

# Grande v. Argentina

## ABSTRACT<sup>1</sup>

*This case is about a top manager of a bank in Argentina who had been prosecuted for embezzlement. The Court found in favor of Argentina for admissibility reasons and on the merits. First, what happened during the victim's pre-trial detention and criminal prosecution took place before Argentina had become party to the American Convention. Second, the victim had failed to provide sufficient evidence to substantiate that there had been due process and judicial guarantee violations during the administrative proceedings he had initiated challenging his criminal prosecution.*

## I. FACTS

### A. Chronology of Events

**July 28, 1980:** The Federal Police initiates an investigation into alleged criminal activity by the management of the Murrillo Credit Union (*Cooperativa de Crédito "Caja Murillo"*; "Credit Union").<sup>2</sup> Mr. Jorge Fernando Grande, the Chief of Credits, fully cooperates with the police and provides them with the information they request.<sup>3</sup> However, unbeknownst to Mr. Grande, the police have not obtained a warrant to lawfully obtain the information.<sup>4</sup>

**July 29, 1980:** Mr. Grande is summoned to the Banks Division of the Federal Police in the Argentine National Bank to be questioned. Instead, he is detained for two weeks by order of the First National Court of

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2. Grande v. Argentina, Admissibility Report, Report No. 3/02, Inter-Am. Comm'n H.R., Case No. 11.498, ¶ 16 (Feb. 27, 2002).

3. *Id.*

4. *Id.*

First Instance for Federal Criminal and Correctional Matters.<sup>5</sup> During his two-week imprisonment, he is brutally beaten, hooded, and tortured with electricity.<sup>6</sup> He remains in isolation for five days.<sup>7</sup> During questioning, he is threatened with death if he does not disclose the location of the missing funds.<sup>8</sup> He denies knowing the funds' whereabouts.<sup>9</sup>

**August 12, 1980:** Mr. Grande is released from prison.<sup>10</sup> He attempts to report his torture to a magistrate, but a court official warns him that he is placing his life at risk and that he should remain silent.<sup>11</sup>

**August 29, 1980:** Criminal charges are filed against Mr. Grande for "economic subversion" in connection with the criminal activity at the Credit Union.<sup>12</sup>

**August 15, 1983:** The Federal Prosecutor accuses Mr. Grande of being in the head of the criminal conspiracy.<sup>13</sup>

**September 5, 1984:** The State ratifies the American Convention of Human Rights.<sup>14</sup>

**May 24, 1988:** The Second Federal Criminal and Correctional Appellate Chamber declares the searches conducted by the Federal Police of the Credit Union invalid because there was no court order.<sup>15</sup>

**January 24, 1989:** The criminal charges against Mr. Grande are dismissed.<sup>16</sup> In response, Mr. Grande files an action against the State requesting damages for his "unjust detention and prosecution."<sup>17</sup>

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5. Grande v. Argentina, Preliminary Objections and Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 231, ¶ 16 (Aug. 31, 2011).

6. Grande v. Argentina, Admissibility Report, ¶ 17.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* ¶ 16.

11. *Id.* ¶ 17.

12. Grande v. Argentina, Admissibility Report, ¶ 18.

13. Grande v. Argentina, Preliminary Objections and Merits, ¶ 21.

14. Grande v. Argentina, Admissibility Report, ¶ 32.

15. Grande v. Argentina, Preliminary Objections and Merits, ¶ 26.

16. *Id.* ¶ 28. 001; Grande v. Argentina, Admissibility Report, ¶ 18.

17. *Id.* ¶ 19.

**April 14, 1992:** The Federal Administrative Contentious Court orders the State to pay Mr. Grande \$150,000 plus interests and costs for his unjust detention and resulting psychological damage.<sup>18</sup> The State and Mr. Grande both appeal the decision.<sup>19</sup>

**April 6, 1993:** The National Chamber of Appeals in Federal Administrative and Contentious Matters completely revokes the lower court's order because Mr. Grande did not prove the State committed "manifest and unquestionable judicial error."<sup>20</sup> Additionally, Mr. Grande did not exhaust all available legal remedies that would entitle him to immediate restitution.<sup>21</sup> Mr. Grande files an extraordinary appeal to the Supreme Court of Justice challenging the decision.<sup>22</sup>

**April 12, 1994:** The Supreme Court of Justice denies Mr. Grande's extraordinary appeal, effectively exhausting all available domestic remedies.<sup>23</sup>

#### *B. Other Relevant Facts*

[None]

## II. PROCEDURAL HISTORY

### *A. Before the Commission*

**October 31, 1994:** Mr. Grande submits his petition to the Commission.<sup>24</sup>

**November 11, 1996:** The State and Mr. Grande hold a friendly settlement meeting.<sup>25</sup>

**December 10, 2001:** The State terminates the friendly settlement process.<sup>26</sup> It submits two preliminary objections as to the admissibility

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18. *Id.*

19. *Id.* ¶ 20.

20. *Id.* (internal quotations omitted).

21. *Id.*

22. Grande v. Argentina, Demand, Inter-Am. Comm'n H.R. Case No. 11.498, ¶ 53 (May 4, 2010).

23. Grande v. Argentina, Admissibility Report, ¶ 21.

24. *Id.* ¶ 1.

25. *Id.* ¶ 9.

of Mr. Grande's petition: (1) the Commission does not have *ratione temporis* jurisdiction to hear the case; and (2) Mr. Grande failed to provide sufficient facts to demonstrate the violation of his protected right.<sup>27</sup>

**February 27, 2002:** The Commission adopts Admissibility Report No. 3/02 and determines it has *ratione temporis* jurisdiction because the State ratified the American Declaration of Human Rights, which protects due process rights, at the time the events occurred.<sup>28</sup> The Commission finds that the facts alleged by Mr. Grande involve "violations of the right to judicial protection and guarantees," which gives the Commission jurisdiction to hear the matter.<sup>29</sup>

**November 10, 2009:** The Commission adopts Report on the Merits No. 109/09.<sup>30</sup> It recommends the State to take all measures necessary to guarantee that Mr. Grande receives "an adequate and timely remedy providing full redress for the human rights violations."<sup>31</sup> The Commission prompts the State to adopt investigative measures to establish the State's civil and criminal responsibilities.<sup>32</sup>

#### *B. Before the Court*

**May 4, 2010:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>33</sup>

**November 18, 2010:** The State submits three preliminary objections: (1) the Court lacks *ratione temporis* jurisdiction to hear the case; (2) Mr. Grande failed to exhaust all available domestic remedies; and (3) the State's right to defense during the examination of a complaint before the Commission was violated.<sup>34</sup>

The Court partly accepts the State's first preliminary objection, lack of *ratione temporis* jurisdiction, because the State did not ratify the American Convention and accept the Court's compulsory jurisdiction

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26. *Id.* ¶ 14.

27. *Id.* ¶ 3.

28. *Id.* ¶ 34.

29. Grande v. Argentina, Admissibility Report, ¶ 43.

30. Grande v. Argentina, Preliminary Objections and Merits, ¶ 1.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* ¶ 5.

until September 5, 1984.<sup>35</sup> Therefore, the Court can only assess facts that occurred after that date.<sup>36</sup>

The Court finds it improper to rule on the State's second preliminary objection, failure to exhaust domestic remedies, because the facts surrounding this case occurred during administrative proceedings, and therefore should be analyzed when examining the merits of this case.<sup>37</sup>

The Court accepts the State's third preliminary objection, the State's right to a defense during examination of the complaint, because it found the Commission estopped the State from arguing the admissibility of facts concerning Mr. Grande's criminal proceedings, which concluded over four years before Mr. Grande's claim for damages.<sup>38</sup>

### 1. Violations Alleged by Commission<sup>39</sup>

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

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

### 2. Violations Alleged by Representatives of the Victims<sup>40</sup>

Same Violations Alleged by Commission.

## III. MERITS

### A. *Composition of the Court*<sup>41</sup>

Diego García-Sayán, President

Manuel E. Ventura Robles, Judge

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35. *Id.* ¶ 39.

36. *Grande v. Argentina*, Preliminary Objections and Merits, ¶ 40.

37. *Id.* ¶ 68.

38. *Id.* ¶¶ 58-61.

39. *Id.* ¶ 3.

40. Mr. Pedro Patiño-Mayer y Ulrralde served as Mr. Grande's representative. *Id.* ¶ 4.

41. Judge Leonardo A. Franco, Vice President of the Court, did not take part in the proceedings as he is a national of the State. Emilia Segares Rodríguez, Secretary, was unable to attend the Court's deliberations for reasons beyond her control. *Id.* at n. \*.\*.\*.

Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, Judge

Pable Saavedra Alessandri, Secretary

*B. Decision on the Merits*

**August 31, 2011:** The Court issues its Judgment on Preliminary Objections and Merits.<sup>42</sup>

The Court found unanimously that the State had not violated:

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Grande,<sup>43</sup> because:

*Mr. Grande filed an administrative court claim because he felt he was a victim of judicial error and therefore had a right to compensation.<sup>44</sup> He used all remedies available in the State's domestic jurisdiction,<sup>45</sup> but did not present sufficient evidence to indicate there were due process and judicial guarantee violations during his administrative proceeding.<sup>46</sup> Therefore, the State did not violate Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) or 25 (Right to Judicial Protection).<sup>47</sup>*

*C. Dissenting and Concurring Opinions*

[None]

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42. See Grande v. Argentina, Preliminary Objections and Merits.

43. *Id.* "Declares," ¶ 4.

44. *Id.* ¶ 91.

45. *Id.*

46. *Id.* ¶ 93.

47. *Id.*

## IV. REPARATIONS

[None]

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[Grande v. Argentina, Preliminary Objections and Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 231, \(Aug. 31, 2011\).](#)

## 2. Decisions on Merits, Reparations and Costs

Grande v. Argentina, Preliminary Objections and Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 231, (Aug. 31, 2011).

## 3. Provisional Measures

[Grande v. Argentina, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(April 15, 2011\).](#)

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[Grande v. Argentina, Admissibility Report, Report No. 3/02, Inter-Am. Comm'n H.R., Case No. 11.498 \(Feb. 27, 2002\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

[None]

## 5. Application to the Court

[Grande v. Argentina, Demand, Inter-Am. Comm'n H.R. Case No. 11.498 \(May 4, 2010\).](#)

## VIII. BIBLIOGRAPHY

[None]