

# Rico v. Argentina

## ABSTRACT\*

*This case is about the dismissal of a judge from his position on the bench of a labor court in Argentina. After having reviewed all aspects of the case and the international standards regarding judicial independence and impartiality, the Court did not find any violation of the Convention.*

### I. FACTS

#### A. Chronology of Events

**1970s:** Eduardo Rico begins serving as a judge in the Judicial Branch of the Providence of Buenos Aires.<sup>1</sup> Mr. Rico serves as a magistrate judge in Labor Court No. 1 of the Judicial Department of San Martín.<sup>2</sup>

**March 1976:** A military regime seizes power and constitutional guarantees are suspended.<sup>3</sup>

**August 1976:** Judge Rico is dismissed from the court by decree.<sup>4</sup>

**1983:** Argentina returns to democracy.

**1996:** Judge Rico is reinstated as a judge and is appointed to a three-judge panel in Labor Court No. 6 of the Judicial Department of San Isidro.<sup>5</sup> Judge Rico often disagrees with the other judges but is outnumbered in deciding cases.<sup>6</sup>

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1. Rico v. Argentina, Preliminary Objections, and Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 383, ¶ 26 (Sept. 2, 2019).

2. Eduardo Rico v. Argentina, Admissibility Report, Report No. 9/16, Inter-Am. Comm'n H.R., Petition No. 149-02, ¶ 6 (Apr. 13, 2016).

3. Rico v. Argentina, Preliminary Objections, and Merits, Judgment, ¶ 6.

4. Eduardo Rico v. Argentina, Admissibility Report, ¶ 6.

5. *Id.*

6. *Id.* ¶ 7.

**November 20, 1997:** Judge Rico files a complaint alleging that his fellow judges were committing irregularities, leading to administrative investigation no. 3001-1517/97.<sup>7</sup> The Supreme Court of Buenos Aires begins to investigate the complaint, but the San Isidro Bar Association (“Bar Association”) hampers the investigation and redirects it at Judge Rico.<sup>8</sup>

**June 1, 1999:** The Bar Association files a complaint against Judge Rico instigating administrative investigation no. 3001-1036/99.<sup>9</sup>

**October 5, 1999:** The Jury for Prosecution of Magistrates (“the Jury”) commences a proceeding against Judge Rico.<sup>10</sup>

**April 13, 2000:** The Jury admits all evidence that the prosecution offered, but only part of Judge Rico’s evidence.<sup>11</sup> He files an appeal against the partially denied evidence, arguing violations of due process.<sup>12</sup>

**June 1, 2000:** The Jury dismisses Judge Rico’s appeal.<sup>13</sup>

**June 15, 2000:** The Jury dismisses Judge Rico from the Labor Court No. 6 of San Isidro and disqualifies him from occupying any judicial post.<sup>14</sup>

**July 6, 2000:** Judge Rico files an appeal with the Supreme Court of Buenos Aires (“SCJBA”) alleging the violation of due process and legality by manipulating facts against him.<sup>15</sup> He further argues that the final decision, disqualifying him from holding judicial office and the exclusion of evidence, is unconstitutional.<sup>16</sup>

**August 30, 2000:** The SCJBA dismisses the appeal.<sup>17</sup>

**September 22, 2000:** Judge Rico brings a special federal appeal to the SCJBA.<sup>18</sup>

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7. Eduardo Rico v. Argentina, Admissibility Report, ¶ 8.

8. *Id.* ¶ 9.

9. *Id.* ¶ 10.

10. Rico v. Argentina, Preliminary Objections, and Merits, Judgment, ¶ 30; Eduardo Rico v. Argentina, Admissibility Report, ¶ 10.

11. Eduardo Rico v. Argentina, Report on Merits, Report No. 72/17, Inter-Am. Comm’n H.R., Case No. 13.019, ¶ 53 (July 5, 2017).

12. *Id.* ¶ 55.

13. Rico v. Argentina, Preliminary Objections, and Merits, Judgment, ¶ 30.

14. Eduardo Rico v. Argentina, Report on Merits, ¶ 57.

15. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 34.

16. *Id.*

17. Eduardo Rico v. Argentina, Report on Merits, ¶¶ 16, 73.

18. *Id.* ¶ 74.

**November 29, 2000:** The SCJBA denies the special federal appeal because it failed to meet the minimum requirements.<sup>19</sup>

**February 7, 2001:** Judge Rico makes a motion for a reconsideration of the denial of his appeal with the Supreme Court of Justice of the Nation.<sup>20</sup>

**February 27, 2001:** Judge Rico appears at the Anticorruption Office of the Ministry of Justice and Human Rights and alleges that his constitutional rights had been denied in the dismissal proceedings.<sup>21</sup>

**February 28, 2001:** The Ministry of Justice and Human Rights set aside Judge Rico's allegations from his February 27, 2001 appearance.<sup>22</sup>

**August 28, 2001:** The Supreme Court of Justice of the Nation denies the February 7, 2001 motion for reconsideration.<sup>23</sup>

**October 22, 2001:** The Impeachment Jury sets the honorarium for the Jury's associate judges and counsels for plaintiff.<sup>24</sup>

**November 5, 2001:** Judge Rico appeals the honorarium claiming he could not pay.<sup>25</sup> The appeal is declared unfounded.<sup>26</sup>

#### *B. Other Relevant Facts*

[None]

### II. PROCEDURAL HISTORY

#### *A. Before the Commission*

**March 4, 2002:** Susan María Barneix and Adrián Leopoldo Azzi present a petition on behalf of Judge Rico to the Inter-American Commission on Human Rights.<sup>27</sup>

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19. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 37.

20. Eduardo Rico v. Argentina, Report on Merits, ¶ 79.

21. *Id.* ¶ 82.

22. *Id.* ¶ 83.

23. *Id.* ¶ 80.

24. *Id.* ¶ 84.

25. *Id.* ¶ 85.

26. Eduardo Rico v. Argentina, Report on Merits, ¶ 86.

27. *Id.* ¶ 1.

**April 13, 2002:** The Commission issues admissibility Report No. 9/16, which declares the petition admissible, but only in part.<sup>28</sup> It finds that the facts could establish violations of Article 8 (Right to a Fair Trial), 9 (Freedom from *Ex Post Facto* Laws), 25 (Right to Judicial Protection) of the American Convention of Human rights in relation to Articles 1.1 (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights).<sup>29</sup> However, it finds the alleged violations of Article 11 (Right to Privacy), 21 (Right to Property), and 24 (Right to Equal Protection) to be inadmissible.<sup>30</sup> Further, although the State argues that the petition is inadmissible because Mr. Rico failed to exhaust all available remedies,<sup>31</sup> the Commission finds that he did.<sup>32</sup>

**July 6, 2017:** The Commission issues Merits Report No. 72/17.<sup>33</sup> It concludes that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2)(h) (Right to Appeal), 9 (Freedom from *Ex Post Facto* Laws), 23 (Right to Participate in Government), and 25(1) (Right of Recourse Before a Competent Court), all in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights).<sup>34</sup> The Commission recommends that the State reinstate Judge Rico, provide reparations for material and nonpecuniary damages, and that the State adopt legislative and other measures to ensure proceedings against judges in the State comply with the standards in the report.<sup>35</sup>

**August 9, 2017:** The Commission notifies the State of Merits Report No. 72/17.<sup>36</sup> The State is given two months to implement the recommendations.<sup>37</sup> The State is granted two additional extensions and the Commission considers that the State did not comply with the recommendations.<sup>38</sup>

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28. Eduardo Rico v. Argentina, Admissibility Report, ¶¶ 46-48.

29. *Id.* ¶ 46.

30. *Id.* ¶ 47.

31. *Id.* ¶ 31.

32. *Id.* ¶ 37.

33. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 2(c).

34. Eduardo Rico v. Argentina, Report on Merits, ¶ 130.

35. *Id.* ¶ 132(1)-(3).

36. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 2(d).

37. *Id.*

38. *Id.*

*B. Before the Court*

**November 10, 2017:** The Commission submits the case to the Court after the State fails to implement its recommendations.<sup>39</sup>

**May 19, 2018:** The State submits a preliminary objection claiming that domestic remedies had not been exhausted.<sup>40</sup> Specifically, the State argues that Judge Rico failed to avail himself of all available domestic remedies due to his own failure to comply with admissibility requirements.<sup>41</sup>

**July 26, 2018:** The court receives an *amicus curiae* brief from Mr. Eduardo S. Barcesat.<sup>42</sup>

**April 26, 2019:** Judge Rico notifies that Mr. Barcesat is his representative. The Court deems Mr. Barcesat's *amicus curiae* brief inadmissible as he is no longer an uninterested party.<sup>43</sup>

1. Violations Alleged by Commission<sup>44</sup>

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

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

Article 9 (Freedom from *Ex Post Facto* Laws)

Article 23 (Right to Participate in Government)

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

*all in relation to:*

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

Article 2 (Obligation to Give Domestic Legal Effect to Rights).

2. Violations Alleged by Representatives of Victim<sup>45</sup>

Same Violations Alleged by Commission.

39. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 3.

40. *Id.* ¶ 6.

41. *Id.* ¶¶ 6, 13.

42. *Id.* ¶ 9.

43. Rico v. Argentina, Resolution of the President, Inter-Am. Ct. H.R. (ser. C) No. 383, "Resolves" ¶ 1 (July 9, 2018).

44. Eduardo Rico v. Argentina, Report on Merits, ¶ 130.

45. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 41.

## III. MERITS

A. *Composition of the Court*<sup>46</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

Pablo Saavedra Alessandri, Secretary

B. *Decision on the Merits*

**September 2, 2019:** The Court issues its Judgment on Merits.<sup>47</sup>

The Court found unanimously:

To both accept and reject Argentina's preliminary objections in part,<sup>48</sup> because:

*First, the State argued that not all domestic remedies had been exhausted because the special federal appeal, the complaint, and the remedies filed to the SCJBA did not comply with admissibility requirements.<sup>49</sup> The Court declined to resolve this argument because this issue required an analysis of the merits.<sup>50</sup>*

*Second, the Court noted that not all domestic remedies had been exhausted because Judge Rico failed to challenge as unconstitutional the disqualification penalty when he submitted the special federal appeal, as was also noted by the SCJBA and the Supreme Court of Argentina.<sup>51</sup> Accordingly, the Court accepted this argument regarding Mr. Rico's failure to exhaust remedies.<sup>52</sup>*

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46. Eugenio Raúl Zaffaroni, of Argentinian nationality, did not participate in the processing, deliberation, or signing of the Judgment, while Ricardo Pérez Manrique, of Uruguayan nationality, did not participate in the hearing or deliberation of the judgment. Rico v. Argentina, Preliminary Objections, and Merits, n.\*.

47. See generally *Id.*

48. *Id.* ¶¶ 112 (1)-(2).

49. *Id.* ¶ 13.

50. *Id.* ¶ 19.

51. *Id.* ¶ 20.

52. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 20.

The Court found unanimously that Argentina had not violated:

Article 8 (Right to a Fair Trial), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Rico<sup>53</sup> because:

*Defending against any State act that may affect an individual's rights requires due process of law.*<sup>54</sup> *The Court analyzed each alleged violation separately.*<sup>55</sup>

*First, the standard used to analyze proceedings in cases against judicial authorities is judicial independence.*<sup>56</sup> *Accordingly, the Court analyzed whether the proceedings before the Impeachment Jury affected (1) judicial independence and the guarantee of being irremovable; and (2) whether Mr. Rico's proceedings violated judicial independence.*<sup>57</sup>

*The Court considered whether the State's procedure for removal of judicial officers contradicted the Convention.*<sup>58</sup> *However, the Court chose to analyze whether the current case violated Article 8 (1) (Right to a Hearing by a Competent and Independent Tribunal).*<sup>59</sup> *The Court concluded that the State did not violate the right to an independent judge because Mr. Rico did not offer sufficient explanation of a violation.*<sup>60</sup>

*Second, the Court established that, in order to be impartial, the intervening judicial authority must be objective and unbiased.*<sup>61</sup> *Objective impartiality questions whether the judicial authority eliminated fears of bias by providing convincing evidence.*<sup>62</sup> *Judge Rico's representatives argued that the individual who brought his charges was also in power of all of the Province's Bar Associations; and the President of the Jury was also the Council of the Magistracy's President, thus violating his right to an impartial judge.*<sup>63</sup> *Here, the Court found that the State did not violate the right to an impartial judge because there is no evidence that being in*

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53. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 112(3).

54. *Id.* ¶ 49.

55. *Id.* ¶ 51.

56. *Id.* ¶ 52.

57. *Id.* ¶ 54.

58. *Id.*

59. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 57.

60. *Id.* ¶ 69.

61. *Id.* ¶ 70.

62. *Id.*

63. *Id.* ¶ 71.

*these positions affected their respective duties, the proceedings, or the jurors.*<sup>64</sup>

*Third, the Court determined whether the State violated Judge Rico's right to a reasoned verdict.*<sup>65</sup> *The Court indicated that a jury verdict does not require an explanation of the reasoning.*<sup>66</sup> *Nevertheless, the Court found that the State did not violate Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) because there were insufficient elements to conclude that the Impeachment Jury's decision was arbitrary.*<sup>67</sup>

*Fourth, the Court determined whether the State violated Judge Rico's right to a defense, other guarantees, and the right to appeal.*<sup>68</sup> *The Court found that the State did not violate his procedural guarantees or his right to defense because he failed to explain how his right to defense had been impaired.*<sup>69</sup> *Accordingly, the Court found that the State did not violate Article 8 (Right to a Fair Trial) of the American Convention.*<sup>70</sup>

Article 9 (Freedom from Ex Post Facto Laws), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Rico<sup>71</sup> because:

*The principle of legality is applicable to disciplinary matters.*<sup>72</sup> *Problems of indetermination regarding the type of punishment are not violations of the Convention as long as there was a clear indication of the form of application and the scope of discretion.*<sup>73</sup> *The Court found that Judge Rico was punished for his involvement in the violation of three grounds of Law 8085.*<sup>74</sup> *The Court analyzed the principle legality of each disciplinary ground of the sanctions and found that the State did not violate the principle legality of Article 9 (Freedom from Ex Post Facto Laws) of the American Convention on any of the grounds.*<sup>75</sup>

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64. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 71.

65. *Id.* ¶ 51.

66. *Id.* ¶ 76.

67. *Id.* ¶ 80.

68. *Id.* ¶ 51.

69. *Id.* ¶¶ 82, 83.

70. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 85.

71. *Id.* ¶ 112(4).

72. *Id.* ¶ 102.

73. *Id.* ¶ 103.

74. *Id.* ¶ 104.

75. *Id.* ¶ 105-109.

Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Rico<sup>76</sup> because:

*Article 25(1) (Right of Recourse Before a Competent Court) includes the guarantee of judicial review against violations of fundamental rights.<sup>77</sup> It is insufficient for a remedy to formally exist; it must also remedy the violation and its application must be effective.<sup>78</sup> Here, Judge Rico challenged decisions made against him by filing various appeals.<sup>79</sup> In his appeals, he failed to meet the minimum requirements.<sup>80</sup> The Court found that the decisions made by the domestic courts were not manifestly unreasonable or arbitrary, and held that the State did not violate Article 25 (Right to Judicial Protection) of the American Convention.<sup>81</sup>*

Article 23 (Right to Participate in Government), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Rico<sup>82</sup> because:

*The Court found that the alleged political rights violation is not autonomous and instead derives from the alleged violations of his other rights.<sup>83</sup> Accordingly, because Argentina was found to not have violated any other articles of the Convention, the State did not violate Article 23 (Right to Participate in Government) of the American Convention.<sup>84</sup>*

### C. Dissenting and Concurring Opinion

[None]

### IV. REPARATIONS

[None]

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76. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 112(6).

77. *Id.* ¶ 88.

78. *Id.*

79. *Id.* ¶ 90.

80. *Id.* ¶¶ 94, 97.

81. *Id.* ¶ 99.

82. Rico v. Argentina, Preliminary Objections, and Merits, ¶ 112(5).

83. *Id.* ¶ 110.

84. *Id.*

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

[None]

*B. Compensation*

[None]

*C. Deadlines*

[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

[None]

2. Judgments on Merits, Reparations and Costs

Rico v. Argentina, Preliminary Objections, and Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 383, (Sept. 2, 2019).

3. Provisional Measures

Rico v. Argentina, Resolution of the President, Inter-Am. Ct. H.R. (ser. C) No. 383, (July 9, 2018).

4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

*A. Inter-American Commission*

## 1. Petition to the Commission

[None]

## 2. Report on Admissibility

Eduardo Rico v. Argentina, Admissibility Report, Report No. 9/16, Inter-Am. Comm'n H.R., Petition No. 149-02, (Apr. 13, 2016).

## 3. Provisional Measures

Eduardo Rico v. Argentina, Report on Merits, Report No. 72/17, Inter-Am. Comm'n H.R., Case No. 13.019, (July 5, 2017).

## 4. Report on Merits

[None]

## 5. Application to the Court

Eduardo Rico v. Argentina, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 13.019, (Nov. 9, 2017).

## VIII. BIBLIOGRAPHY

[None]

