

# Gorigoitia v. Argentina

## ABSTRACT\*

*This case is about the right to an effective appeal. The petitioner had been criminally tried and convicted. However, all appeals had been rejected solely on procedural grounds. Disputed evidence, facts, and law had not been included in the scope of the appellate review. The Court found Argentina in violation of Article 8 of the American Convention.*

## I. FACTS

### A. Chronology of Events

**August 31, 1996:** Mr. Oscar Raúl Gorigoitia is a police officer, with the rank of Staff Sergeant, serving on the Mendoza Police Force (Policía de Mendoza).<sup>1</sup> He responds to a call requesting officer assistance at a traffic stop and arrives on scene with Mr. Víctor Agüero.<sup>2</sup> Mr. Raúl Gorigoitia fatally shoots the driver of a vehicle, Mr. Hugo Alejandro Gómez Romagnoli, who was attempting to flee the scene.<sup>3</sup> Mr. Raúl Gorigoitia and other officers are arrested and detained for Mr. Gómez Romagnoli's murder.<sup>4</sup>

**September 6, 1996:** The First Criminal Chamber of Mendoza files charges against Mr. Raúl Gorigoitia for homicide under the Code of Criminal Procedure of the Province of Mendoza (Código Procesal Penal de la Provincia de Mendoza; "CPPM").<sup>5</sup>

**September 12, 1997:** The First Criminal Chamber of Mendoza convicts Mr. Raúl Gorigoitia of manslaughter, sentences him to fourteen years in

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1. Oscar Raúl Gorigoitia v. Argentina, Report on Merits, Report No. 98/17, Inter-Am. Comm'n H.R., Case No. 12.925, ¶ 23 (Sept. 5, 2017).

2. *Id.* ¶ 24.

3. *Id.*

4. Gorigoitia v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 382, ¶ 29 (Sept. 2, 2019).

5. *Id.*

prison, and renders him ineligible for early release.<sup>6</sup> The court reasons Mr. Raúl Gorigoitía failed to follow official protocol when operating a firearm and acted with temporary intent at the time of the incident.<sup>7</sup>

**September 29, 1997:** Mr. Raúl Gorigoitía’s defense counsel files an appeal for cassation and argues Mr. Raúl Gorigoitía lacked intent, arbitrary appraisal of evidence, that the court lacked grounds for the judgment, and erroneous application of the law.<sup>8</sup>

**December 19, 1997:** The Second Chamber of the Supreme Court of Justice of Mendoza dismisses Mr. Raúl Gorigoitía’s cassation appeal because he failed to prove that the prior ruling was wrong.<sup>9</sup> The Supreme Court notes Mr. Raúl Gorigoitía’s appeal generally references the elements of fraud and failed to consider the merits of the case.<sup>10</sup>

**February 24, 1998:** Mr. Raúl Gorigoitía’s counsel files a federal extraordinary appeal against the Second Chamber in the Supreme Court of Justice of the Province of Mendoza, and argues the prior rulings against Mr. Raúl Gorigoitía were arbitrary.<sup>11</sup> However, the Supreme Court declares it inadmissible due to the failure to meet the requirements laid down in Article 280 of the Code of Civil and Commercial Procedure of the Nation.<sup>12</sup> The Supreme Court indicates the reasons for rejecting Mr. Raúl Gorigoitía’s extraordinary appeal include that: (1) the appeal fails to meet the requirements of State criminal procedural law; and (2) Mr. Raúl Gorigoitía’s grievances must pertain to the court of second instance regardless if there is a defect within the court of first instance.<sup>13</sup>

**April 23, 1998:** Mr. Raúl Gorigoitía’s defense counsel files a complaint appeal against the rejection of his extraordinary appeal before the Supreme Court of Justice of the Nation (*Corte Suprema de Justicia de la Nación*; “CSJN”).<sup>14</sup>

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6. Gorigoitía v. Argentina, Report on Merits, ¶ 27.

7. *Id.* ¶ 28.

8. *Id.* ¶¶ 29-31.

9. Gorigoitía v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 35.

10. *Id.*

11. Gorigoitía v. Argentina, Report on Merits, ¶ 35.

12. Posadas et al. v. Argentina, Admissibility Report, Report No. 35/13, Inter-Am. Comm’n H.R., Pet. No. 828-01, ¶ 29 (July 11, 2013).

13. Gorigoitía v. Argentina, Report on Merits, ¶¶ 38-39.

14. Gorigoitía v. Argentina, Merits, Reparations, and Costs, ¶ 40.

**August 6, 1998:** The CSJN rules Mr. Raúl Gorigoitia's extraordinary appeal is inadmissible and consequently dismisses his complaint appeal.<sup>15</sup> Mr. Raúl Gorigoitia is convicted and sentenced to fourteen years in prison, and he is fired from the Mendoza Police.<sup>16</sup>

**September 20, 2005:** The CSJN issues a judgment that addresses certain restrictive judicial practices within State courts.<sup>17</sup> In particular, it criticizes the judges, particularly those in the National Courts of Criminal Cassation Appeals, for their narrow interpretation of what a reviewable case is in a cassation appeal.<sup>18</sup> Namely, distinctions between matters of law and fact must not be used to determine the scope of a cassation appeal review.<sup>19</sup> With this decision, the CSJN acknowledged the need to broaden the scope beyond the traditional strict questions of law to also review facts and appraise evidence.<sup>20</sup>

**December 2005:** Mr. Raúl Gorigoitia is released on parole after having served a total of nine years and four months in prison.<sup>21</sup>

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**January 19, 1999:** The Inter-American Commission on Human Rights receives a petition on behalf of Mr. Raúl Gorigoitia.<sup>22</sup>

**August 11, 2003:** The State argues the petition inadmissible because the State complied with domestic laws and international standards when convicting Mr. Raúl Gorigoitia.<sup>23</sup> Moreover, the State guaranteed Mr. Raúl Gorigoitia his right to defend himself and challenge his conviction by

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15. Gorigoitia v. Argentina, Merits, Reparations, and Costs, ¶ 40.

16. *Id.* ¶ 41.

17. Gorigoitia v. Argentina, Report on Merits, ¶ 20.

18. *Id.*

19. *Id.*

20. *Id.* ¶¶ 20-21.

21. Gorigoitia v. Argentina, Merits, Reparations, and Costs, ¶ 41.

22. Gorigoitia v. Argentina, Report on Merits, ¶ 1.

23. *Id.* ¶ 2.

filing appeals.<sup>24</sup> However, his appeals were inadmissible because they failed to meet procedural requirements.<sup>25</sup>

**July 11, 2013:** The Commission issues Admissibility Report No. 35/13, which declares the petition admissible.<sup>26</sup>

**September 5, 2017:** The Commission issues Merits Report No. 98/17.<sup>27</sup>

The Commission concludes the State is responsible for violating the rights provided in Articles 8(2)(h) (Right to Appeal) and Article 25(1) (Right to Recourse Before Competent a Court), all in relation to Articles 1(1) (Obligation of Non-Discrimination), and (2) (Obligation to Give Domestic Legal Effect to Rights) of the American Convention to the detriment of Mr. Raúl Gorigoitia.<sup>28</sup>

In light of the foregoing violations, the Commission recommends the State: (1) take steps to allow Mr. Raúl Gorigoitia to file an appeal for his conviction; (2) provide reasonable compensation for the human rights violations; and (3) order legislative measures to adjust the domestic regulatory framework of cassation appeals to be in accordance with the Inter-American standards and order measures to warrant the State complies with the right recognized in Article 8(2)(h) (Right to Appeal).<sup>29</sup>

#### *B. Before the Court*

**March 16, 2018:** The Commission submits the case to the Court, after the State failed to adopt its recommendations.<sup>30</sup>

**August 15, 2018:** The State submits a brief to the Court with its preliminary objection, stating the Court lacks jurisdiction to conduct a constitutional review of Provincial Law No. 6730, including its reforms.<sup>31</sup> Also, the State argues the norm at issue was not in force at the time of this case, and thus, the Court is not competent to assess its constitutionality.<sup>32</sup>

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24. Gorigoitia v. Argentina, Report on Merits, ¶ 2.

25. Posadas et al. v. Argentina, Admissibility Report, ¶¶ 75-76.

26. *Id.* ¶ 4.

27. Gorigoitia v. Argentina, Report on Merits, ¶ 3.

28. *Id.*

29. *Id.* ¶ 74.

30. Gorigoitia v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

31. *Id.* ¶ 15.

32. *Id.* ¶ 16.

1. Violations Alleged by Commission<sup>33</sup>

To the detriment of Mr. Raúl Gorigoitía:

Article 8(2)(h) (Right to Appeal)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Inter-American Convention on Human Rights

2. Violations Alleged by Representatives of the Victims<sup>34</sup>

Same Violations Alleged by the Commission.

## III. MERITS

*A. Composition of the Court*<sup>35</sup>

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi, Vice President

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

L. Patricio Pazmiño Freire, Judge

Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

*B. Decision on the Merits*

**September 2, 2019:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>36</sup>

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33. Gorigoitía v. Argentina, Report on Merits, ¶ 73.

34. Gorigoitía v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 44.

35. Judge Eugenio Raúl Zaffaroni is an Argentine national and did not participate in the deliberation of the Judgment. *See generally id.* p. 1.

36. *Id.*

The Court decided unanimously to:

Dismiss the State’s preliminary objection, which argued that the Court lacked jurisdiction to review the constitutionality of Provincial Law No. 6730 and its reforms,<sup>37</sup> because:

*The Court reasoned that the State’s argument failed because it did not intend to review state laws in the abstract; the Court examines the compatibility between State judicial practices in effect at the time Mr. Raúl Gorigoitia filed an appeal and the State’s international human rights obligations.<sup>38</sup> The State’s argument was connected to the merits of Mr. Raúl Gorigoitia’s case and thus, must be heard during the merits of his case.<sup>39</sup>*

The Court found unanimously that Argentina had violated:

Article 8(2)(h) (Right to Appeal), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Oscar Raúl Gorigoitia,<sup>40</sup> because:

*Article 8(2)(h) (Right to Appeal) requires that an individual has access to an appeal as an effective remedy.<sup>41</sup> An effective appeal is one that deals with all the disputed evidence, facts, and law a judgment is based on.<sup>42</sup> Here, the Second Chamber rejected Mr. Raúl Gorigoitia’s cassation appeal without having analyzed the merits of his allegations.<sup>43</sup> The Second Chamber’s refusal to review Mr. Raúl Gorigoitia’s appeal on the merits constituted an international wrongful act because it breached the duty to comprehensively review the ruling under Article 8(2)(h) of the Convention.<sup>44</sup>*

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37. Gorigoitia v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, “decide” ¶ 1.

38. *Id.* ¶ 21.

39. *Id.*

40. *Id.* “declares” ¶ 2.

41. *Id.* ¶ 47.

42. *Id.* ¶ 48.

43. Gorigoitia v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 49, 52.

44. *Id.* ¶ 53.

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation Article 8(2)(h) (Right to Appeal) of the Convention, to the detriment of Mr. Raúl Gorigoitía,<sup>45</sup> because:

*Article 2 (Obligation to Give Domestic Legal Effect to Rights) requires States adapt their domestic law to Inter-American standards by conforming with the Convention to guarantee the rights provided by the Convention.<sup>46</sup> Compliance with this duty requires that States suppress norms and practices that violate the guarantees provided in the Convention, and develop new norms and practices, which are consistent with Inter-American standards.<sup>47</sup>*

*Here, the Code of Criminal Procedure of the Province of Mendoza in effect at the time of cassation prohibited a higher court from reviewing any factual issues or evidence presented by Mr. Raúl Gorigoitía as established in Article 8(2)(h) (Obligation to Give Domestic Legal Effect to Rights) of the Convention, which was a breach of the obligations set forth in Article 2 (Obligation to Give Domestic Legal Effect to Rights).<sup>48</sup>*

The Court found unanimously that Argentina did not violate:

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Raúl Gorigoitía,<sup>49</sup> because:

*The Court found no compelling legal argument to establish the ineffectiveness or lack of suitability of either the extraordinary federal appeal or complaint appeal filed by Mr. Gorigoitía's defense.<sup>50</sup> For this reason, the Court declined to rule on the alleged violations of Article 25(1) (Right of Recourse Before a Competent Court).<sup>51</sup>*

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45. Gorigoitía v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, “declares” ¶ 3.

46. *Id.* ¶ 55.

47. *Id.*

48. *Id.* ¶ 56.

49. *Id.* “declares” ¶ 4.

50. *Id.* ¶ 54.

51. Gorigoitía v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, ¶ 54.

Article 28 (Federal States) of the American Convention, to the detriment of Mr. Raúl Gorigoitia,<sup>52</sup> because:

*Article 28 (Federal States) recognizes that some provisions of the Convention fall under the jurisdiction of the federal government, however, the State failed to present a claim that its federal structure prevented compliance with its international obligations.<sup>53</sup> Thus, the Court did not find that the State failed to comply with any of its obligations arising from Article 28.<sup>54</sup>*

*C. Dissenting and Concurring Opinions*

[None]

IV. REPARATIONS

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

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

1. Adopt Measures Necessary to Guarantee the Right to Appeal.

The State must adopt measures that guarantee Mr. Raúl Gorigoitia's right to appeal the ruling and conviction ordered by the First Criminal Chamber of Mendoza in accordance with the Convention.<sup>55</sup>

2. Temporarily Suspend the Legal Effects of Mr. Raúl Gorigoitia's Conviction

The State must adopt sufficient procedures to suspend the legal effects of Mr. Raúl Gorigoitia's conviction until the State can conduct a substantive appeal.<sup>56</sup>

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52. Gorigoitia v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, "declares" ¶ 5.

53. *Id.* ¶ 57.

54. *Id.*

55. *Id.* ¶ 66.

56. *Id.*



### 3. Publish the Judgment

The Court ordered the State to publish its Judgment online within six months of the Judgment and publish the Official Summary of the Judgment in a nationally circulated newspaper and in a widely circulated newspaper within the Province of Mendoza.<sup>57</sup> The Court noted the State must immediately notify the Court once each publication is made available regardless of any time period restriction.<sup>58</sup>

### 4. Adapt Legal System in Accordance with Judgement

The State must adapt its domestic legal system to conform with the Inter-American standards of the Convention.<sup>59</sup>

#### *A. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

[None]

#### 2. Non-Pecuniary Damages

The Court awarded \$30,000 to Mr. Raúl Gorigoitia for violations of his right to appeal.<sup>60</sup>

#### 3. Costs and Expenses

The Court awarded the representatives \$15,000 for the costs and expenses related to the litigation of the case.<sup>61</sup>

The Court also awarded \$987.36 as reimbursement for the Court's Legal Assistance Fund for Victims.<sup>62</sup>

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57. *Gorigoitia v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs ¶ 68.

58. *Id.* ¶ 69.

59. *Id.* ¶ 72.

60. *Id.* ¶ 82.

61. *Id.* ¶ 86.

62. *Id.* ¶ 89.

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

\$45,987.36

*B. Deadlines*

The State must adopt measures to guarantee Mr. Raúl Gorigoitia the right to appeal his conviction within six months of the notification of the Judgment.<sup>63</sup>

The State must publish the Official Summary and the Judgment within six months from the date of the Judgment.<sup>64</sup>

The State must, within a reasonable time, adapt its domestic legal system to comply with Article 8(2)(h) of the Convention.<sup>65</sup>

The State must reimburse the Court Assistance Fund within six months from the date of the Judgment.<sup>66</sup>

Within one year from the Judgment, the State must provide the Court with a report on the measures it took to comply with the Judgment.<sup>67</sup>

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

*A. Inter-American Court*

1. Preliminary Objections

[None]

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63. *Gorigoitia v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, “and provides” ¶ 6.

64. *Id.* “and provides” ¶ 8.

65. *Id.* “and provides” ¶ 9.

66. *Id.* “and provides” ¶ 11.

67. *Id.* “and provides” ¶ 12.

## 2. Decisions on Merits, Reparations and Costs

Gorigoitia v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 382, (Sept. 2, 2019).

## 3. Provisional Measures

Gorigoitia v. Argentina, Resolution of the President, Inter-Am. Ct. H.R., (ser. C) No. 382, (Mar. 20, 2019).

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

### *B. Inter-American Commission*

#### 1. Petition to the Commission

[None]

#### 2. Report on Admissibility

Posadas et al. v. Argentina, Admissibility Report, Report No. 35/13, Inter-Am. Comm'n H.R., Pet. No. 828-01, (July 11, 2013).

#### 3. Provisional Measures

[None]

#### 4. Report on Merits

Oscar Raúl Gorigoitia v. Argentina, Report on Merits, Report No. 98/17, Inter-Am. Comm'n H.R., Case No. 12.925, (Sept. 5, 2017).

#### 5. Application to the Court

Oscar Raúl Gorigoitia v. Argentina, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 12.925, (Mar. 16, 2018).

VIII. BIBLIOGRAPHY

[None]