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**REPORT No. 72/17**  
**CASE 13.019**  
REPORT ON MERITS

EDUARDO RICO  
ARGENTINA

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<b>I.</b>	<b>SUMMARY</b> .....	1
<b>II.</b>	<b>PROCESSING SUBSEQUENT TO THE ADMISSIBILITY REPORT</b> .....	1
<b>III.</b>	<b>POSITIONS OF THE PARTIES</b> .....	2
	A. The petitioners.....	2
	B. The State .....	3
<b>IV.</b>	<b>PROVEN FACTS</b> .....	4
	A. Regarding Eduardo Rico .....	4
	B. Regarding the legal framework applicable to the impeachment of judges in the Province of Buenos Aires .....	4
	C. Proceedings before the Impeachment Jury .....	8
	1. Judgment.....	9
	2. Special appeal for nullity.....	11
	3. Special federal appeal.....	12
	4. Motion for reconsideration of dismissal of appeal.....	13
	5. Remedies related to the setting of honoraria .....	14
<b>V.</b>	<b>LEGAL ANALYSIS</b> .....	15
	A. General considerations on applicable guarantees and the principle of judicial independence .....	15
	B. The right to a competent, independent, and impartial tribunal (Article 8.1 of the Convention) .....	17
	1. Regarding the right to a competent, independent tribunal.....	17
	2. Regarding the right to an impartial tribunal.....	18
	C. The right of defense and the right to appeal the judgment to a higher court (Articles 8.2 (c), (f), and (h) of the Convention) .....	19
	1. Regarding the right of defense .....	19
	2. Regarding the right to appeal the judgment to a higher court.....	19
	D. The right to reasoned decisions and the principle of legality (Articles 8(1) and 9 of the Convention) .....	20
	E. Right to participate in government (Article 23 of the American Convention) .....	23
	F. Right to judicial protection (Article 25 of the American Convention) .....	23
<b>VI.</b>	<b>CONCLUSIONS</b> .....	24
<b>VII.</b>	<b>RECOMMENDATIONS</b> .....	24

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**I. SUMMARY**

1. On March 4, 2002, the Inter-American Commission on Human Rights (hereinafter also “the IACHR,” “the Commission,” or “the Inter-American Commission”) received a petition lodged by Susana María Barneix and Adrián Leopoldo Azzi (hereinafter “the petitioners”) on behalf of Eduardo Rico, alleging the violation by the Republic of Argentina (hereinafter also “Argentina,” “the State,” or “the Argentine State”) of rights enshrined in the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”).<sup>1</sup>

2. The petitioners said that in 1999, the alleged victim was subjected to a proceeding before an impeachment jury (*Jurado de Enjuiciamiento*), a political body that in 2000 decided to dismiss him as a Judge on the Sixth Labor Tribunal of San Isidro Judicial Department and declare him ineligible for any other post in the judiciary for supposedly having committed disciplinary infractions. They said that various due process violations were committed in the course of that proceeding and that he was denied the possibility of lodging an appeal.

3. The State said that the alleged victim underwent impeachment proceedings before an impeachment jury which decided to remove him from office as a judge. It added that the proceedings conformed to all domestic and international human rights standards, including the obligation to observe all fair-trial guarantees.

4. After analyzing the position of the parties, the Inter-American Commission concluded that the Argentine State was responsible for the violation of the rights enshrined in Articles 8.1, 8.2(h), 9, 23, and 25 of the American Convention, taken in conjunction with the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of Eduardo Rico. The Commission also concluded that the State was not responsible for violation of the right to a hearing by a competent, independent and impartial tribunal, or for violation of the right of defense.

**II. PROCESSING SUBSEQUENT TO THE ADMISSIBILITY REPORT**

5. The IACHR received the petition on March 4, 2002, and registered it as No. 149-02. The processing of the petition up to the decision on admissibility, is described in detail in Report on Admissibility 9/16 of April 13, 2016.<sup>2</sup> In that report the IACHR declared the petition admissible for the purposes of examining possible violations of rights recognized in Articles 8, 9, and 25 of the American Convention in connection with Articles 1(1) and 2 of that instrument.<sup>3</sup>

6. The Commission notified the parties of the report on admissibility on May 1, 2016. In addition, pursuant to Article 37(4) of its Rules of Procedure, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter and requested the petitioners to submit any additional observations on merits that they might have within four months. On August 12, 2016, the petitioners submitted their additional observations on merits which were forwarded to the Argentine State on August 25, 2016, with the request that it present its additional observations on merits within four months.

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<sup>1</sup>On October 22, 2004, the lawyer Carlos Federico Bossi Ballester became a co-petitioner in the case.

<sup>2</sup>IACHR, Report No. IACHR, Report No. 9/16, Petition 149-02, Admissibility, Eduardo Rico, Argentina, April 13, 2016.

<sup>3</sup>The IACHR also declared the petition inadmissible with respect to Articles 11, 21, and 24 of the American Convention.

On May 5, 2017, the IACHR reiterated its request to the State for additional observations on merits. As of the date of adoption of this report the State had not presented its additional observations on merits. Neither party has expressed any interest in initiating a friendly settlement procedure.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

7. The petitioners said that in 1996, Eduardo Rico was appointed Judge of the Sixth Labor Tribunal of the Judicial Department of San Isidro.

8. They said that after joining the tribunal, Mr. Rico realized that his colleagues were committing a series of irregularities and corrupt acts designed to benefit a particular group of lawyers close to the San Isidro Bar Association. Therefore, on November 20, 1997, the alleged victim filed a complaint with the Supreme Court of Justice of the Province of Buenos Aires, a copy of which was provided to the Bar Association, which was not a party in the proceeding. They said that, in parallel, other lawyers in the private sector lodged various complaints against the other judges on the Tribunal.

9. They said that after three years of continuous complaints, the Supreme Court of Justice of the Province of Buenos Aires decided to investigate the judges through the Office of Judicial Oversight (*Oficina de Control Judicial*).

10. According to the petitioners, in response, the Bar Association launched a defamation campaign against the alleged victim through its own media outlets, and even published a false psychiatric evaluation. They said that in view of its temerity, the Bar Association decided to withdraw that piece of evidence from the proceeding; nevertheless, by then, the defamatory effect had been achieved.

11. The petitioners informed that on June 1, 1999, the Bar Association filed a complaint against the alleged victim, which gave rise to proceedings before the Provincial Impeachment Jury. They said that the complaint interrupted the investigation that was being conducted into the three members of the Sixth Labor Tribunal.

12. They explained that the Impeachment Jury is a political body comprising lawyers and legislators elected on a case-by-case basis who, therefore, are not tenured, making them vulnerable to pressure.

13. They said that the Jury engaged in a series of "illegalities." They alleged that it unlawfully extended in the plaintiff's favor the 15-day information submission deadline for summary proceedings established in Article 28 of Law 8085, on which basis the alleged victim requested that all proceedings subsequent to the expiration of that deadline be declared void.

14. They argued that the Jury prevented the alleged victim from presenting relevant evidence, while admitting all the evidence put forward by the plaintiff, as a result of which his right of defense was impaired. They said that the alleged victim denounced those flaws but the request was rejected by the Jury.

15. They said that on June 15, 2000, the Jury passed judgment, finding against the alleged victim, and ordered his dismissal and declared him ineligible for any post in the judiciary for having committed various violations of Law 8085.

16. According to the petitioners, on July 6, 2000, the alleged victim filed a special nullity appeal (*recurso extraordinario de nulidad*) against the judgment, which was turned down on August 30, 2000.

17. The petitioners claim that on September 22, 2000, the alleged victim filed a special federal appeal against the preceding decision with the Supreme Court of Justice of the Province of Buenos Aires, which was denied on November 29, 2000.

18. The petitioners said that on February 7, 2001, the alleged victim filed an application for reconsideration (*recurso de queja*) with the Supreme Court of Justice of the Nation, challenging the ruling described in the preceding paragraph. However, the application was refused on August 28, 2001.

19. The facts and proceedings in relation to the alleged victim are examined in detail in the Commission's analysis as to facts based on the information furnished by both parties. What follows is a summary of the main legal submissions advanced by the petitioners.

20. They argued that the state violated the **right to a fair trial** due to the manner of appointment of the members of the Impeachment Jury, which offered no guarantees in terms of tenure or protection from external pressure. On that point, they alleged the violation of the right to an independent and impartial tribunal. In that connection, they also held that the right of defense was violated since the alleged victim was prevented from questioning witnesses or having witnesses or experts offered by him appear in the proceedings. They said that the Impeachment Jury thus prevented the alleged victim from submitting evidence to clarify the truth of the charges against him.

21. They argue that the State violated the **right to judicial protection** because the dismissal was never subjected to judicial review at either the provincial or federal level. They added in that regard that all the remedies invoked by the alleged victim were rejected on formal grounds, without any review as to merits.

22. Finally, they argued that the State violated the **principle of legality** on the basis that the conduct for which the alleged victim was punished was not classified in the punitive framework and the facts were not properly accredited.

## **B. The State**

23. As of the date of adoption of this report the State had not presented its additional observations on merits. Therefore, this section is based on the arguments put forward by the State during the admissibility stage that have a bearing on the merits of the matter.

24. The State referred in broad terms to the nature of the Impeachment Jury, saying that it is a political body and that its judging criteria is based on political discretion, which means that the advisability of a judge continuing in office or not it is analyzed in the light of their conduct. It added that the Jury is composed of lawyers and lawmakers who are not judges and that their decision is not subject to appeal unless it is found that there has been a violation of due process.

25. As to the proceeding against the alleged victim, it argued that it was political in nature and that it underwent a judicial review as a result of the challenge presented by Mr. Rico alleging violations of due process. The State said that the appeal bodies did not accept the violations of due process and, therefore, denied the appeals lodged.

26. It said that although the Impeachment Jury is not a judicial body, that does not mean that the process in which the removal of a judge is decided does not have to meet certain domestic and international human rights standards. It held that the alleged victim was afforded all the guarantees of a fair trial.

27. As to law, the State denied any violation of rights protected by the American Convention. The State contended that there had been no violation of the **right to a hearing by an independent, impartial tribunal**. It said that the petitioners did not offer any evidence to show the existence of external pressures on the Impeachment Jury that might call into doubt its independence.

28. In addition, as regards the right to an impartial tribunal, the State argued that the petitioners made no mention of having sought the recusal of the members of the Jury during the proceeding. In relation

to the petitioners' submission that the appointment process for members of the Jury violated the guarantee of an impartial tribunal because the Board's members are elected on a case-by-case basis and are not tenured, the State argued that the right to be heard by a competent tribunal has to do not with the tenure of the individuals in the post but with the preexistence of the adjudicatory body. It added that Mr. Rico was heard by a tribunal established prior to his accusation.

29. As to the submission that his right to a hearing with fair trial guarantees was impaired by the fact that the President of the Jury extended the preliminary discovery period (*etapa de información sumaria*) by 15 days, the State said that the petitioners did not explain how that extension affected the alleged victim's rights. It added that the petitioners also failed to argue how the additional charges, the rejection of the applications for nullity presented, and the evidence offered by the accused affected the alleged victim's right of defense. The State alleged in general terms that in accordance with the practice and caselaw of the inter-American system, the assessment of evidence made by domestic tribunals is not susceptible to review by an international tribunal.

30. It argued that there had been no violation of the **right to appeal the judgment** to a higher court, saying that it was not a criminal proceeding, but a political one that was susceptible to judicial review provided that the interested party accredited a violation of due process, which had not happened in this case. It added that the right of appeal applies to criminal proceedings, but excludes proceedings before the Impeachment Jury.

31. The State said that it had not violated the **right to judicial protection**, arguing that Mr. Rico appeared to be confusing an unfavorable decision with the lack of a ruling by a judicial body. However, it said that the Supreme Court of Justice of the Nation, in rejecting the motion for reconsideration of dismissal of appeal, examined the violations denounced by the alleged victim and decided that they were not demonstrated in the proceeding.

32. The State argued that it had not violated the **principle of legality**, saying that Mr. Rico was dismissed exclusively for the causes envisaged in paragraphs e, f, and k of Article 21 of Law 8085 of the Province of Buenos Aires, which referred, respectively, to reiterated incompetence or negligence demonstrated in the performance of official duties, reiterated failure to perform the official duties inherent to the post, and reiterated allowance of procedural deadlines to lapse without pronouncing on the matters submitted for a decision or an opinion.

#### **IV. PROVEN FACTS**

##### **A. Regarding Eduardo Rico**

33. The petitioners said that the alleged victim served as a judge in 1970s and was terminated from his judgeship in August 1976 as a "result of the advent of the military regime in March 1976," which entailed the dismissal of large numbers of constitutionally elected magistrates.

34. According to information provided by both parties, the alleged victim was reinstated in the judiciary in 1996. There is no dispute over the fact that at the time of the events alleged in the petition he was serving as a judge on the Sixth Labor Tribunal of the Judicial Department of San Isidro.

##### **B. Regarding the legal framework applicable to the impeachment of judges in the Province of Buenos Aires**

35. As the next section explains in detail, the alleged victim was dismissed and declared ineligible for service in the judiciary as a result of a punitive proceeding before an impeachment jury governed by the Argentine National Constitution, the Constitution of the Province of Buenos Aires and Law 8085 (Rules of Procedure for the Impeachment Judges).

36. Article 115 of the Argentine National Constitution provides:

The judges of the lower courts of the Nation shall be removed on the grounds stated in Article 53, by a special impeachment 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. However, the convicted 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 set aside 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 Article 114.<sup>4</sup>

37. Article 182 of the Constitution of the Province of Buenos Aires provides:

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.<sup>5</sup>

38. Law 8085 set forth the composition and procedure of the Impeachment Jury, as well as causes for disciplinary measures.

39. Article 1 of Law 8085 stipulated:

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 the list shall be used for all drawings of lots that may be required up to the first regular session of the next year.<sup>6</sup>

40. Article 2 established:

The list of registered lawyers who meet the requirements to be members of the Supreme Court that this Tribunal is required to draw up, in order to draw lots to choose from it those called upon to be part of the jury referred to in Article 182 of the Constitution, shall comprise those who satisfy the conditions to be associate judges in accordance with the provisions contained in said Article 182. The Senate and the Chamber of Deputies shall be notified of that list and it may not be modified until the following year except in the event of a duly justified erroneous exclusion or inclusion.<sup>7</sup>

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<sup>4</sup> Argentine National Constitution, Law No. 24430.

<sup>5</sup> Constitution of the Province of Buenos Aires.

<sup>6</sup> Law 8085, Rules of Procedure for the Impeachment Judges.

<sup>7</sup> Law 8085, Rules of Procedure for the Impeachment Judges.

41. Article 3 stipulated:

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.<sup>8</sup>

42. Article 4 established:

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 5 provided that "if the number of legislator-lawyers is fewer than five (5), the President of the Jury shall proceed directly to constitute the Tribunal with such as there are on the list mentioned in Article 1 and shall notify the President of the Senate of that fact." Article 6 provided that "the Supreme Court of Justice, having been specially called by its President, shall hold, with at least three days' notice to the parties (plaintiff and accused), the public drawing of lots for five lawyers from among those registered in the list mentioned in Article 2, who together with the five legislator-lawyers—or however many there are in the event that that number is not reached—shall constitute the Impeachment Jury, in accordance with Article 182 of the Constitution."<sup>9</sup>

43. Article 27 provided:

If the complaint or accusation meets the requirements set out in Article 25 and the prosecutor has formulated their opinion, as appropriate, the President will call the members who shall be required to make up the Jury in accordance with the provisions of Articles 4, 5, and 6 of this Law, so that they may adopt a decision on their jurisdiction by a majority of votes and determine if there is cause to proceed. If the complaint lies outside the jurisdiction of the Jury, it shall find as much by a reasoned concurring vote of seven of its members rejecting the complaint or accusation and ordering the proceedings to be set aside. If it is prima facie admissible, it shall notify the accused, granting them not more than 15 days in which to answer, which term may not be extended for reasons of distance.<sup>10</sup>

44. Article 28 provided:

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."<sup>11</sup>

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<sup>8</sup> Law 8085, Rules of Procedure for the Impeachment Judges.

<sup>9</sup> Law 8085, Rules of Procedure for the Impeachment Judges.

<sup>10</sup> Law 8085, Rules of Procedure for the Impeachment Judges; Law 11.967 amending various articles of Law 8085, promulgated on June 24, 1997.

<sup>11</sup> Law 8085, Rules of Procedure for the Impeachment Judges; Law 11.967 amending various articles of law 8085, promulgated on June 24, 1997.

45. Article 21 of Law 8085 contained the grounds for disciplinary measures that can lead to dismissal. The parts of that article that are pertinent to this case provided:

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.<sup>12</sup>
- l) Reiterated gross irregularities in the proceeding.<sup>13</sup>

46. Article 42 of the Law provided that in returning a verdict the members of the Jury had to ask themselves the following questions with regard to the accusation:

- 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?<sup>14</sup>

47. According to Article 10 of Law 8085 “the Jury shall require a minimum of six members for its constitution and operation, at least three of whom shall be legislators, assuming there are any. Decisions shall be taken by a simple majority of those present, except in the case of guilty verdicts, in which case the concurring vote of seven members of the Jury shall be necessary, of whom at least three shall be legislators, assuming there are any.”<sup>15</sup>

48. As to the weighing of evidence in the proceeding and the penalties that the Jury could impose under Law 8085, Article 45 provided that “the Jury shall weigh the evidence according to the rules of free conviction. If the verdict is a conviction, the only effect shall be for the accused to be removed and rendered ineligible for any other post in the judiciary thereafter.”<sup>16</sup>

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<sup>12</sup>Law 8085, Rules of Procedure for the Impeachment Judges; Law 11.967 amending various articles of Law 8085, promulgated on June 24, 1997.

<sup>13</sup> Law 8085, Rules of Procedure for the Impeachment Judges.

<sup>14</sup> Law 8085, Rules of Procedure for the Impeachment Judges. Law 11.967 amending various articles of Law 8085, promulgated on June 24, 1997.

<sup>15</sup> Law 8085, Rules of Procedure for the Impeachment Judges; Law 11.967 amending various articles of Law 8085, promulgated on June 24, 1997.

<sup>16</sup> Law 8085, Rules of Procedure for the Impeachment Judges; Law 11.967 amending various articles of Law 8085, promulgated on June 24, 1997.

49. That same provision stipulated that “the decisions of the President or the Jury are not open to any appeal other than an appeal for clarification when the verdict orders the removal of the accused, which must be lodged within 24 hours and the decision on the subject of fees.”<sup>17</sup> However, the State reported that, according to the case law of the Supreme Court of Justice of the Nation, the decisions of the Jury are subject to appeal if a violation of due process in the framework of the proceedings is alleged.

### C. Proceedings before the Impeachment Jury

50. On June 1, 1999, the Bar Association of San Isidro filed a complaint against the alleged victim with the Council of the Magistracy, alleging the commission of violations envisaged in Article 21 (a), (e), (f), (g), (j), (k) and (l) of Law 8085, the contents of which are transcribed in the preceding paragraphs.

51. As a result, a Jury of Impeachment of Judges and Public Officials of the Province of Buenos Aires was formed and officially constituted on October 5, 1999.<sup>18</sup> According to the record, the Impeachment Jury that convicted the alleged victim comprised the President of the Supreme Court of Justice, Guillermo David San Martín; Associate Justices Benito José Aldazábal, Margarita Maroni de Berceteche, Oscar Antonio Huerta, and Jorge Mariezcurrena; and legislators Enrique Pedro Basla, Juan Carlos Correa, Ricardo Luis Alfonsín, and Gustavo Ferrari.<sup>19</sup>

52. On October 27, 1999, the President of the Jury decided to extend by 15 days the time limit for the preliminary discovery procedure envisaged in Article 28 of the Impeachment Law.

53. On April 13, 2000, the impeachment jury admitted all the testimony and informative evidence offered by the plaintiff. It admitted part of the evidence offered by the alleged victim. In particular, it rejected all the testimony evidence offered “because it was not accompanied by the corresponding questions.” That decision also said that “in light of what is stated on p. 32 overleaf (2nd paragraph) by the plaintiff in terms of not bringing charges under Article 21 (c) of Law 8085 against the accused, it is inadmissible grounds of being manifestly overabundant (Art. 209 Code of Criminal Procedure and Art. 56 of Law 8085).”<sup>20</sup>

54. In the above decision, the Jury set June 5, 2000, as the date for the public, oral proceedings in the case.<sup>21</sup>

55. The alleged victim filed an application for nullity against the decision to deny certain evidence offered, alleging a series of due process violations in the proceedings before the Impeachment Jury. First, he argued that the successive additional charges violated his right of defense and fair trial guarantees, given that Law 8085 stipulated that the accusation had to contain “all the evidence offered,” in spite of which new evidence was incorporated in the aforesaid additional charges. The alleged victim also added that he was denied the possibility of presenting evidence in his defense to elucidate the facts. Second, he said that the extension of the time limit for preliminary discovery was a “clear violation of Law 8085” because the 15-day time limit that the Law establishes was not subject to extension. Third, he said that in the dismissal proceeding he was suspended and was applied a 40% salary reduction in the wake of it.<sup>22</sup>

<sup>17</sup> Law 8085, Rules of Procedure for the Impeachment Judges.

<sup>18</sup>Annex 1. Decision of June 1, 2000, of the Jury of Impeachment of Judges and Public Officials of the Province of Buenos Aires. Annex 14 to the initial petition of March 4, 2002.

<sup>19</sup>Annex 2. Vote of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

<sup>20</sup> Article 21.c of Law 8085 refers to “ineligibility on physical or mental grounds.” Annex XX. Decision of April 13, 2000, of the Jury of Impeachment of Judges and Public Officials of the Province of Buenos Aires. Annex 15 to the initial petition of March 4, 2002.

<sup>21</sup>Annex 3. Decision of April 13, 2000, of the Jury of Impeachment of Judges and Public Officials of the Province of Buenos Aires. Annex 15 to the initial petition of March 4, 2002.

<sup>22</sup>Annex 4. Special motion for preliminary decision (*Planteo de previo y especial pronunciamiento*). That the decisions of the Office of Judicial Oversight be declared void. Application for nullity of decision on admissibility of evidence. Suggest serious procedural irregularities and violations of constitutional guarantees, May 18, 2000. Annex 13 to the initial petition of March 4, 2002. The Commission  
[continues ...]

56. On June 1, 2000, the Impeachment Jury decided "to reject the motions for nullity filed by the accused."<sup>23</sup> In that connection, it said that the accused was notified of the additional charges so that he might exercise his right of defense in full. Furthermore, as regards the extension of the time limit for the preliminary inquiry, it said that it "provided the opportunity for the exercise of greater oversight by the accused, who consented to proceeding in that manner."<sup>24</sup> Finally, it said that the Jury accepted all the evidence offered that met the legal requirements.<sup>25</sup>

## 1. Judgment

57. On June 15, 2000, the Impeachment Jury found that the alleged victim met the grounds envisaged in paragraphs e, f, and k of Article 21 of Law 8085, which referred, respectively, to "reiterated incompetence or negligence demonstrated in the performance of official duties," "reiterated failure to perform the official duties inherent to the post," and "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," and therefore decided

1. TO DISMISS Dr. EDUARDO RICO as a judge of the Sixth Labor Tribunal of San Isidro.
2. To decree him ineligible to occupy any other judicial post hereafter....<sup>26</sup>

58. The Commission notes that the decision process was divided into 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;<sup>27</sup> the second contains the judgment per se.

[... continuation]

notes in this regard that Article 30 of Law 8085 provided that "as a result of the proceedings, the suspended official shall have 40 percent of their pay garnished. The accused judge shall continue to receive the remaining 60 percent until the Jury delivers its verdict, which, if a conviction, shall entail the automatic cessation of such payments. Law 8085, Rules of Procedure for the Impeachment Judges.

<sup>23</sup>Annex 1. Decision of the Impeachment Jury of June 1, 2000. Annex 14 to the initial petition of March 4, 2002.

<sup>24</sup>Annex 1, Decision of the Impeachment Jury of June 1, 2000. Annex 14 to the initial petition of March 4, 2002.

<sup>25</sup>Annex 1. Decision of the Impeachment Jury of June 1, 2000. Annex 14 to the initial petition of March 4, 2002.

<sup>26</sup>Annex 2. Judgment of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

<sup>27</sup>The questions that the members of the Jury had to answer were as follows: 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 Dr. Gonzales Rubio 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, Dr. Marigo? 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

[continues ...]

59. The Commission observes that in the voting process, all nine members of the Jury responded to the 16 questions, indicating the charges that they considered proven, the grounds for infringement, and their personal appreciations. From a comprehensive reading of the decision, the Commission notes that on several occasions the questions receive the same responses. However, some members of the Impeachment Jury differed from others in terms of the reasons provided for those responses.

60. Thus, for example, in the response to question 12.1, "Is it proven that he has treated employees of this tribunal and lawyers improperly"? Judge Alfonsín said that "while it is true that mistreatment of his colleagues is not on the list of offenses with which he is charged, I mention it as a way of illustrating his erratic behavior evinced by his constant overreaction." For his part, Judge Aldazabal said, "I would echo the reasons given by Dr. San Martín in his vote on this matter, with the sole dissent that I do not believe that it is suitably proven that the accused challenged Dr. Pastore to a fight outside the Tribunal."<sup>28</sup>

61. As the vote shows, the Jury found unanimously that the alleged victim had engaged in the following conduct: 1. Refusal 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 referring to his peers as "de facto president and de facto vice president"; 2. Ordering all proceedings in which Dr. Gonzales Rubio 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. Refusal to swear an oath of loyalty to the Buenos Aires flag before the President of the Tribunal, Dr. Marigo; 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. It also unanimously found that the preceding five charges met the grounds envisaged in article 21.f of Law 8085.

62. Furthermore, eight members of the Jury considered it proven that "Dr. Rico obstructed the holding of hearings, with such conduct entailing clear adverse effects to the parties," thereby committing the minor offense stipulated in Article 21.f of Law 8085.

63. The Jury also unanimously found that the alleged victim "requested his peers to recuse themselves and thereby abstain from intervening in those proceedings in which he had been recused for

[... continuation]

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 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. Coronado 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?

<sup>28</sup>Annex 2. Vote of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

'having been found to meet the grounds for recusal and/or for reasons of the utmost decorum and sensitivity,'" thereby committing the minor offense stipulated in Article 21.e of Law 8085.<sup>29</sup>

64. The Jury also unanimously considered it proven that the alleged victim "allowed procedural deadlines for delivering judgments to expire and has issued pronouncements after requests were made for prompt despatch," thereby committing the minor offense envisaged in Article 21.k.<sup>30</sup>

65. Furthermore, following the vote, all the members of the Jury considered that the alleged victim should be dismissed, based on their "inner convictions" or what they stated in their individual votes on each question. They did not provide reasons to explain why that penalty was appropriate or provide any justification on the propriety of the punishment of ineligibility, which was only included in the operative part of the decision.<sup>31</sup>

66. For example, Judge Guillermo San Martín said: "I believe, based on my inner convictions, that Dr. Eduardo Rico should be dismissed from his post as judge of the Sixth Labor Tribunal of San Isidro." Furthermore, Judge Jorge Mariezcurrena said: "in accordance with what was said in all the points on which I cast my vote, based on my inner convictions Dr. Rico should be terminated as a judge." Judge Oscar Antonio Huerta said in that regard: "in keeping with the vote issued on the preceding questions and in accordance with Article 45 of Law 8085, based on my inner convictions the accused should be dismissed." Those sentiments were echoed by Judge Enrique Pedro Basla, Judge Gustavo Ferrari, and Judge Margarita Maroni de Bercetche in their pronouncements.<sup>32</sup>

67. The Commission notes that the judgment itself does not explain the Board's reasoning as a collegiate body for considering why certain facts were proven or how those facts were consistent with the causes set out in paragraphs e, f, and k of Law 8085.

## **2. Special appeal for nullity**

68. On July 6, 2000, the alleged victim filed a special appeal for nullity against the decision mentioned in the preceding paragraph with the Supreme Court of the Province of Buenos Aires.<sup>33</sup>

69. The alleged victim said that in the framework of the nullity appeal, he recused Judge San Martín, who served as President of the Impeachment Jury. He said that the aforesaid judge accepted his recusal, and therefore was not involved in the decision on the nullity appeal.

70. In the nullity appeal, the alleged victim argued that the principle of legality and due process were violated by the "forced match between the facts and the conduct classified in paragraphs e, f, and k of the aforesaid law..."<sup>34</sup>

71. He also submitted that the punishment of ineligibility to hold another post in the judiciary was unconstitutional, arguing that while Article 45 of Law 8085 contemplated the penalty of ineligibility, it was not envisaged in the Provincial Statute and is banned under Article 115 of the National Constitution, which provides that the verdict of the Impeachment Jury "shall have no other effect than the removal of the

<sup>29</sup>Annex 2. Vote of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

<sup>30</sup>Annex 2. Vote of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

<sup>31</sup>Annex 2. Vote of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

<sup>32</sup>Annex 2. Vote of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

<sup>33</sup>Annex 5. Special appeal for nullity, July 6, 2000. Annex 4 to the initial petition of March 4, 2002.

<sup>34</sup>Annex 5. Special appeal for nullity, July 6, 2000. Annex 4 to the initial petition of March 4, 2002.

accuse.”<sup>35</sup> He also argued that the ancillary penalty of ineligibility was irrational and arbitrary, particularly since it could be imposed indefinitely.<sup>36</sup>

72. Finally, he alleged another series of due process violations, such as the extension of the time limit for the preliminary discovery and the rejection of evidence for the defense offered by the alleged victim. As regards the rejection of the evidence for the defense, he said that the presentation was denied of the only witness who really mattered for the accused, Auxiliary Judge Martínez Grijalba, who was ejected from her place of work by their colleague Judge Marigo “for failing to conduct a required interrogation, a minor matter.”<sup>37</sup> He added that the testimony was also refused of the medical doctors Mariano Castex, Barriocanal, and Fernández Amallo, who would have refuted the “supposed profile of psychosis or insanity” of Eduardo Rico, with the argument that they were “manifestly overabundant.”<sup>38</sup>

73. On August 30, 2000, the Supreme Court of the Province of Buenos Aires turned down the appeal, arguing that “the jury created by Article 182 of said Constitution for the impeachment of judges is not the “court of justice” to which the aforementioned precepts refer, as it 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.”<sup>39</sup>

### 3. Special federal appeal

74. On September 22, 2000, the alleged victim filed a special federal appeal with the Supreme Court of Justice of the Province of Buenos Aires, contending that the argument that the decisions of the Impeachment Jury were not subject to appeal had been refuted on repeated occasions by the Supreme Court of Justice of the Nation. In particular, he mentioned that in one case the Supreme Court enabled the review of decisions, saying that “notwithstanding the opinion of the undersigned regarding the unappealability of the decisions of the Impeachment Tribunal ..., given that the Supreme Court of Justice decided that it is incumbent upon the Supreme Court of Justice of the Province of Buenos Aires to examine any challenges on constitutional grounds brought against the decision of the Impeachment Jury by means of special appeals at the local level, said doctrine should be adhered to.”<sup>40</sup>

75. Furthermore, he argued that the decision of the Impeachment Jury violated due process by ordering his dismissal and ineligibility for public office, in spite of the fact that the legal requirements of classification of the conduct as an offense, unlawfulness, and culpability required by the law were not met, and because of “the nonexistent or insufficient evidence of the supposedly proven facts.”<sup>41</sup> He also argued again that he was denied the possibility of presenting evidence in his defense and that the time limit for the preliminary discovery was unduly extended.

<sup>35</sup> Law No. 24.430, Constitution of the Argentine Nation.

<sup>36</sup> Annex 5. Special appeal for nullity, July 6, 2000. Annex 4 to the initial petition of March 4, 2002.

<sup>37</sup> Annex 4. Special motion for preliminary decision (*Planteo de previo y especial pronunciamiento*). Nullity of the decisions of the Office of Judicial Oversight. Application for nullity of decision on admissibility of evidence. Suggest serious procedural irregularities and violations of constitutional guarantees before the Judicial Impeachment Jury, May 18, 2000. Annex 13 to the initial petition of March 4, 2002.

<sup>38</sup> Annex 4. Special motion for preliminary decision (*Planteo de previo y especial pronunciamiento*). Nullity of the decisions of the Office of Judicial Oversight. Application for nullity of decision on admissibility of evidence. Suggest serious procedural irregularities and violations of constitutional guarantees before the Judicial Impeachment Jury, May 18, 2000. Annex 13 to the initial petition of March 4, 2002.

<sup>39</sup> Annex 6. Ruling of the Supreme Court of Justice of the Province of Buenos Aires, August 30, 2000. Annex 6 to the initial petition of March 4, 2002.

<sup>40</sup> Annex 7. Special federal appeal, September 22, 2000, Annex 7 to the initial petition of March 4, 2002.

<sup>41</sup> Annex 7. Special federal appeal, September 22, 2000, Annex 7 to the initial petition of March 4, 2002, p. 31.

76. Finally, he reiterated his submission regarding the unconstitutionality of the punishment of ineligibility imposed, since he considered that the penalty, envisaged in Article 45 of Law 8085, ran counter to the Provincial Statute and the National Constitution.<sup>42</sup>

77. On November 29, 2000, the Supreme Court of Justice of the Province of Buenos Aires denied the federal appeal lodged, saying that "decisions declaring appeals filed with local tribunals inadmissible do not, as a rule, warrant the activation of recourse to review under Article 14 of Law 48, especially in cases such as this where 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."<sup>43</sup>

78. The Supreme Court of the Province of Buenos Aires also denied the unconstitutionality motion presented, arguing that "the claim that Article 45 of Law 8085 is unconstitutional was only specifically submitted in the special federal appeal, said challenge having been omitted in the nullity appeal presented to this Supreme Court, in which only an ineffective reservation was formulated."<sup>44</sup>

#### **4. Motion for reconsideration of dismissal of appeal**

79. On February 7, 2001, the alleged victim filed an application for reconsideration for denial of the special federal appeal with the Supreme Court of Justice of the Nation, arguing that the Tribunal committed a violation by declaring in the denial of the special appeal that the decisions of the Impeachment Jury are not subject to appeal. He also reiterated his request that Article 45 of Law 8085 be declared unconstitutional because it "bans access to review" and "imposes the punishment of permanent ineligibility on dismissed judges."<sup>45</sup> He also argued that the punished conduct was not consistent with the faults contained in paragraphs e, f, and k of Article 21 of Law 8085.<sup>46</sup> Finally, he alleged a series of violations of due process, including the refusal to receive evidence in his defense.<sup>47</sup>

80. On August 28, 2001, the Supreme Court of Justice refused the motion. It said that, although the Court has hewn to the doctrine that decisions in so-called trials of magistrates at the provincial level are

<sup>42</sup>Annex 7. Special federal appeal, September 22, 2000, Annex 7 to the initial petition of March 4, 2002.

<sup>43</sup> Annex 8 Ruling of the Supreme Court of Justice of the Province of Buenos Aires, November 29, 2000. Annex 8 to the initial petition of March 4, 2002. The Commission notes that Articles 14 and 15 of Law No. 48 provide as follows: Art. 14. Once a proceeding has been instituted before the Courts of the Province, it shall be adjudicated and disposed of in the provincial jurisdiction and final judgments pronounced by the superior courts of the province may only be appealed to the Supreme Court in the following cases: 1. When the validity of a treaty, of an act of Congress, or of an authority exercised in the name of the nation is called into question in the dispute, and the decision has gone against its validity. 2. When the validity of a provincial law, decree, or authority is called into question on the grounds of running counter to the National Constitution, treaties, or acts of Congress, and the decision has been in favor of the validity of the provincial law or authority. 3. When the soundness of any clause of the Constitution, treaty, or act of Congress, or of a mandate exercised in the name of the nation is called into question and the decision goes against the validity of the title, right, privilege, or exemption that is founded on said clause and is the subject of litigation. Art. 15. When the appeal authorized by the preceding article is lodged, the complaint shall be inferred from what is prescribed therein, such that its justification appears in the record and offers a direct and immediate resolution of the questions of validity of the disputed provisions of the Constitution, laws, treaties, or mandates, it being understood that the provincial courts' interpretation or application of the civil, criminal, business, and mining codes shall not give rise to this remedy by virtue of being acts of Congress, in accordance with Article 67 (11) of the Constitution. Law No. 48. Jurisdiction and Competence of the National Courts.

<sup>44</sup> Annex 8 Ruling of the Supreme Court of Justice of the Province of Buenos Aires, November 29, 2000. Annex 8 to the initial petition of March 4, 2002.

<sup>45</sup>Annex 9. Motion for reconsideration of dismissal of appeal presented by the alleged victim, February 7, 2001. Annex 2 to the initial petition of March 4, 2002.

<sup>46</sup>Annex 9. Motion for reconsideration of dismissal of appeal presented by the alleged victim, February 7, 2001. Annex 2 to the initial petition of March 4, 2002.

<sup>47</sup>Annex 9. Motion for reconsideration of dismissal of appeal presented by the alleged victim, February 7, 2001. Annex 2 to the initial petition of March 4, 2002.

justiciable when one of the parties invokes a violation of due process, that does not apply in the instant case because the appellant has not demonstrated a violation of Article 18 of the National Constitution.<sup>48</sup>

81. The Commission notes that Article 18 of the Constitution provides: "No inhabitant of the Nation may be punished without previous trial based on a law enacted before the act that gives rise to the process, nor tried by special committees, nor removed from the judges appointed by law before the act for which he is tried. Nobody may be compelled to testify against himself, or be arrested except by virtue of a written warrant issued by a competent authority. The defense by trial of persons and rights may not be violated."<sup>49</sup>

82. On February 27, 2001, the alleged victim presented himself at the Anticorruption Office of the Ministry of Justice and Human Rights to denounce that he had been denied his constitutional rights in the dismissal proceedings against him. He also alleged a situation of corruption and connivance between the Impeachment Tribunal and the Departmental Bar Association.<sup>50</sup>

83. On February 28, 2001, the Ministry of Justice and Human Rights decided "to set aside the instant proceedings because they do not fall within the scope and objectives of this Anticorruption Office's investigations."<sup>51</sup>

## **5. Remedies related to the setting of honoraria**

84. On October 22, 2001, the Impeachment Jury set the honoraria of the Jury's associate judges at 7,000 pesos each. It also set the honoraria for the counsels for the plaintiff and the accused at 3,500 pesos.<sup>52</sup>

85. On November 5, 2001, the alleged victim lodged an appeal against the above decision, arguing that the amounts set were "arbitrary, confiscatory, and removed from the circumstances of the case" since the total sum set in favor of the associate judges and counsels plus the contributions prescribed by law exceeded US\$50,000, an amount impossible for him to pay."<sup>53</sup>

86. The alleged victim also invoked another series of remedies to challenge the proceedings in which the honoraria of the professionals acting both for and against him were set. However, all were declared unfounded.

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<sup>48</sup> Annex 10. Decision of the Supreme Court of Justice of the Nation denying the motion for reconsideration, August 28, 2001. Annex 1 to the initial petition of March 4, 2002.

<sup>49</sup> Law No. 24.430, Constitution of the Argentine Nation.

<sup>50</sup> Annex 11. Brief presented to the Ministry of Justice and Human Rights, February 27, 2001. Annex 19 to the initial petition of March 4, 2002.

<sup>51</sup> Annex 11. Decision of the Anticorruption Office of the Ministry of Justice and Human Rights, February 28, 2001. Annex 19 to the initial petition of March 4, 2002.

<sup>52</sup> Annex 12. Decision of the Jury of Impeachment of Judges and Public Officials of the Province of Buenos Aires, October 22, 2001. Annex 16 to the initial petition of March 4, 2002.

<sup>53</sup> Annex 13. Appeal filed by the alleged victim on November 5, 2001. Annex 17 to the initial petition of March 4, 2002.

## V. LEGAL ANALYSIS

### A. General considerations on applicable guarantees and the principle of judicial independence

87. Both the Commission and the Inter-American Court have consistently held that, in general, the guarantees recognized in Article 8 of the American Convention are not confined to criminal proceedings, but apply also to other types of proceedings.<sup>54</sup>

88. Specifically, where punitive proceedings are concerned, both organs of the system have held that the guarantees enshrined in Article 8.2 of the American Convention apply analogously,<sup>55</sup> as does the principle of legality and freedom from ex post facto laws established in Article 9 of the same treaty.<sup>56</sup> The “due guarantees” established in Article 8.1 of the American Convention are also applicable in other proceedings in which rights or interests are addressed, including the right to sufficient justification for decisions.<sup>57</sup> The decision as to what constitute “due guarantees” in a particular proceeding for a determination on rights must take into account the nature of the proceeding and the legal interests in play.<sup>58</sup>

89. Based on the above, to determine which guarantees the State had the obligation to afford in a specific case, it is necessary to refer the nature of the proceeding in question.

90. This case involves an impeachment proceeding that culminated in the decision to dismiss the alleged victim from his post as judge of the Sixth Labor Tribunal of the Department of San Isidro and declare him ineligible to exercise judicial functions. The Commission also notes that, as is mentioned in the section on proven facts, the Impeachment Jury, had the authority under Article 42.b of the Law to determine whether the alleged victim had committed criminal offenses. In that regard, the Commission considers that it was a punitive proceeding that involved the punitive power of the State and, therefore, the applicable guarantees analogously included the ones applicable in criminal proceedings. Of particular relevance for the analysis in this case are the guarantees established in Articles 8.1, 8.2, and 9 of the American Convention.

91. In addition to the punitive nature of the proceedings, the Commission considers it appropriate to formulate a number of general considerations on the enhanced guarantees in proceedings for the dismissal of judges, as well as on the impeachment of judicial operators.

92. The principle of judicial independence is an inherent requirement of a democratic system and a fundamental prerequisite for the protection of human rights.<sup>59</sup> It is enshrined as one of the fair-trial guarantees protected by Article 8(1) of the American Convention; moreover, that principle gives rise in turn

<sup>54</sup>IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al. (Supreme Court of Justice) Ecuador, March 31, 2011, par. 102.

<sup>55</sup>I/A Court H.R., Baena Ricardo et al. Case v. Panama. Merits, Reparations, and Costs, Judgment of February 2, 2001. Series C No. 72, pars. 126-127. See also: IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*. OEA/Ser.L/V/II.129, September 7, 2007, pars. 98-123; and Case No. 12.828, Report 112/12, Marcel Granier et al., Venezuela, Merits, November 9, 2012, par. 188.

<sup>56</sup>I/A Court H.R., Baena Ricardo et al. Case v. Panama. Merits, Reparations, and Costs, Judgment of February 2, 2001. Series C No. 72, par. 106.

<sup>57</sup>IACHR, Report No. 43/15, Case 12.632, Merits (Publication), Adriana Beatriz Gallo, Ana María Cariaga and Silvia Maluf de Christin, Argentina, July 28, 2015, par. 136; I/A Court H.R. Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, par. 118; and Case of Claude-Reyes et al. v. Chile. Merits, Reparations, and Costs. Judgment of September 19, 2006. Series C No. 151, par. 118.

<sup>58</sup>I/A Court H.R., Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234, pars 118-119.

<sup>59</sup>IACHR, Report on Merits 12.816, Report No. 103/13, November 5, 2013, par. 112. Citing United Nations, Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, para. 19. In that same connection, see *Habeas corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, par. 30. See also IACHR, *Democracy and Human Rights in Venezuela*, Ch. III, Independence and Separation of Public Powers, December 30, 2009, par. 80.

to “strengthened”<sup>60</sup> guarantees that states must provide to judges to ensure their independence.<sup>61</sup> The organs of the Inter-American system have interpreted the principle of judicial independence as incorporating the following guarantees: an appropriate selection process, guaranteed tenure and the guarantee against external pressures.<sup>62</sup> Specifically insofar as is relevant to this case, with respect to the guarantee of tenure, the Court has established that it “results in the subjective right of judges to be dismissed exclusively for the reasons permitted, either by a proceeding that complies with judicial guarantees or because their mandate has terminated.”<sup>63</sup> When a judge’s tenure is arbitrarily impaired, “the right to judicial independence recognized in Article 8(1) of the American Convention is violated.”<sup>64</sup>

93. Specifically with regard to impeachment and its use for the removal of persons involved in the administration of justice, the Inter-American Court has stated that it “must observe the guarantees of due process in order to respect the principle of judicial independence with regards to senior magistrates facing such proceedings.”<sup>65</sup> The IACHR, for its part, has stated that impeachment:

... may only be used on an exceptional basis as a mechanism for removing judges, since because of its unique nature it may pose certain risks for certain guarantees that must be strictly observed in such circumstances. Accordingly, if the legislative branch is empowered to exercise adjudicatory functions in cases involving the dismissal of judges, that authority must constitute legal control with unreserved compliance with the principles of legality and the guarantees of due process, not political control of judicial activity based on discretionary criteria or political expediency.<sup>66</sup>

94. The Commission is of the view that “the use of impeachment in the case of justice operators should be gradually eliminated in the region, as impeachment poses a significant threat to judicial independence.”<sup>67</sup>

95. Bearing in mind the positions of the parties and the established facts, and taking into account the above general considerations, the Commission’s legal analysis is conducted in the following order: (i) The right to a competent, independent, and impartial tribunal (Article 8(1) of the Convention); (ii) The right of defense and the right to appeal the judgment to a higher court (Articles 8(2) (c), (f), and (h) of the Convention); (iii) The right to reasoned decisions and the principle of legality (Articles 8(1) and 9 of the

<sup>60</sup>I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, par. 67; IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009, par. 185. Available at: <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, par. 359.

<sup>61</sup>Thus, for example, the Inter-American Court has held that the obligations of the State with respect to persons subject to judicial proceedings in the courts give rise, in turn, to “rights for judges,” which, according to the Court, include “the guarantee of not being subject to removal at will signifies that, in the case of judges, the disciplinary and punishment procedures must necessarily respect the guarantees of due process, and those subject to such procedures must be provided, among other matters, with an effective remedy.” I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008, Series C No. 182, par. 147.

<sup>62</sup>IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, pars. 56, 109 and 184, I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 191.

<sup>63</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 192.

<sup>64</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 192.

<sup>65</sup>I/A Court H.R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, par. 84.

<sup>66</sup>IACHR, Report No. 43/15, Case 12.632, Merits (Publication), Adriana Beatriz Gallo, Ana María Cariaga and Silvia Maluf de Christin, Argentina, July 28, 2015, par. 135.

<sup>67</sup>See also, IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II.Doc.44, December 5, 2013, par. 205.

Convention); (iv) The right to participate in government (Article 23 of the Convention); and (v) The right to judicial protection (Article 25 of the Convention).

**B. The right to a competent, independent, and impartial tribunal (Article 8.1 of the Convention)<sup>68</sup>**

**1. Regarding the right to a competent, independent tribunal**

96. Article 8(1) of the Convention recognizes the right to a trial by “a competent ... tribunal, previously established by law.” Thus, people “have the right to be tried, in general, by a competent tribunal, in accordance with legally established procedures.” The State should not create courts that do not apply duly established procedural norms in substitution of the jurisdiction that would normally correspond to the [regular] courts.”<sup>69</sup> The purpose of this is to avoid people being tried by special or ad hoc tribunals.<sup>70</sup>

97. States are entitled to design and organize their internal disciplinary proceedings. Such processes should be applied in accordance with previously established procedures that indicates the appropriate authorities and the procedural rules.<sup>71</sup> That guarantee is satisfied when the disciplinary authority originates from a rule established in advance of the proceeding,<sup>72</sup> and correlatively, that rule is broken when the disciplinary body lacks the competence recognized by law.<sup>73</sup>

98. The Commission has stated that an appropriate procedure for appointing members of the judiciary, one that is transparent and that guarantees the equality of candidates, is a fundamental guarantee for judicial independence.<sup>74</sup> Precisely in light of the important function performed by the organs entrusted with the processes of appointment, promotion, and disciplinary sanctions, and the objectivity required for their activity, the Commission has considered that it is advisable for the states to establish an independent organ whose functions include the appointment, promotion, and removal of judges.<sup>75</sup>

99. As regards the right to a competent tribunal previously established by law, the Commission notes that the section on proven facts sets out both the legal framework applicable to the constitution of the Impeachment Jury, and the ultimate composition of the Jury in Mr. Rico's case. In that connection, the Commission finds that in the instant case the rules on composition were previously established by law. Furthermore, those rules clearly describe the steps for its formation, as regards both its president and members of the Senate and lawyers. The Commission observes that it involves public drawings of lots from lists of individuals who meet certain objective requirements. In that regard, while it would be desirable for officials charged with exercising punitive functions to be appointed in advance, the constitution of a collegiate body to hear a specific case does not necessarily entail a violation of the right to a competent tribunal,

<sup>68</sup>Article 8(1) of the Convention states: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>69</sup>I/A Court H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations, and Costs, Judgment of November 17, 2009. Series C No. 206, par. 75.

<sup>70</sup>I/A Court H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations, and Costs, Judgment of November 17, 2009. Series C No. 206, par. 75.

<sup>71</sup>See also, IACHR, *Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II Doc.44, December 5, 2013, par. 187.

<sup>72</sup>I/A Court H.R. *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008, Series C No. 182, par. 53.

<sup>73</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 221.

<sup>74</sup>IACHR, *Democracy and Human Rights in Venezuela*, 2009, par. 187.

<sup>75</sup>See IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, par. 374.

provided that there are pre-existing objective rules on its composition and those rules are observed in each specific case, neither of which is in dispute.

100. As regards the right to an independent tribunal, the Commission sees that the Argentine State explained that the Impeachment Jury is an organ of a political nature. Indeed, in terms of its composition, 5 of its 11 members have to be senators who meet certain requirements. The Commission considers the legislative branch having a decisive say in punitive proceedings against judges to be problematic and as constituting, per se, a source of risk to the independent exercise of such a function, since such proceedings do not offer the proper institutional guarantees or suitability that the judiciary would. However, both the Commission and the Court have taken up cases in which the legislative branch has been granted material adjudicatory authority in punitive proceedings against judges. In those cases, the analysis as to whether or not it acted independently was conducted taking into account the circumstances of each specific case.<sup>76</sup> Thus, the Commission considers that, notwithstanding the aforementioned risks, in the instant case the petitioner merely indicated that the San Isidro Bar Association had an interest in harming him in reprisal for the accusations of corruption that he leveled at his peers on the court on which he sat. However, the IACHR has no additional elements by which to infer the above. At the same time, the petitioner indicated in general terms that because of the way in which they are appointed, members of the Impeachment Jury are not shielded from external pressures. However, he does not explain what type of pressures might have been exerted upon them or how they might have influenced the decision.

101. In light of the foregoing, the Commission concludes that in the circumstances of this case the Argentine State did not violate the right to a competent, independent tribunal.

## **2. Regarding the right to an impartial tribunal**

102. In disciplinary proceedings instituted by the legislative branch, the guarantee of impartiality (Article 8(1) of the Convention) remains wholly applicable since the decisive aspect for determining the respective guarantees is the punitive nature of the power being exercised by the authority in question. The guarantee of impartiality entails that the members of the Impeachment Jury “have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy.”<sup>77</sup> When impartiality is being determined, regard must be had, from a subjective standpoint, to the personal conviction and behavior of a judge in a given case, but also, from an objective perspective, if sufficient guarantees are offered in the proceeding to exclude any legitimate doubt in that respect.<sup>78</sup> The right to an impartial tribunal is the guarantee that the decision will be adopted based on the reasons that the law provides and not on other criteria that have nothing to do with the legal framework. The importance of that is particularly acute where punitive matters are concerned and even more so in punitive proceedings against judges, bearing in mind the principle of judicial independence, as described earlier.

103. Relating the foregoing to impeachment, as it mentioned when it referred to such proceedings, the Commission reiterates that because of the risks that it poses to judicial independence, it should be used only in exceptional cases for judges and in all instances it should be ensured that the control exercised is legal and not political. To do otherwise would be to allow reasons other than those that the law envisages into the decision-making process on the propriety of a judge's punishment, which constitutes undue interference in judicial independence.

104. In spite of the foregoing, in the present case the Commission does not find concrete elements that suggest that the Impeachment Jury which heard the case acted politically motivated so that its

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<sup>76</sup>See, for example, Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador; and Case of the Constitutional Court v. Peru. Both cases were considered first by the Commission and then by the Inter-American Court.

<sup>77</sup>I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005. Series C No. 135, par. 146.

<sup>78</sup>See, ECHR, *Case of Thomann v. Switzerland*, Judgment of 10 June 1996, § 30.

subjective impartiality - which is presumed - in application of the disciplinary grounds, would be compromised.

**C. The right of defense and the right to appeal the judgment to a higher court (Articles 8.2 (c), (f), and (h) of the Convention)<sup>79</sup>**

**1. Regarding the right of defense**

105. The petitioner alleged that in the context of the punitive proceedings, Mr. Rico's right of defense recognized in Article 8(2) of the Convention was violated in a number of ways: The first is that the preliminary discovery period afforded to the plaintiff was said to have been arbitrarily extended. The second is that he was purportedly prevented from submitting evidence critical for his defense, specifically witness testimony.

106. As to the first point, the Commission notes that the time limit for preliminary discovery was indeed extended in the course of the proceeding. The Commission observes that that possibility is envisaged in law and that the petitioner did not explain how that extension adversely affected his right of defense. From the description of the proceedings, the Commission finds that Mr. Rico had access to all the information that supported the accusation and presented no arguments to the effect that the time that he was afforded for the preparation of his defense was insufficient in light of the extension granted to the other party, or that the other party had had an advantage incompatible with the principle of equality of arms (*égalité des armes*).

107. As regards the second point, the record suggests two reasons why Mr. Rico was denied the possibility of presenting testimony evidence. For one thing, certain testimony was refused because it did not comply with the formal requirement that it be accompanied by the corresponding questions. For another, two witnesses who sought to refute the "supposed profile of psychosis or insanity" of the alleged victim were refused with the argument that their testimony was not related to the grounds for the accusation and, therefore, were "manifestly overabundant." The Commission finds that the two reasons provided to support the refusal were not manifestly unreasonable nor incompatible with the applicable standards. In that connection, the Commission notes that the mental health of the alleged victim was not in discussion nor reasonably related to the grounds under analysis. As regards the formal requirement to include the questions to be put to proposed witnesses, the Commission does not consider it unduly onerous or that Mr. Rico was unable to comply.

108. Based on the foregoing, the Commission concludes that the Argentine State did not violate Eduardo Rico's right of defense.

**2. Regarding the right to appeal the judgment to a higher court**

109. The right of appeal is recognized as a part of due process of law by Article 8(2)(h) of the Convention.<sup>80</sup> With respect to this guarantee, the United Nations Basic Principles on the Independence of the Judiciary provide that "[d]ecisions in disciplinary, suspension or removal proceedings should be subject to an independent review."<sup>81</sup> The review of a conviction demands the possibility of a comprehensive examination

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<sup>79</sup> Article 8(2) of the Convention provides: Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: [...] c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel; [...] f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts; [...] h. the right to appeal the judgment to a higher court."

<sup>80</sup> I/A Court H.R., *Case of Herrera Ulloa vs. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004, par. 158.

<sup>81</sup>Basic Principles on the Independence of the Judiciary, Principle 20.

of the appealed decision,<sup>82</sup> which requires that it be verified by a higher body that can analyze the questions as to fact, evidence, and law on which the challenged judgment is based.<sup>83</sup>

110. As was mentioned in the section on proven facts, Law 8085 provided that the decisions of the Impeachment Jury are not open to any appeal other than an appeal for clarification when the removal is ordered of the accused. The State said that Article 8(2)(h) of the Convention was not violated since, although it confirmed that there was no possibility of appealing the penalty imposed by the Impeachment Jury to a higher authority, it argued that judicial review was possible but only when a violation of due process had been demonstrated.

111. The Commission finds that the submissions of the State suggest confusion over the different aspects covered by Articles 8(2)(h) and 25 of the American Convention. The former provision enshrines the right of everyone who is punished to have their penalty reviewed by a higher authority. This includes, not a new trial, but the possibility of a comprehensive review of the legal issues as well as of the facts and evidence. The latter provision refers to the obligation of states to offer a simple and prompt recourse against violations of rights recognized in the American Convention and in the domestic system of laws. The arguments of the State regarding the possibility of judicial review of violations of due process mainly relate to Article 25 of the Convention and, therefore, will be analyzed in the appropriate section.

112. As pertains to this point, the Commission underscores that there is no dispute over the impossibility of appealing the penalty imposed by the Impeachment Jury to a higher authority in order to have the established facts, the evidence used, or the causes invoked reviewed. Accordingly, the Commission concludes that the Argentine State violated the right of appeal recognized in Article 8(2)(h) of the Convention, taken in conjunction with the obligations set forth in Articles 1(1) and 2 of that treaty, to the detriment of Eduardo Rico.

#### **D. The right to reasoned decisions and the principle of legality (Articles 8(1)<sup>84</sup> and 9<sup>85</sup> of the Convention)**

113. The principle of legality contained in Article 9 of the American Convention governs the actions of State organs in the exercise of their punitive power.<sup>86</sup> That principle applies to disciplinary processes, which are “an expression of the punitive powers of the State” given that they entail an impairment or alteration of the rights of individuals as a consequence of illicit conduct.<sup>87</sup>

114. The Commission has indicated that compliance with the principle of legality enables persons effectively to determine if their conduct is lawful.<sup>88</sup> As the IACHR has held, “The principle of legality has a specific role in the definition of crimes; on the one hand, it guarantees individual liberty and safety by pre-

<sup>82</sup>I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of July 2, 2004. Series C No. 107, par. 165.

<sup>83</sup>I/A Court H.R., *Case of Mendoza et al. v. Argentina*, Preliminary Objections, Merits and Reparations, Judgment of May 14, 2013, Series C, No. 260, par. 245.

<sup>84</sup>This article was cited earlier in this report.

<sup>85</sup>Article 9 of the Convention provides: No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

<sup>86</sup>IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/Doc.49/15, December 31, 2015, par. 253.

<sup>87</sup>Cf. I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 257, and *Case of Maldonado Ordoñez v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, par. 89. I/A Court H.R., *Baena Ricardo et al. Case v. Panama*. Merits, Reparations, and Costs, Judgment of February 2, 2001. Series C No. 72, pars. 106 and 108.

<sup>88</sup>IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116.Doc 5 rev. 1, corr., October 22, 2002, par. 225, and Executive Summary, par. 17.

establishing the behavior that is penalized clearly and unambiguously and, on the other hand, it protects legal certainty.”<sup>89</sup>

115. The precision of a norm establishing a sanction of a disciplinary nature may be different from that required by the principle of legality in a criminal matter, owing to the nature of the disputes that each one is designed to resolve.<sup>90</sup> However, it must be predictable, “either because the punishable conduct is expressly and clearly established, precisely, clearly and previously, by law, or because the law delegates its imposition to the judge or to an infra-legal norm, under objective criteria that limit the scope of discretion.”<sup>91</sup>

116. The obligation to justify decisions, translates as the “reasons justification” that allows the judge to arrive at a conclusion.<sup>92</sup> That guarantee is closely related to the principle of legality since on the premise that the disciplinary grounds must be established in the State’s legal framework in accordance with the above-describe standards, the justification for a ruling and certain administrative decisions should disclose “the facts, reasons and standards on which the authority for the decision was based.”<sup>93</sup> In that regard, the justification for the punitive decision is what discloses how the facts supporting the proceeding align with or fall within the scope of the grounds invoked. On this point, in *De la Cruz Flores v. Peru*, the Court stressed the need that in all punitive decisions there be a link between the conduct of which the person is accused and the provision on which the decision is based.<sup>94</sup>

117. As regards the applicable penalty, the “principle of maximum severity” of the punishment of dismissal of a judge implies that it is only appropriate for “clearly reproachable conduct” and “genuinely serious reasons of misconduct or incompetence.”<sup>95</sup> The protection of judicial independence requires that the dismissal of judges be considered as the *ultima ratio* in judicial disciplinary matters.<sup>96</sup> In its report *Guarantees for the Independence of Justice Operators*, the IACHR said: “Under international law, the penalty of suspension or removal must be applied only in the case of the most serious misconduct. As the Council of Europe recommended with respect to disciplinary offences, the disciplinary measures should become stricter as the seriousness of the offence increases, and can include removal of cases from a judge, assigning the judge other tasks, economic sanctions and suspension.”<sup>97</sup> In addition, the Court held that the guarantee of tenure for

<sup>89</sup>IACHR, *Application and submissions to the Inter-American Court of Human Rights in the case of De la Cruz Flores v. Peru*; referenced in: I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Merits, Reparations and Costs. Judgment of November 18, 2004, Series C No. 115, par. 74.

<sup>90</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 257.

<sup>91</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 259.

<sup>92</sup>I/A Court H.R., *Case of Maldonado Ordoñez v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, par. 87.

<sup>93</sup>IACHR, Report No. 103/13, Case 12.816, Report on Merits, Adan Guillermo Lopez Lone et al., Honduras, par. 145.

<sup>94</sup>I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Merits, Reparations, and Costs. Judgment of November 18, 2004. Series C No. 115, par. 84.

<sup>95</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 259.

<sup>96</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 259; IACHR, Report No. 38/16, Case 12.768, Merits, Omar Francisco Canales Ciliezar, Honduras, August 31, 2016, pars. *et seq.* See also, IACHR, *Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II Doc.44, December 5, 2013, par. 211. In that report, the IACHR considered: “Laws that establish administrative disciplinary measures such as dismissal must be subjected to the strictest test of legality. Such laws not only provide for extremely serious penalties and curtail the exercise of rights, but also create an exception to the principle of judicial stability and can compromise the principles of judicial independence and autonomy.”

<sup>97</sup>IACHR, *Guarantees for the Independence of Justice Operators: Toward Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II Doc.44, December 5, 2013, par. 211.

Justice operators implies that dismissal is due to fairly serious conducts, while the other sanctions may be used in the case of negligence or incapacity.<sup>98</sup>

118. In the present case, the Commission notes first of all that The Argentine State expressly indicated to the Commission that the Impeachment Jury, apart from being a political body, uses "political discretion" criteria when adopting decisions on whether or not a judge should remain in the judiciary. That assertion by the State is a sign that the control that the Impeachment Jury exercises is, at least in part, political, which is problematic where judges are concerned. This situation is even more problematic when, as the analysis below discloses, the grounds for disciplinary measures to be applied by a political body empowered to use political discretion in adopting decisions are considerably vague. Therefore, the supposedly legal component of the proceeding is based on criteria that certainly afford the Jury a wide margin of discretion.

119. In relation to the foregoing, the Commission notes that the grounds on which the alleged victim was charged and later dismissed were general in nature, and in some it was not possible clearly to establish specific conduct that constituted faults. Such was the case of grounds (e) and (f) regarding "incompetence" and "negligence," as well as failure to perform official duties "inherent to the post." The Commission considers that the wording of those grounds leaves the punishing authority an excessive margin of discretion in determining what specific conduct matches such vague wording, leaving room for subjective appreciations. Thus, for example, the Commission finds that Mr. Rico could not have foreseen that "refusing to swear an oath of loyalty to the Buenos Aires flag" constituted a "reiterated failure to perform the official duties inherent to the post." The margin of discretion arising from the wording of the grounds is especially problematic in this case, since, as the State recognized, the Impeachment Jury bases its decisions on reasons of political expediency. Thus, on one hand, at least two of the three grounds applied were excessively broad in their wording and, on the other, the punishing authority was empowered to use its "political discretion." The Commission considers that this situation violated the principle of legality, which, as noted, should be strengthened in punitive proceedings against judges.

120. Second, the Commission finds that the reasoning provided for the decisions did nothing to correct the above-referenced lack of precision. As was mentioned in the section on proven facts, the reasoning for decisions adopted by the Impeachment Jury follows a particular formula, in that each of the nine members of the jury provides a separate answer to questions as to whether or not the act was proven and if it was consistent with the grounds invoked. In that section of the decision each member of the jury offered personal assessments on both aspects; that is, not only on the facts, but also how they were consistent with the aforesaid grounds.

121. The Commission notes that some members of the Impeachment Jury even provided "elaborations," "additions," or "dissents" with respect to the facts and the assessment of evidence. Thus, for example, in the response to question 12.1, "Is it proven that he has treated employees of this tribunal and lawyers improperly"? Judge Alfonsín said that "while it is true that mistreatment of his colleagues is not on the list of offenses with which he is charged, I mention it as a way of illustrating his erratic behavior evinced by his constant overreaction." For his part, Judge Aldazabal said, "I would echo the reasons given by Dr. San Martín in his vote on this matter, with the sole dissent that I do not believe that it is suitably proven that the accused challenged Dr. Pastore to a fight outside the Tribunal."<sup>99</sup>

122. The Commission underscores that the way in which the reasoning was presented in this case impaired the possibility of knowing with any clarity or certainty which facts the jury considered attested and why they were consistent with the disciplinary grounds that were considered proven. The Commission notes in that regard that each member of the 9-member jury had to answer 16 questions with various sub-questions for each disciplinary ground, making a total of 68 questions per ground. Since there were 7

<sup>98</sup> I/A Court H.R., Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 199.

<sup>99</sup> Annex 5. Vote of the Impeachment Jury of June 15, 2000. Annex 3 to the initial petition of March 4, 2002.

grounds, the Commission finds that each member of the jury provided 476 answers and that the decision, adding up the total number questions and answers on the grounds for each member of the jury, contained a total of 4,284 questions and answers. The Commission also notes that the jury did not carry out a material consolidation exercise of the answers provided by each member.

123. In light of the considerations presented in this section, the IACHR finds that the Argentine State is responsible for violation of Articles 8(1) and 9 of the American Convention, taken in conjunction with the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of Eduardo Rico.

#### **E. Right to participate in government (Article 23 of the American Convention)<sup>100</sup>**

124. Article 23(1)(c) recognizes the right of judges to have access to public service under “under general conditions of equality.” The Court has interpreted that article to mean that the arbitrary impairment of the tenure of judges violates the right to judicial independence enshrined in Article 8(1) of the Convention in conjunction with the right to have tenured access under general conditions of equality, to the public service of one’s country, has established in Article 23(1)(c).<sup>101</sup>

125. It has been established in this case that Eduardo Rico was removed from office in an arbitrary proceeding in which various violations were committed of due process and of the principle of legality in the manner described in the course of this report on merits. In such circumstances, and consistent with the interpretation contained in the preceding paragraph, the Commission considers that the State also violated Article 23(1)(c) of the American Convention taken in conjunction with Article 1(1) of that instrument to Eduardo Rico's detriment.

#### **F. Right to judicial protection (Article 25 of the American Convention)<sup>102</sup>**

126. In addition, under Article 25 of the Convention, States are required to provide a suitable and effective remedy for acts that violate their rights, whether those established in the Convention or in the law.<sup>103</sup>

127. In the instant case, the Commission notes that after the judgment was issued in which he was dismissed and declared ineligible for service in the judiciary, Mr. Rico filed an application for nullity, which was denied by the Supreme Court with the argument that the organ that issued the decision was of a political nature and its decisions escaped “judicial oversight.” He also filed a special federal appeal alleging a series of due process violations. However, the Supreme Court of Justice denied it, saying that it was not properly founded in accordance to law and that the arguments presented by the alleged victim merely demonstrated his disagreement with the tribunal's findings.

128. In the application for reconsideration that he then filed with the Supreme Court of Justice of the Nation against the preceding decision, the Supreme Court said that decisions in trials of magistrates at the provincial level “are justiciable” when one of the parties invokes a violation of due process, but that in this

<sup>100</sup>The pertinent portions of Article 23 of the American Convention provide: 1. Every citizen shall enjoy the following rights and opportunities: (...) c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

<sup>101</sup> I/A Court H.R., Case of López Lone et al. v. *Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 192.

<sup>102</sup>Article 25(1) of the Convention states: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>103</sup> I/A Court H.R., *Castillo Páez Case v. Peru*. Merits, Judgment of November 3, 1997. Series C No. 34, par. 82; *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations, and Costs, Judgment of September 19, 2006. Series C No. 151, par. 131, and *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008. Series C No. 183, par. 78.

case the appellant had not demonstrated a violation of Article 18 of the National Constitution, which is transcribed in the section on proven facts.

129. The Commission notes that in none of the remedies invoked did the courts make any substantive analysis as to the existence or otherwise of violations of due process in the punitive proceeding. The discussion, with contradictory findings, centered on the possibility or not of lodging an appeal, with it initially being indicated that the decisions of Impeachment Juries are not subject to review, then that the appeal was not properly founded, and finally that the decisions were subject to appeal but not in this case where the violations of due process had not been attested. The Commission underscores that the last decision rejected the admissibility of an appeal on the grounds that no violation of due process had been proven, when that precisely was the substantive issue that the appeal sought to have reviewed. In light of the foregoing, the Commission concludes that the Argentine State violated Eduardo Rico's right to judicial protection recognized in Article 25(1) of the American Convention, taken in conjunction with the obligations set forth in Article 1(1) of the same instrument.

## **VI. CONCLUSIONS**

130. The Inter-American Commission concludes that the Argentine State is responsible for the violation of the right to reasoned decisions, the principle of legality, the right to participate in government, and the right to judicial protection enshrined in Articles 8(1), 8(2)(h), 9, 23, and 25(1) of the American Convention, taken in conjunction with the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of Eduardo Rico.

131. The Commission also concludes that the State is not responsible for violation of the right to a hearing by a competent, independent and impartial tribunal, or for violation of the right of defense.

## **VII. RECOMMENDATIONS**

132. Based on the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE ARGENTINE STATE:**

1. Reinstate Eduardo Rico, if he so wishes, in a position similar to the one he held, with the same pay, welfare benefits and rank as he would enjoy at present had he not been dismissed, for the length of time that remained under his term of office. If for justified reasons his reinstatement is not possible, pay him an alternative indemnity.

2. Provide reparation for the consequences of the violations established in this report, including both material and nonpecuniary damages

3. Adopt such legislative and other measures as may be necessary to ensure that punitive proceedings against judges in Argentina meet the standards described in this report. In particular, the State should effect the necessary legislative changes to: (i) ensure that punitive proceedings against judges are subject to legal, not political, control; (ii) enact rules on applicable penalties so that the punishment of dismissal and ineligibility are not automatically imposed but, rather, that there be a range of applicable penalties proportionate to the fault committed; (iii) allow judges recourse to appeal in punitive proceedings against them so that they can have the penalty imposed reviewed, independently of the possibility of judicial review for violations of due process; and (iv) ensure that the judicial remedy for possible violations of due process in proceedings of this type is genuinely accessible and simple, as well as allowing a decision on the merits without excessive formalities. Furthermore, the State should adopt such administrative and other measures as may be necessary to ensure that officials charged with punitive proceedings against judges provide reasoned decisions in a manner compatible with the American Convention, as analyzed in this report.

Done and signed in Lima, Perú, on the 5th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice-President; José de Jesus Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.