that Mr. Rico had filed a challenge in accordance with the provisions of Articles 13 to 16 of Law 8085. The only evidence submitted was a "recusal" filed against one of the jurors, once a decision was taken regarding the filing of the REN before the SCJBA.⁴⁹

73. Based on the foregoing, the Court finds that the right to an impartial tribunal was not violated to the detriment of Mr. Rico.

B.3. The right to a reasoned decision

74. The Court has pointed out that the duty to provide the grounds for a decision is one of the 'due guarantees' included in Article 8(1) to safeguard the right to due process. The Court has specified that the reasoning "is the exteriorization of the reasoned justification that allows a conclusion to be reached" and entails a rational presentation of the reasons that led the judge to take a decision. The relevance of this guarantee relates to the correct administration of justice and avoidance of arbitrary decisions. In addition, the reasoning accords credibility to legal decisions in a democratic society and demonstrates to the parties that they have been heard.⁵⁰

75. The above is linked to another aspect that highlights the value of the reasoning as a guarantee, which is to provide the possibility of contesting the decision and obtaining a fresh examination of the matter before a higher court in those cases in which it is possible to appeal the decision. Thus, the Court has already pointed out that "the grounds for the judicial decision must be provided to be able to guarantee the right of defense".⁵¹ However, the obligation to provide a reasoned decision does not require a detailed answer to every argument of the parties, but may vary according to the nature of the decision and, in each case, it is necessary to examine whether the guarantee has been fulfilled.⁵²

76. Regarding the duty to state reasons and its relation to jury trials, this Court has indicated that the jury's verdict in the classic sense did not require presentation of the reasoning or externalization of the grounds. Like the European Court of Human Rights (ECHR), the Court has also held that the absence of the reasons for the verdict does not, of itself, violate the guarantee of a reasoned decision. Indeed, there are reasons behind every verdict, even though in accordance with the essential nature of the jury, these are not expressed.⁵³

77. In *VRP v. Nicaragua*, it was recalled that some OAS States that use the system of trial by jury expressly establish different guarantees prohibiting arbitrary decisions and that the judge's instructions to the jury, or even the provision of a questionnaire to the jurors with the matters to be decided, are established in the procedural laws of some States. The Court also indicated that the system of decisions based on firm conviction does not, in itself, violate the right to a fair trial provided that the person concerned is able to understand the reasons for the decision based on the proceedings as a whole. It also recalled that firm conviction is not

⁴⁹ Extraordinary Appeal for Annulment of July 6, 2000 (merits file, folios 222-286).

⁵⁰ *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C No. 170, para. 107, and *Case of Amrhein et al. v. Costa Rica*, para. 268, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 254.

⁵¹ *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 118, and *Case of Zegarra Marín v. Peru*, paras. 147 and 155, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 255.

⁵² *Cf. Case of Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela*, para. 90, and *Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 255.

⁵³ *Cf. Case of V.R.P., V.P.C. et al. v. Nicaragua*, para. 258.

an arbitrary criterion. The free assessment made by the jury does not differ substantially from the assessment that a technical judge can make; it merely does not articulate it. Ultimately, any court (whether technical or lay), must reconstruct a past event and, to this end, it must use methodological logic which anyone is capable of doing, because this does not depend on whether or not the individual has legal training or education. Everyone who has to reconstruct a past event, consciously or unconsciously, uses the historical method; that is, they first delimit the evidence they will take into account; then they assess whether that evidence is not substantively false; then they assess the plausibility of the content of the evidence and, finally, they reach a synthesis. Anyone assessing a jury's verdict must necessarily follow this path, and it is not sufficient to reject any different opinion on the evaluations. To reject a jury's verdict, it is necessary to verify that the synthesis completely diverged from this methodological logic referred to above.⁵⁴

78. In the present case, the Commission and the representatives argued that the form of the reasoning affected the possibility of knowing with clarity and certainty the facts that the jury considered proved and the reasons why they fell within the disciplinary grounds that were established.

79. In this regard, the Court notes that: a) in accordance with Article 184 of the Constitution of the Province of Buenos Aires, the verdict of the Impeachment Jury is rendered "according to the law, declaring the accused judge guilty or not guilty of the fact or facts imputed to him"; b) each of the jurors had to render their verdict by answering 16 questions that were known to them prior to the trial (*supra* para. 31); c) in the instant case, the content of the decision of the Impeachment Jury contains the factual and legal arguments of each one of the jurors to each one of the questions,⁵⁵ and d) in the Judgment of the Impeachment Jury of June 15, 2000,⁵⁶ contrary to what was stated by the Commission, an exercise of substantial integration of the answers provided by each of its members was carried out, and it was indicated that the jury had concluded by "unanimity of the members present that the accused incurred in the grounds set forth in Article 21, paragraphs e), f) and k) of Law 8085 [...], with the reservations and partial dissents indicated in the votes that make up the verdict herein" (*supra* para. 32).

80. In accordance with the foregoing, the Court has no elements to conclude that the Judgment of the Impeachment Jury had been reached arbitrarily or lacked the necessary motivation inherent to the nature of this type of proceedings. Consequently, this Court concludes that the State did not violate the right to a reasoned decision contained in Article 8(1) of the Convention to the detriment of Mr. Rico.

B.4. The alleged violation of the right of defense, other judicial guarantees and the right to appeal the judgment to a higher court

81. This Court recalls that on October 5, 1999, the Impeachment Jury in charge of trying Mr. Rico was formed and that it extended for 15 days the term of the proceeding provided for in Article 28 of the Impeachment Law. In addition, it admitted the totality of the testimonial and informative evidence offered by the plaintiff and partially admitted the evidence offered by the alleged victim. On May 18, 2000, Mr. Rico filed a motion for nullity against the decision that partially denied the evidence offered, arguing a series of due process violations. On June 1, 2000, the Impeachment Jury dismissed the nullities argued by the accused and decided to continue with the proceedings (*supra* para. 30).

⁵⁴ Cf. *Case of V.R.P., V.P.C. et al. v. Nicaragua*, paras. 259 and 262.

⁵⁵ Cf. Votes of the Impeachment Jury of June 15, 2000 (evidence file, folios 8 to 173).

⁵⁶ Judgment of the Impeachment Jury of June 15, 2000 (evidence file, folios 175 and 176).

82. This Court agrees with what the Commission stated when it pointed out that the possibility of the extension was envisaged in law and that Mr. Rico had not clearly explained to what extent this fact adversely affected his right of defense. On the other hand, with regard to the denial of certain evidence by the Impeachment Jury, this Court agrees with the Commission when it states that the judicial decision must be based on grounds that are "manifestly unreasonable or incompatible with the applicable standards" in order to constitute a violation of judicial guarantees, which are not verified in the instant case. In this regard, the Court notes that the Impeachment Jury stated that it had proceeded to admit "all the testimonial statements that met the legal requirements set forth in Article 25 of the Procedural Law". It added that those that "did not have an adequate legal framework" or that were "manifestly inappropriate"⁵⁷ were dismissed.

83. Consequently, this Court finds that the State is not responsible for a violation of Mr. Rico's due process rights and, in particular, to his right of defense, due to the extension of the procedural time limit and the partial inadmissibility of the testimonial evidence that he submitted at trial.

84. Regarding the alleged violation of the right to appeal the decision to a higher court, this Court refers to the analysis of the allegations related to the right to judicial protection in the framework of which the Federal extraordinary appeal and motion for reconsideration filed by Mr. Rico to challenge the decision of the Impeachment Jury will be analyzed.

B.5. Conclusion

85. In accordance with the foregoing considerations, the Court finds that the State is not responsible for a violation of Mr. Rico's judicial guarantees contained in Article 8 of the American Convention.

VII. 2 THE RIGHT TO JUDICIAL PROTECTION OF MR. RICO

A. Arguments of the parties and the Commission

86. The *Commission* alleged that after the judgment was issued in which Mr. Rico was dismissed and declared ineligible for service in the judiciary, he filed an application for nullity, a REF, and a motion for reconsideration. He argued that in none of the appeals filed, the judicial bodies carried out a substantive analysis on the existence or not of violations to due process in the sanctioning procedure. He affirmed that the debate was focused on the possibility or not of filing an appeal, indicating that the REF was not well grounded. He also argued that according to SCJN jurisprudence, the decisions of the Impeachment Juries may be appealed, but that in the present case it was not possible to do so because no violations of due process were proven. He pointed out that the latter decision rejected the admissibility of an appeal because violations of due process were not proven, when this was precisely the substantive matter that was intended to be evaluated through the aforementioned appeal. By virtue of the foregoing considerations, the Commission concluded that the State violated the right to judicial protection established in Article 25(1) of the Convention, to the detriment of Mr. Rico. The *representatives* shared these arguments.

87. In this regard, the *State* argued that the extraordinary federal appeal filed in the instant case was the appropriate and effective remedy in the domestic sphere to remedy any due process violations that Mr. Rico may have suffered in the proceedings before the Impeachment

⁵⁷ Decision of June 1, 2000 of the Jury of Impeachment of Magistrates and Officials of the Province of Buenos Aires (evidence file, folio 6).

Jury. However, Argentina pointed out that it was the petitioner himself who undermined the effectiveness of the REF by failing to comply with the requirement of duly accrediting said alleged violations, inasmuch as this was a requirement of admissibility of the remedy itself in light of the jurisprudence in force. The State concluded that it is not possible to attribute liability for the violation of Article 25(1) of the Convention.

B. Considerations of the Court

88. The Court has indicated that Article 25(1) of the Convention establishes the obligation of the States Parties to ensure, to all persons subject to their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights.⁵⁸ This effectiveness supposes that, in addition to the formal existence of the remedy, it leads to results or responses to the violation of the rights recognized in either the Convention, or their Constitution and laws. The Court has established that for an effective remedy to exist, it is not sufficient that it exists formally. This means that the remedy should be appropriate to contest the violation and that its application by the competent authority be effective. This does not mean that the Court assesses the effectiveness of a remedy based on whether it has produced a favorable result for the plaintiff.⁵⁹

89. In the present case, neither the Commission nor the representatives presented allegations or evidence to argue that the REN, the REF, and the Motion for reconsideration were inadequate to correct this type of legal situation in the abstract. They presented arguments related to alleged violations in the specific case of Mr. Rico. The Commission acknowledged that the decisions of Impeachment Juries are subject to appeal, but that in the present case this could not have been done because no violations of due process were proven. Likewise, the State, at the request of this Court, submitted, together with its brief of final written arguments, judgments in which the REF was effective to appeal the decisions of the Impeachment Jury (*supra* para. 24). Consequently, this Court will not rule in the abstract on the adequacy of these remedies to appeal such decisions, but will only do so with respect to the decisions related to Mr. Rico.

90. Mr. Rico filed several appeals to challenge the decision against him by the Impeachment Jury (*supra* para. 33). On July 6, 2000, he filed a REN before the SCJBA, on September 22, 2000, a Federal extraordinary appeal before the SCJBA, and on February 7, 2001, a motion for reconsideration of dismissal of appeal before the CSJN (*supra* paras. 34 to 38).

91. In the first appeal, Mr. Rico argued that the principle of legality and due process guarantees were violated by framing the facts into the hypotheses provided in Law 8085; the unconstitutionality of the sanction of ineligibility to hold another judicial office and the denial of testimonies. In the second appeal, he reiterated that the decision of the Impeachment Jury violated due process and referred to the unconstitutionality of Article 45 of Law 8085, which denies the possibility of review of the rulings of Impeachment juries. In the third appeal before the CSJN, Mr. Rico indicated that the SCJBA committed a violation by denying the extraordinary appeal and that decisions of the Impeachment Jury are non-appealable. He also reiterated his request for unconstitutionality of Article 45 of Law 8085 and reiterated that he suffered a series of due process violations, such as the refusal to accept evidence on his behalf.

⁵⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*, para. 91, and *Case of Colindres Schonenberg v. El Salvador*, para. 101.

⁵⁹ Cf. *Advisory Opinion OC-9/87*, para. 24, *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 67, and *Case of Cuscul Pivaral et al. v. Guatemala*, para. 169.

92. In turn, on August 30, 2000, the SCJBA dismissed the appeal, arguing that the jury created by Article 182 of said Constitution for the impeachment of judges is not a regular judicial tribunal of inferior rank to this Supreme Court but a special, independent body that exercises powers of a political nature that concern the responsibility of those submitted to it, which escapes judicial oversight. On the other hand, on November 29, 2000, the SCJBA denied the federal appeal filed in its entirety, holding that the appeal did not meet minimum requirements. In particular, it indicated that "they only reflect his personal disagreement with those of the tribunal that passed judgment". Regarding the unconstitutionality, it found that it had not been alleged in the appeal for annulment filed previously.

93. With respect to the motion for reconsideration before the CSJN, it was dismissed because the appellant had not demonstrated a violation of Article 18 of the Constitution. Regarding the request for unconstitutionality, the court reiterated that such unconstitutionality had not been formulated in the REN. Consequently, it considered that the "federal question is belated insofar as the grievance invoked is due to the appellant's discretionary conduct". Regarding the allegations related to the grievances caused by the evaluation of evidence by the Impeachment Jury, it referred to the "procedural and local nature of the issue raised and the lack of clear, unequivocal and conclusive demonstration of the impairment of constitutional guarantees".

94. With respect to the foregoing, this Court notes that Mr. Rico raised different claims of unconstitutionality in the Special appeal for nullity and the Federal extraordinary appeal. In the former, he referred to the unconstitutionality of the ineligibility sanction applied to him, while in the latter, he only refers to the unconstitutionality of the non-appealability of the decisions of Impeachment Juries established in Law 8085. Consequently, the considerations of the SCJBA and the CSJN on the lack of consistency of this argument on the two different charges of unconstitutionality that were presented in those appeals reflect what happened.

95. On this point, it has already been mentioned that in accordance with the jurisprudence of the CSJN, "decisions in matters of so-called political trials or impeachment of judges in the provincial sphere, issued by bodies outside the local powers, constitute a justiciable matter when a violation of due process is invoked by the interested party" and that "such decisions do not escape judicial review by those powers nor the subsequent intervention of the Court by means of the extraordinary appeal" (*supra* para. 17).

96. In turn, the CSJN held that "whoever seeks the exercise of such scrutiny must demonstrate in a clear, unequivocal and conclusive manner, flagrantly, a serious breach to due process norms and the guarantee of due process and legal defense which, also, carries sufficient relevance to vary the fate of the case based on the direct and immediate relationship that the federal issue invoked must have with the subject matter of the trial" (*supra* para. 17).

97. In the present case, the SCJBA indicated in its decision rejecting the REF filed by Mr. Rico that the appeal does not meet the minimum requirements "of proper justification set out in article 15 of Law 48, since the arguments of the appellant only reflect his personal disagreement with those of the tribunal that passed judgment." Likewise, the CSJN pointed out, in its decision on the motion for reconsideration, that "the appellant has not complied with one of the requirements for [the appeal] to be pertinent; that of demonstrating that Article 18 of the National Constitution has been violated in the proceedings". It further added that the decision of the Impeachment Jury was appealed by Mr. Rico "due to the evaluation of the evidence". In this regard, the CSJN stated that the "procedural and local nature of the issue raised and the lack of clear, unequivocal and conclusive demonstration of the impairment of constitutional guarantees invoked prevent [...] the change of fate of the *litis*".⁶⁰

⁶⁰ CSJN decision of August 28, 2001 (evidence file, folio 442).

98. In accordance with the foregoing, this Court understands that, although Mr. Rico alleged in his brief of September 22, 2000 through which he filed a REF, that the decision of the Impeachment Jury had violated his right of defense protected by Article 18 of the National Constitution, the two courts concluded that he did not substantiate or prove the reasons why this had occurred, and merely stated his disagreement with some aspects of the judgment against him.

99. Therefore, this Court considers that it cannot rule on the effectiveness of the REF and the motion for reconsideration filed against the judgment of the Impeachment Jury, since those appeals were declared inadmissible by the SCJBA and the CSJN. It is the opinion of this Court that the conclusions reached by these two national courts deciding that the appeals were inadmissible are not manifestly arbitrary or unreasonable and, therefore, contrary to the American Convention. Consequently, this Court considers that the State is not responsible for a violation of Article 25 of the American Convention to the detriment of Mr. Rico.

VII.3 PRINCIPLE OF LEGALITY AND Mr. RICO'S RIGHT TO PARTICIPATE IN GOVERNMENT

A. Arguments of the parties and the Commission

100. The *Commission* observed that the grounds for which the alleged victim was accused and subsequently dismissed are generic in nature, without it being possible to clearly establish in some of them the specific acts that constitute misconduct. It added that such is the case of grounds e) and f) relating to "incompetence" and "negligence", as well as the failure to comply with the duties "inherent to the position". The IACHR considered that the formulation of such grounds leaves an excessive margin of discretion for the sanctioning authority to establish the specific conducts that fit such generic formulations, opening the space for the inclusion of subjective appraisals. It concluded that this situation violates the principle of legality, which should be strengthened in punitive proceedings against judges. On the other hand, the Commission affirmed that it was established that Mr. Rico was removed from office in an arbitrary proceeding in which various violations of due process and the principle of legality were committed. Therefore, the State also violated Article 23(1)(c) of the Convention, to his detriment. The *representatives* agreed with the arguments presented by the Commission.

101. The *State* pointed out that Mr. Rico was dismissed because the Impeachment Jury concluded that he incurred in the grounds for dismissal set forth in Article 21 paragraphs e), f) and k) of Law 8085 and considered that the aforementioned legal provisions do not contravene the principle of legality according to the standards of the Court. The State added that each ground is provided for in a law enacted by the Congress of the Province of Buenos Aires, prior to the time of the facts. These grounds contain objective criteria that allow the conduct itself to be adjusted, and that in turn limit the discretion in the exercise of disciplinary powers. Regarding the right to participate in government, the State argued that the violation of this right was not substantiated in an autonomous manner, considering it a consequence of the alleged arbitrary dismissal, for which reason Argentina referred to the arguments submitted in this regard in the relevant sections.

B. Considerations of the Court

B.1. Principle of legality

102. Regarding the principle of legality, although the Court considers it to be valid in disciplinary matters, its scope will depend to a great extent on the matter regulated. The precision of a disciplinary norm may be different from that required by the principle of legality in criminal matters, owing to the nature of the disputes that each of them is designed to resolve.⁶¹

103. Similarly, this Court expressed in the case of *López Mendoza v. Venezuela* that the problems regarding uncertainty do not generate, *per se*, a violation of the Convention, namely, that the fact that a regulation grants some form of discretion is not inconsistent with the degree of foreseeability that the regulation should bear, provided that the scope of discretion and the manner in which it should be exercised is indicated with sufficient clarity so as to provide adequate protection from arbitrary interference.⁶²

104. In the instant case, the Court finds that Mr. Rico was punished for "incurring in the grounds set forth in Article 21, paragraphs e), f) and k) of Law 8085". As noted above (*supra* para. 28), these three grounds, which were already established prior to the occurrence of the facts that were attributed to Mr. Rico, refer to: "(e) reiterated incompetence or negligence demonstrated in the exercise of official duties"; "(f) reiterated failure to perform the official duties inherent to the post", and (k) reiterated allowance of procedural deadlines to lapse without pronouncing on the matters submitted for a decision or an opinion". The legality of each disciplinary grounds for which Mr. Rico was sanctioned will be analyzed below.

a. Cause contained in Article 21(f), reiterated failure to perform the official duties inherent to the post

105. This Court notes that the Impeachment Jury found that the cause of reiterated failure to perform official duties inherent to the post had been established (Article 21(f)) because it was deemed proven that Mr. Rico: a) refused to sign an agreement formalizing the change of Presidency of the Tribunal he was part of, qualifying his colleagues as "de facto President and de facto Vice-President"; b) obstructed the holding of hearings because he had the habit of reading the files minutes before the celebration of each act; c) ordered all the files in which a specific lawyer intervened to be classified as reserved. He also ordered that the consultation of the casefiles should be carried out under strict control, until such time as a psychiatrist could issue an opinion on the lawyer's mental health; d) he refused to swear a pledge of allegiance to the flag of the Province of Buenos Aires; e) he refused to cast his vote in cases where there was a legal obligation to do so. In this regard, it was noted that in several cases he refused to sign the judgments, arguing in some occasions that the intervention of his colleagues had been adulterated, and in another case that the settlement amounts approved by the parties were meager, refusing, however, to issue a dissenting opinion; f) he treated Court employees and litigants inappropriately; and g) he used an official license plate of the Judicial Branch without authorization. It was also noted that there were complaints from professionals and parties that the schedules of the cases had been altered and that this implied a lack of consideration towards them, and that there was documentary proof of misconduct, as evidenced by previous disciplinary proceedings.⁶³

106. On this ground, the Court notes that several of the conducts that were attributed to Mr. Rico and considered proven, refer to non-compliance with activities that constitute functions inherent to the work of a judge. In the opinion of this Court, it is reasonable to hold that Mr.

⁶¹ Cf. *Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of May 3, 2016. Series C No. 311, para. 89, and *Case of Flor Freire v. Ecuador. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315, para. 146.

⁶² *Case of López Mendoza v. Venezuela. Merits, Reparations and Costs*. Judgment of September 1, 2011. Series C No. 233, para. 202.

⁶³ Cf. Votes of the Impeachment Jury of June 15, 2000 (evidence file, folios 9 to 173).

Rico was in a position to foresee that the cause of repeated non-compliance with the duties inherent to the post is related to the main functions that he must perform as a judge, and that undoubtedly the holding of hearings or the casting of votes in various cases are part of those duties. In this sense, this Court does not find that the Impeachment Jury made evident and notorious use of a discretion incompatible with the degree of foreseeability that the rule must have, or that it had materialized in an arbitrary decision in violation of the principle of legality contained in Article 9 of the Convention.

b. Cause contained in Article 21(e), on reiterated incompetence or negligence demonstrated in the exercise of official duties

107. Regarding the cause contained in Article 21(e), on incompetence or negligence in the exercise of official duties, it was proven that Mr. Rico requested his colleagues to abstain from intervening in cases in which he himself had been recused. According to the considerations of the Impeachment Jury, the substance of the act arose from the evidence in several files added to the proceeding, in which Mr. Rico repeatedly requested his colleagues to refrain from intervening in cases in which attorney González Rubio was acting, because he had recused the alleged victim in those cases, indicating that Mr. Rico had "lost his jurisdiction" because he understood that the deadlines for issuing a judgment had expired.⁶⁴

108. On this point, the Court notes that the behaviors that were imputed to Mr. Rico and that were considered proven refer to inappropriate conduct in the exercise of his position as a judge. In this sense, the Court understands that when Mr. Rico challenged his colleagues to refrain from intervening in the cases in which he himself had been challenged, it was accessible and foreseeable to him that this could constitute a form of incompetence or negligence in the exercise of his functions. Therefore, this Court does not find that the Impeachment Jury had made evident and notorious use of a discretion incompatible with the degree of foreseeability that the rule must have or that it had materialized in an arbitrary decision in violation of the principle of legality contained in Article 9 of the Convention.

c. Cause contained in article 21(k), reiterated allowance of procedural deadlines to lapse without pronouncing on the matters submitted for a decision or an opinion

109. Finally, the Jury found with respect to the cause contained in Article 21(k) (reiterated allowance of procedural deadlines to lapse without pronouncing on the matters submitted for a decision or an opinion) that Mr. Rico allowed procedural terms to expire for the issuance of judgments, and that he ruled after the parties had made claims for prompt delivery.⁶⁵ In the Court's opinion, there is no doubt that the wording of Article 21(k) is unequivocal, and that the cause refers to precise and determined situations. In the specific case, the Jury found that Mr. Rico had allowed procedural terms to lapse, a situation that corresponds to the type of sanction provided for in Article 21(k) of Law 8085. Consequently, the Court concludes that the State did not violate the principle of legality in relation to this ground.

B.2. Mr. Rico's Right to participate in government

110. With regard to the allegation of violation of Mr. Rico's right to participate in government, this Court finds that it does not refer to an autonomous violation, but would derive from a violation of other rights alleged in this case. Consequently, the Court refers to its considerations on the rights to judicial guarantees, to judicial protection and on the principle

⁶⁴ Cf. Votes of the Impeachment Jury of June 15, 2000 (evidence file, folios 9 to 173).

⁶⁵ Cf. Votes of the Impeachment Jury of June 15, 2000 (evidence file, folios 9 to 173).

of legality to establish that the State is not responsible for a violation of the right to participate in government established in Article 23 of the Convention, to the detriment of Mr. Rico.

111. Notwithstanding the foregoing, this Court recalls what was stated in Chapter IV of this Judgment regarding the fact that both the SCPBA and the CSJN affirmed that Mr. Rico had not challenged the constitutionality of the ineligibility sanction imposed on him when he filed the REF, nor in any other remedy that he could have filed through other channels. In turn, neither the Commission nor the representatives presented specific elements or allegations that would allow this Court to analyze and determine whether or not the ineligibility sanction imposed on Mr. Rico could have constituted an infringement of his right to participate in government pursuant to Article 23(1)(c) of the American Convention.

VIII. OPERATIVE PARAGRAPHS

112. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To declare the preliminary objection admissible, pursuant to paragraph 20 of this judgment.
2. To reject the preliminary objection filed by the State, pursuant to paragraphs 15 to 19 of this judgment.

DECLARES,

Unanimously, that:

3. The State is not responsible for the violation of Article 8 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, pursuant to paragraphs 49 to 85 of this judgment.
4. The State is not responsible for the violation of Article 9 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, pursuant to paragraphs 102 to 109 of this judgment.
5. The State is not responsible for the violation of Article 23 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, pursuant to paragraphs 110 to 111 of this judgment.
6. The State is not responsible for the violation of Article 25 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, pursuant to paragraphs 88 to 99 of this judgment.

AND ORDERS:

Unanimously, that:

7. The Secretariat of the Court shall notify this Judgment to the Republic of Argentina, to Mr. Rico's representatives and to the Inter-American Commission on Human Rights.
8. To close the file.

Judgment of the Inter-American Court of Human Rights. *Case of Rico v. Argentina*. Preliminary Objection and Merits.

Done at Barranquilla, Colombia, on September 2, 2019, in the Spanish language.

I/A Court HR. *Case of Rico v. Argentina. Preliminary Objection and Merits.* Judgment of September 3, 2019.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar