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REPORT No. 98/17
CASE 12.925
REPORT ON MERITS

OSCAR RAÚL GORIGOITIA
ARGENTINA

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INDEX

I. SUMMARY.....	1
II. PROCEDURES BEFORE THE COMMISSION	1
III. ALLEGATIONS OF THE PARTIES.....	1
A. Allegations of the petitioner.....	1
B. Allegations of the State	2
IV. DETERMINATIONS OF FACT.....	2
A. The relevant criminal procedural legal framework in terms of remedies	2
B. Judicial practice in Argentina and the 2005 “Casal” judgment	4
C. Oscar Raúl Gorigoitia and the criminal proceedings against him.....	5
D. Cassation appeal.....	6
E. Extraordinary appeal and complaint appeal.....	8
V. ANALYSIS OF LAW	9
VI. CONCLUSIONS AND RECOMMENDATIONS.....	16

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I. SUMMARY

1. On January 19, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received a petition filed by Carlos Varela Álvarez and Alejandro Acosta (hereinafter “the petitioner”) alleging the responsibility of the Argentine Republic (hereinafter “State of Argentina,” “Argentina,” or “the State”) for the absence of an ordinary appeal that would permit a comprehensive review of the conviction of Oscar Raúl Gorigoitia in the framework of a criminal proceeding in the province of Mendoza, Argentina.

2. The State alleged that it does not bear any international responsibility because Mr. Gorigoitia’s conviction was carried out in line with the provisions of the domestic legal regulatory framework and international standards. It contended that his right to defend himself was guaranteed and he was allowed to file appeals to challenge the conviction. It explained that these appeals were ruled inadmissible because they did not meet the “required procedural formalities.”

3. After reviewing the position of the parties, the Commission concluded that the State of Argentina is responsible for the violation of the rights to a fair trial and to judicial protection, as set forth in Articles 8.2 h) and 25.1 of the American Convention, in connection with the obligations established in Articles 1.1 and 2 thereof, to the detriment of Oscar Raúl Gorigoitia. The Commission made the corresponding recommendations.

II. PROCEDURES BEFORE THE COMMISSION

4. The IACHR received the initial petition on January 19, 1999. The proceedings, from submittal of the petition up to the ruling on the case’s admissibility, are explained in detail in Admissibility Report 35/13, adopted on July 11, 2013.¹

5. On September 6, 2013, the Commission notified said report to the parties and indicated its availability to reach a friendly settlement. On August 2, 2016, the petitioner submitted its observations on the merits. On August 10, 2016, the IACHR forwarded the observations to the State and granted it a statutory deadline of four months to submit its observations. On December 16, 2016, the State requested the Commission a first extension of the deadline for submitting its observations, which was granted on December 21, 2016. On February 17, 2017 Argentina requested the IACHR to grant a second extension, which was turned down on February 21, 2017, in keeping with the provisions of Article 37.2 of IACHR’s Rules of Procedure. At the time of the adoption of the present report, the State had not submitted its observations on the merits of the case

III. ALLEGATIONS OF THE PARTIES

A. Allegations of the petitioner

6. The petitioner alleged that the State was responsible for violating the right of Oscar Raúl Gorigoitia to appeal the guilty verdict that convicted him in 1997 for the crime of manslaughter. It reported

¹ IACHR. Report on Admissibility No. 35/13. Case 12.925. Posadas et al. v. Argentina. July 11, 2013.

that Mr. Gorigoitia was Staff Sergeant of the Police Force of Mendoza and that, during a police chase after an unidentified motor vehicle, the driver of said vehicle died as a result of shots fired from a firearm. The details of the incidents and the domestic proceedings shall be referred to in the section of Determination of Facts, on the basis of information provided by both parties.

7. In connection with the alleged violation of the right to appeal a judgment, the petitioner argued that the cassation appeal (*recurso de casación*) had limitations in terms of the regulatory framework and practice, because it did not have the necessary characteristics to benefit from the right to a second hearing. It pointed out that said appeal only allowed the review of procedural aspects and not a comprehensive review, including appraisal of the evidence by the court of first instance. It indicated that this situation also constituted a violation of the right to judicial protection.

8. The petitioner also alleged that the State failed to fulfill its duty to adopt domestic law provisions taking into account the limited and nonconventional nature of the cassation appeal in the regulatory framework and domestic practice.

B. Allegations of the State

9. The State of Argentina did not submit its observations on the merits of the case. In the admissibility stage, the State denied its international responsibility and indicated that the criminal proceedings respected due process of law for Mr. Gorigoitia. It explained that the conviction was in conformity with the law because “all evidence presented conspicuously showed that Gorigoitia had a clear idea of the possible outcome (the death of young man Gómez) and, ignoring the order not to use arms, he repeatedly fired the two arms provided.”

10. It contended that the cassation appeal was declared inadmissible and that the “Court of Cassation Appeals cannot re-examine or judge the reasons that led to the judgment conviction by the lower court.” The State added that the appeal that was filed was dismissed “arguing that there were formal defects in the filing and establishing that the causes invoked by the defense were not deemed suitable for the Court’s review.”

11. The State alleged that the petitioner intends to indicate the presumed arbitrariness of a final judgment solely on the basis of its disagreement with it. It indicated that the IACHR cannot act as a “fourth instance” to review judgments under domestic law that have been issued adequately.

IV. DETERMINATIONS OF FACT

A. The relevant criminal procedural legal framework in terms of remedies

12. In this section, the relevant legal framework for the appeals filed by Mr. Gorigoitia against the judgment of conviction for the crime of manslaughter shall be described.

13. Article 474 of the Criminal Procedures Code of the Province of Mendoza (*Código Procesal Penal de la Provincia de Mendoza*—hereinafter the “CPPM”), with contents almost identical to those of Article 456 of the Criminal Procedures Code of the Argentine Nation (*Código Procesal Penal de la Nación Argentina*—hereinafter the “CPPN”), governs the admissibility of the cassation appeal on the basis of the following terms:

Reasons. The cassation appeal can be filed on the basis of the following reasons:

- 1) Failure to observe or erroneous application of substantive law.
- 2) Failure to observe the standards set by the present Code under penalty of inadmissibility, expiration, or quashing, as long as the complainant, except in cases of absolute quashing, had filed a claim, on a timely basis, to remedy the defect, if possible, or had protested to file a cassation appeal.

14. Regarding challengeable rulings, Article 475 of the CPPM indicates the following:

In addition to the cases especially provided for by law and with the limitations set in the following articles, this appeal against final judgments or the writs that put an end to the proceeding or sentencing or that make it impossible to continue them or that deny the termination, commutation or suspense of any of them.

15. Regarding the filing of this appeal, Article 480 of the CPPM, almost identical to Article 463 of the CPPN, establishes that:

The cassation appeal shall be filed before the court that issued the ruling within 15 days after notification and in writing with the attorney's signature, where the legal provisions that are deemed to have been breached or erroneously applied shall be cited and the application that is being called for shall be indicated.

Each reason must be indicated separately with its justifications. Outside of this opportunity no other reason can be claimed.

The complainant must indicate if he or she shall report orally.

16. Regarding the admissibility or rejection of the appeal, Article 461 of the CPPM indicates that:

Inadmissibility or Rejection. The appeal shall not be granted by the Court that issued the ruling being challenged when the latter is not subject to appeal or when it is not filed on time by whoever is entitled to file it.

If the appeal is inadmissible, the higher court must declare it is so, without making any ruling about the merits. It must also reject the appeal when it is evident that it is substantively out of order.

17. As for the extraordinary federal appeal, the Civil and commercial Procedural Code of the Nation establishes the following:

Article 256. The extraordinary appeal filed before the Supreme Court shall proceed on the basis of the assumptions established in Article 14 of Law 48.

Article 257. The extraordinary appeal must be filed before the judge, court, or administrative body that issued the ruling that is at the origin of the appeal and it must be filed in writing within ten (10) days of the notification, as well as substantiated on the basis of what is set forth in Article 15 of Law 48.

18. As for Article 14 of Law 48, it stipulates the following:

Once a case has been filed in the Courts of the Province, it shall be heard and judged in the provincial jurisdiction, and judgments issued by superior provincial courts can only be appealed in the Supreme Court in the following cases:

When the complaint has challenged the validity of a Treaty, a Law enacted by Congress, or an authority exercised on behalf of the Nation and the ruling has been against its validity.

When the validity of a law, decree, or authority of a Province has been challenged because it is claimed that it goes against the National Constitution, Treaties, or laws enacted by Congress and the ruling has supported the validity of said law or provincial authority.

When the intelligence of any clause of the Constitution or Treaty or law enacted by Congress or a commission exercised on behalf of the national authority has been challenged and the

decision goes against the validity of the title, right, privilege, or exemption on which said clause is based and is the target of litigation.

B. Judicial practice in Argentina and the 2005 “Casal” judgment

19. From the above, it turns out that the legal framework applicable at the time of the incidents in the Province of Mendoza envisaged the cassation appeal as a means to appeal a judgment of conviction issued by a judge of the court of first instance. The IACHR recalls that, as described above, the cassation appeal is governed by similar terms in the legislation applicable to the federal capital and in the legislation applicable to the Province of Mendoza.

20. The Supreme Court of Justice of the Nation in the judgment known as the “Casal judgment,” issued on September 20, 2005, referred to how the judges and, in particular, the National Courts of Criminal Cassation Appeals restrictively interpreted the scope of the reviewable case on the basis of a cassation appeal. In the words of the Supreme Court of Justice of the Nation:

It is illustrative, for explanatory purposes, to stress that this concept of differentiation between matters of fact and law, defects *in iudicando* and defects *in procedendo*, defects of activity, and defects of judgment or any other differential classification on targeted matters has distorted the practice of filing appeals in the National Courts of Cassation Appeals.

The complainants, in general, warned about the restrictive policy in admitting appeals, attempt to focus the grievances they are developing on the basis of the formulation of subparagraph 1 of Article 456 of the Criminal Proceedings Code of the Nation, in other words, under the assumption of failure to observe or erroneous application of the substantive law, in case where problems of classification are discussed. The truth is that a large part of these objections introduce and, at the same time, focus on problems that have to do with the facts, evidence, and their appraisal, whether to demonstrate the existence or absence of some element of an objective kind, willful misconduct, or subjective elements other than the willful misconduct comprising the criminal classification.

[...] it is well known that defenders, aware of the jurisprudential reluctance to discuss the grievances associated with the facts or the evidence and its appraisal in the framework of cassation appeals, tend to force the scope of subparagraph 1 of Article 456 of the Criminal Proceedings Code of the Nation.²

21. Precisely after considering that the distinction between matters of law, on the one hand, and matters of fact or appraisal of evidence, on the other hand, must not determine the scope of the cassation appeal review, the Supreme Court of Justice of the Nation issued the Casal judgment, whereby it provided a broader interpretation. The Casal judgment provides a highly relevant assessment of the regulatory framework and practice at the time of incidents, and thus certain considerations are presented in the section on analysis of law that are relevant to make the recommendations, specifically about the non-repetition component.

22. Bearing in mind that the relevant proceedings for the present case culminated before the issuance of the Casal judgment, the Commission does not deem it necessary to specify, at the present time, the scope of said ruling. This is without detriment to the considerations that are included in the section on analysis of law and that are relevant for making the recommendations, specifically about the non-repetition component.

² Casal, Matías Eugenio et al. attempted simple theft, Case No. 1681, Supreme Court of Justice of the Argentine Nation, September 20, 2005.

C. Oscar Raúl Gorigoitia and the criminal proceedings against him

23. Oscar Raúl Gorigoitia is a naturalized Argentine national, born on July 29, 1949.³ At the time of the incidents, he was Staff Sergeant of the Police Force of Mendoza and member of the Motorized Unit.⁴ The next of kin of Mr. Gorigoitia is comprised of his spouse Berta Montenegro and his three children.⁵

24. The criminal proceedings against him were filed for the crime of homicide as a result of the death of Mr. Hugo Alejandro Gómez on August 31, 1996 in the context of a police chase after the latter failed to obey the order to get out of his motor vehicle. In said situation, backup was requested and four motorized police officers arrive at the scene, among whom Oscar Raúl Gorigoitia, who was with Víctor Agüero. It was indicated that, after shots were fired by Mr. Gorigoitia, Sergeant Hugo Sarmiento fired two shots at the lower part of the moving car, hitting the rear hood with one shot and a metal panel of the car's body with the other shot. The car driven by Mr. Gómez stopped after these shots, and he was taken to a hospital where he was pronounced dead as a result of acute anemia because of internal hemorrhaging produced by the wound of a bullet from a firearm.

25. That same day, Mr. Gorigoitia and other police officers who participated in the chase were called to the Police Substation. The investigating judge appeared and proceeded to arrest said persons.

26. On September 6, 1996, a court ruling was issued whereby proceedings were filed against Mr. Gorigoitia for the crime of homicide, on the basis of Article 79 of the Criminal Code and Article 307 of the Criminal Proceedings Code. The judge indicated the following:

In short, the death of the victim from the shot of a firearm, the lodging of the bullet as a result of the firing, the determination that this bullet was shot by the weapon of the accused, the report that shows that another shot was also fired from the same gun, and the statements of the police officers who witnessed Gorigoitia shoot the car of Gómez, from an angle that is compatible with the impacts found on the road, constitute without a doubt an a combination of evidence making it possible to hold the person being charged as the probable perpetrator of the death of Gómez.⁶

27. On September 12, 1997, the First Criminal Court of Mendoza convicted Mr. Gorigoitia for the crime of manslaughter and sentenced him to 14 years prison and absolute ineligibility for release for the same period of time. In connection with the qualification of the crime as a "manslaughter" and not a "culpable homicide," which was alleged by the defense, the First Court stated the following:

[Mr. Gorigoitia] started his homicidal act (...) with an inexcusable indifference to the possible harmful outcome. Gorigoitia was aware of the firearm and knew the consequences of using it in a high-speed chase, the typical outcome occurred and, despite this, he fired under these circumstances.⁷

³ Judicial Branch of Mendoza, Case File No. 16.073 "F. C/GORIGOITIA OSCAR RAUL P/MANSLAUGHTER" and its joinder, Agreement Room of the First Criminal Court, September 12, 1997, page 1, Attachment to the initial petition.

⁴ Judicial Branch of Mendoza, Case File No. 73.872/1 "F. c/Gorigoitia, Oscar", September 6, 1996, Attachment to the initial petition.

⁵ Judicial Branch of Mendoza, Case File No. 16.073 "F. C/GORIGOITIA OSCAR RAUL P/MANSLAUGHTER" and its joinder Agreement Room of the First Criminal Court, September 12, 1997, page 1, Attachment to the initial petition.

⁶ Judicial Branch of Mendoza, Case File No. 73.872/1 "F. c/Gorigoitia, Oscar", September 6, 1996, Attachment to the initial petition.

⁷ Judicial Branch of Mendoza, Case File No. 16.073 "F. C/GORIGOITIA OSCAR RAUL P/MANSLAUGHTER" and its joinder, Agreement Room of the First Criminal Court, September 12, 1997, page 3, Attachment to the initial petition.

28. The First Court indicated that Mr. Gorigoitia did not act in accordance with the caution that the use of firearms merits, according to the Police Force Manual. It also argued that “to assert the existence of willful misconduct in legal terms, there must be a use of facts, circumstances, and phenomena symbolizing them (...).”⁸ In that regard, it took into account a psychological examination conducted by the Forensic Medical Corps, which indicated that he has trouble adjusting to outside requirements and limits, as well as achieving a rational management of situations, and views inter-relationships as competitive, aggressive, untrustworthy, and without self-restraint. It was also pointed out that “applying this personality to the incident that we are targeting (...) his performance is a true reflection of his personality.”⁹

D. Cassation appeal

29. On September 29, 1997, Mr. Gorigoitia’s defense filed a cassation appeal requesting quashing of the judgment of conviction. In this appeal, the following was stated:

(...) The willful misconduct is a fact and as such it must be proven as any other fact; never, in the facts stated in the present judgment of the Court, has it been possible to demonstrate the existence of this element that is an integral part of culpability, because it is not enough to merely state these facts or the circumstances surrounding what happened the night of August 31, 1996. (...) Every legal statement must be proven on the basis of its immediate antecedent and (...) the evidence must be furnished (sic) with facts that lead “reasonably to the legal consequence” and not their statement. Therefore, it is of no use to say: according to the facts it is proven that the accused committed a crime of gross negligence (...). The court attributes the motive to the personality of the accused. (...) Willful misconduct is a psychic fact that belongs to the innermost thoughts of the perpetrator and must respond to what he had the intention of doing and not fit the attitude of the other members of the Police Force (...). The sentencing Court [indicated] that Gorigoitia “participated in a frenzied pursuit.”¹⁰

30. The defense also alleged that it involved an arbitrary judgment because “with the same arguments raised to convict Oscar Raul Gorigoitia for the crime of manslaughter (...) Master Sergeant Hugo Felix Sarmiento is excluded from all suspicion,” although he also fired shots at the motor vehicle of Mr. Gómez.¹¹ Thus, the defense indicated the following:

If the incident was illegal for the person I am defending, should it not be illegal for those who fired at the motor vehicle under the same circumstances? And if the action of Master Corporal Sarmiento is justified, why is not also justified for Gorigoitia?¹²

31. Finally, he stated that the judgment failed to provide a due motive and that gross negligence cannot be established for the following reason:

[A]t all times, the person I am defending is charged with acting reprehensibly and breaching all the rules of the Police Force Manual, whether by intervening in the procedure or by choosing to stop a car which most did not know why it was being chased, but it is not an

⁸ Judicial Branch of Mendoza, Case File No. 16.073 “F. C/GORIGOITIA OSCAR RAUL P/MANSLAUGHTER” and its joinder, Agreement Room of the First Criminal Court, September 12, 1997, page 85, Attachment to the initial petition.

⁹ Judicial Branch of Mendoza, Case File No. 16.073 “F. C/GORIGOITIA OSCAR RAUL P/MANSLAUGHTER” and its joinder, Agreement Room of the First Criminal Court, September 12, 1997, page 85, Attachment to the initial petition.

¹⁰ Criminal cassation appeal, filed before the First Criminal Court of Mendoza, September 29, 1997, pages 17 and 18, Attachment to the initial petition.

¹¹ Criminal cassation appeal, filed before the First Criminal Court of Mendoza, September 29, 1997, page 18, Attachment to the initial petition.

¹² Criminal cassation appeal, filed before the First Criminal Court of Mendoza, September 29, 1997, page 19, Attachment to the initial petition.

indifferent attitude to rules of procedure that can determine a gross negligence, on the contrary on the basis of this same reasoning, it is inferred that he acted contrary to the duties of his job, breaching regulations, with a large dose of recklessness. In other words, that there was an absence of caution but no prediction that the death of Hugo Gómez would be caused.¹³

32. On December 19, 1997, the Second Chamber of the Supreme Court of Justice of Mendoza decided to dismiss the cassation appeal “because it was formally inadmissible.”¹⁴

33. The Second Chamber pointed out that the cassation appeal “must be motivated and this motivation must be provided by the complainant in the same document filing the proceeding, concretely determining the grievance, both in terms of the defect it is denouncing and in terms of the law that substantiates it.”¹⁵ In that regard, it indicated the following:

(...) when the absence of motive in the judgment is claimed, it is necessary to individualize the defective proceeding, (...) pointing out the reasonable possibility of impact from the illegal or omitted evidence in the reasoning of the court examining the merits (...). With respect to the alleged substantive motive, it should be dismissed *in limine* because the appeal’s arguments reveal, in short, the discrepancy of the appraisal made by the plaintiff with the Chamber’s criterion regarding evidence legally incorporated into the discussion, because the Cassation Court cannot review or judge the motives that constituted the conviction issued by the lower Court (...).¹⁶

34. The Second Chamber added that “the Chamber has clearly, completely, and abundantly substantiated the gross negligence that it attributes to the conduct of the accused,” for which purpose it quoted textually the reasoning of the Chamber.¹⁷ Likewise, the Second Chamber indicated that the Chamber had closely examined the hypothesis that the accused had acted culpably.¹⁸ As a result, it ruled that the appeal that was filed should be dismissed.¹⁹

¹³ Criminal cassation appeal, filed before the First Criminal Court of Mendoza, September 29, 1997, page 22, Attachment to the petition of January 19, 1999. Attachment to the initial petition.

¹⁴ Judicial Branch of Mendoza, Case File No. 63.145: “F. c/ GORIGOITIA GUERRERO. Oscar,” Supreme Court of Justice of Mendoza, December 19, 1997, page 2. Attachment to the initial petition.

¹⁵ Judicial Branch of Mendoza, Case File No. 63.145: “F. c/ GORIGOITIA GUERRERO. Oscar,” Supreme Court of Justice of Mendoza, December 19, 1997, page 2. Attachment to the initial petition.

¹⁶ Judicial Branch of Mendoza, Case File No. 63.145: “F. c/ GORIGOITIA GUERRERO. Oscar,” Supreme Court of Justice of Mendoza, December 19, 1997, page 3. Attachment to the initial petition.

¹⁷ Specifically, it indicated that, according to the Court, “it cannot be doubted that, in the scenario in which the final outcome of this story unfolded (sticking exclusively, as did the civilian stakeholders and the Attorney General’s Office, to what occurred starting at the Olive Bridge up to the arrest on highway R-6 in San Martín 6264 de Carrodilla for more than 5 kilometers), the death that occurred could not have been foreseen or that Gorigoitia acted in the hopes that this would be the outcome, trusting his skills. On the contrary, all evidence indicates that he imagined the possible outcome (death) and, driven by his selfishness ignored the order not to use firearms, fired repeatedly with the two arms provided (Itaka, 9 mm).”

¹⁸ Specifically, the court indicated that it dismissed the malicious intent when it contends that “in this framework of action, pretending that all Gorigoitia did was to fail to observe the regulations, along with the recklessness that would tend to establish his conduct as culpable which would be supported in the crime of culpable homicide (Article 84 of the Criminal Code), I believe involves ignoring the evidence against the accused, which shows a reality that is different from what happened, which was much more severe. The indifference to the outcome of a severe action such as aiming at a moving motor vehicle from another one chasing it, with a high-caliber and long-range gun, aware of its bullets’ power to damage, excludes all form of culpability, even when there is representation and it adequately fulfills the classification requirement of negligence, viewed as gross, because to invoke mere guilt with awareness would require that the agent’s action not be directly aimed at one or more given persons.”

¹⁹ Judicial Branch of Mendoza, Case File No. 63.145: “F. c/ GORIGOITIA GUERRERO. Oscar,” Supreme Court of Justice of Mendoza, December 19, 1997, page 4. Attachment to the initial petition.

E. Extraordinary appeal and complaint appeal

35. On February 24, 1998, the defense of Mr. Gorigoitia filed an extraordinary appeal with the Supreme Court of Justice of the Province of Mendoza.²⁰ The defense requested quashing of the judgment of the Second Chamber of the Supreme Court of Justice and the issuance of a new judgment “in formal terms and in line with the law.”²¹ It was indicated that the judgments of the Criminal Court and the Supreme Court had turned out to be arbitrary for the following reasons:

The legal situation of Gorigoitia [had to be] appraised on the basis of the principle *in dubio pro reo*, when deciding if the criminal category to be established was a manslaughter or a culpable homicide. (...) The gross negligence that was attributed to the actions of the accused was never proven, and what emerged with greater certainty was that, at most and in the worst of cases, the blame was the most judicious in view of the particular features of the incident. (...) What the cassation appeal is arguing is not a mere discrepancy, in terms of the appraisal, with the Court issuing the judgment; the discrepancy goes far beyond that and is essentially aimed censuring a criterion of appraisal of the evidence supported by the pure and exclusive subjectivism of the judges, who in addition departed (...) from the facts, common sense, and the rules of sound criticism.²²

36. He also added that there was a grievance involved in “dismissing the need to undertake a thorough and detailed interpretation of the records of the proceedings, as well as basically dismissing the examination of arguments from the defense (...) both in the discussion and in the cassation appeal.”²³

37. On March 11, 1998, the Prosecutor General of the Supreme Court of Justice of Mendoza issued a writ indicating that the extraordinary appeal must be declared admissible. The Prosecutor invoked Article 8.2 h) of the American Convention and Article 14.5 of the International Covenant on Civil and Political Rights (CCPR), indicating that “the guarantee of appeal has been enshrined in a truly broad fashion for the benefit of the accused and cannot be confined or restricted for the purpose of meeting excessive formal requirements.”²⁴

38. On March 31, 1998, the Supreme Court of Justice of the Province of Mendoza turned down the extraordinary appeal, indicating that:

(...) the complainant is not challenging a judgment, but rather an “order” issued by the present Chamber II which is formally rejecting the cassation appeal because it does not meet the requirements expressly set forth in Mendoza’s criminal procedural law and jurisprudence (...). (...) The doctrine of arbitrariness is not aimed at rectifying, in courts of third instance, erroneous rulings or those that the complainant considers are erroneous, in accordance with the complainant’s divergence from the interpretation given by the judges to the common facts and laws, including respect for the standards that are deemed to be clear. (...) In the case *in lite*, the ruling that is being challenged has been duly grounded in Mendoza’s procedural law and related jurisprudence, of which the complainant is unaware (...).²⁵

²⁰ Petition of January 19, 1999 and Extraordinary Appeal, February 25, 1998, page 1, Attachment to the initial petition.

²¹ Extraordinary Appeal, February 25, 1998, page 1, Attachment to the initial petition.

²² Extraordinary Appeal, February 25, 1998, pages 14 y 15, Attachment to the initial petition.

²³ Extraordinary Appeal, February 25, 1998, pages 14 y 15, Attachment to the initial petition.

²⁴ General Prosecution Service of the Supreme Court of Justice, Mendoza, challenge to the extraordinary appeal filed before the Supreme Court of Justice of the Nation, March 11, 1998, Attachment to the initial petition.

²⁵ Supreme Court of Justice of the Province of Mendoza, Case File No. 62.145: “Civil and Fiscal Party, c/ GORIGOITIA GUERRERO, Oscar Raúl,” March 31, 1998, page 3, Attachment to the initial petition.

39. The Provincial Supreme Court added that the grievances on which the extraordinary appeal is based must refer to the court of second instance and not to the first “regardless of the defects it contains.” The opinion of the Prosecutor General was not mentioned in this ruling.

40. In view of the dismissal of the extraordinary appeal, the defense of the alleged victim filed, with the Supreme Court of Justice of the Nation, a complaint appeal.²⁶ On August 6, 1998, the Supreme Court of Justice of the Nation ruled that the extraordinary appeal was inadmissible and, as a result, dismissed the complaint.²⁷

V. ANALYSIS OF LAW

A. Right to appeal the judgment before a higher judge or court²⁸ and right to judicial protection²⁹

1. General considerations on the right to appeal a judgment

41. The right to appeal a judgment before a different higher-ranking judge or court is a basic guarantee in the framework of due process of law, whose ultimate purpose is to avoid consolidating a situation of injustice.³⁰ According to inter-American jurisprudence, the goal of this right is to make it possible for an adverse judgment to be reviewed by a judge or court that is different and higher-ranking³¹ and to prevent the final consolidation of a decision that was adopted with defects and contains errors that might lead to undue harm to the interests of a person.³² Due process of law cannot be effective without the right to defense in a trial or the opportunity to defend oneself against a judgment on the basis of adequate review.³³

42. The Court has contended that “the second court ratification [*doblo conforme*], expressed by means of access to an appeal that grants the possibility for a comprehensive review of a judgment of conviction, confirms the principle and grants greater credibility to the State’s jurisdictional action and, at the same time, provides greater security and safeguards the rights of those convicted.”³⁴

²⁶ Complaint appeal filed before the Supreme Court of Justice of the Nation, no date, Attachment to the initial petition.

²⁷ Supreme Court of Justice of the Nation, F. 115. XXXIV. Appeal of Fact, Fiscal and civilian party c/ Gorigoitia, Oscar Raúl, August 6, 1998, Attachment to the initial petition.

²⁸ Article 8.2 h) of the American Convention establishes the following: 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: (...) h. the right to appeal the judgment to a higher court.

²⁹ Article 25.1 of the American Convention establishes the following: 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.

³⁰ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 188.

³¹ Inter-American Court. *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 242; *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 158, and *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 97.

³² Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 158. See, in general: IACHR, Report No. 24/17, Case 12.254, Merits. Víctor Hugo Saldaño. United States. March 18, 2017, para. 204.

³³ IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella (Argentina), November 18, 1997, para. 252.

³⁴ Inter-American Court. *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 242; *Case of Barreto Leiva v. Venezuela*. Judgment of Merits, Reparations and Costs. November 17, 2009. Series C No. 206, para. 89; *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 97; Inter-American Court. *Case of Liakat Ali Alibux v. Suriname*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of January 30, 2014. Series C No. 276, para. 85.

43. In that respect, for international human rights law, the denomination or name given to this appeal is irrelevant;³⁵ what is important is that it should meet certain standards. First of all, it must take place before the judgment becomes *res judicata*³⁶ and it must be settled within a reasonable period of time, that is, it must be *timely*. It must also be an *effective* remedy, that is, it must yield results or responses in terms of the purpose for which it was conceived,³⁷ that is, it must prevent consolidating a situation of injustice. In addition, it must be *accessible*, without requiring further formalities that might render the right illusory.³⁸

44. The Commission underscores that the appeal's effectiveness is closely linked to the scope of possibilities for appealing a judgment.³⁹ Because it is possible that judicial authorities will make mistakes leading to a situation of injustice, this cannot be confined to enforcement of the law, but rather it includes other aspects such as the determination of the facts or the criteria for appraising evidence. Thus, the appeal shall be effective in achieving the purpose for which it was conceived, if it allows a review of such matters without confining its admissibility *a priori* to given points of law in the proceedings of the court authority.⁴⁰

45. Regarding this, in the case of *Abella* versus Argentina, the Inter-American Commission indicated the following:

Article 8(2)(h) refers to the minimum characteristics of a remedy that serves as a check to ensure a proper ruling in both substantive and formal terms. From the formal standpoint the right to appeal the judgment to a higher court to which the American Convention refers should, in the first place, apply to [...] the purpose of examining the unlawful application, the lack of application, or the erroneous interpretation of rules of law based on the operative part of the judgment. The Commission also considers that to guarantee the full right of defense, this remedy should include a material review of the interpretation of procedural rules that may have influenced the decision in the case when there has been an incurable nullity or where the right to defense was rendered ineffective, and also with respect to the interpretation of the rules on the weighing of evidence, whenever they have led to an erroneous application or non-application of those rules.

[...]

The remedy should also allow the higher court a relatively simple means to examine the validity of the judgment appealed in general, as well as to monitor the respect for fundamental rights of the accused, especially the right of defense and the right to due process.⁴¹

³⁵ Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 165; United Nations Human Rights Committee. *Gómez Vázquez v. Spain*. Communication No. 701/1996. Decision of 11 August 2000, para. 11.1.

³⁶ United Nations Human Rights Committee. *Bandajevsky v. Belarus*. Communication No. 1100/202, Decision of 18 April 2006, para. 11.13. Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 158; and *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

³⁷ Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 161; and *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

³⁸ Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Judgment of Preliminary Objections, Merits, Reparations and Costs. July 2, 2004. Series C No. 107, para. 164; and *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 244.

³⁹ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 188.

⁴⁰ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al. (Juveniles sentenced to life time imprisonment), Argentina, November 2, 2010, para. 186.

⁴¹ IACHR, Report No. 55/97, Case 11.137, Merits, Juan Carlos Abella, Argentina, November 18, 1997, paras. 261-262.

46. As for the Human Rights Committee of the International Covenant on Civil and Political Rights (CCPR), it has repeatedly established that:⁴²

Every person's the right to appeal under article 14, paragraph 5, imposes on the State party a duty substantially to review, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, as long as the procedure allows for due consideration of the nature of the case. A review confined to only the formal or legal aspects of the judgment falls short of the requirements of the Covenant.⁴³

47. Along the same line of what is established by the CCPR Human Rights Committee, the IACHR underscores that the right to appeal does not entail a new trial or a new "hearing," as long as the court undertaking the review is not prevented from examining the facts of the case.⁴⁴ What is required by the standard is the possibility of pointing out and securing a response to the errors that might have been made by the judge or court, without excluding a priori certain categories such as the facts and the appraisal and receipt of the evidence. The way and means whereby the review is conducted shall depend on the nature of the questions being discussed, as well as the specificities of the criminal procedures system in the State concerned.⁴⁵

48. These standards governing the right to appeal a judgment were accepted by the Inter-American Court in the case of *Mendoza et al. v. Argentina*. In particular, with respect to the scope of the review, the Court contended that, regardless of the appeal regime or system adopted by the States Parties and the name given to the means for challenging a conviction, to be effective it must consist of an adequate means to ensure rectification of an erroneous conviction.⁴⁶ This requires the possibility of analyzing the factual, evidentiary, and legal questions on which the judgment being challenged is based, because in jurisdictional activities there is an interdependence between determinations of fact and the application of law, so that an erroneous determination of the facts entails a mistaken or improper application of the law. As a result, the causes for admissibility of an appeal must make it possible to exercise broad control over those aspects that are being challenged in the judgment of conviction.⁴⁷ The Court also specified, along the same line as what the Commission has contended, that the appeal must respect minimum procedural guarantees, which under Article 8 of the Convention are relevant and necessary to resolve the grievances filed by the complainant, which does not mean that a new trial must be held.⁴⁸

49. Furthermore, in terms of the appeal's *accessibility*, the Commission considers that, at first, the regulation of some minimum requirements for the appeal's admissibility is not incompatible with the law

⁴² The wording of Article 14.5 of International Covenant on Civil and Political Rights (CCPR) is substantially similar to that of Article 8.2.h of the American Convention; therefore the interpretations made by the United Nations Human Rights Committee in connection with the contents and scope of this article are relevant as a guidelines for interpreting Article 8.2.h of the American Convention.

⁴³ United Nations Human Rights Committee. *Aliboev v. Tajikistan*, Communication No. 985/2001, Decision of 18 October 2005; *Khalilov v. Tajikistan*, Communication No. 973/2001, Decision of 30 March 2005; *Domukovsky et al. v. Georgia*, Communication No. 623-627/1995, Decision of 6 April 1998; and *Saidova v. Tajikistan*, Communication No. 964/2001, Decision of 8 July 2004.

⁴⁴ United Nations Human Rights Committee. General Comment No. 32 "Article 14. Right to equality before tribunals and courts and to fair trial." 2007, para. 48.

⁴⁵ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza et al. (Juveniles sentenced to life time imprisonment), Argentina, November 2, 2010, para. 189.

⁴⁶ Inter-American Court. *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

⁴⁷ Inter-American Court. *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 100; *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

⁴⁸ Inter-American Court. *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs, November 23, 2012. Series C No. 255, para. 101; *Case of Mendoza et al. v. Argentina*. Judgment of Preliminary Exceptions, Merits and Reparations. May 14, 2013. Series C No. 260, para. 245.

contained in Article 8.2 h) of the Convention. Some of these minimum requirements are, for example, the filing of the appeal as such, since Article 8.2 h) does not require an automatic review or the regulation of a reasonable period of time during which it must be filed.⁴⁹ Nevertheless, under certain circumstances, rejection of the appeals because of failure to meet formal requirements legally established or defined by judicial practice in a given region, can turn out to be a violation of the right to appeal a judgment.⁵⁰

50. Below, the Commission shall analyze whether, in Mr. Gorigoitia's trial, the guarantee envisaged in Article 8.2 h) of the American Convention has been respected, taking into account the applicable regulatory framework and the specificities of the appeals filed in this concrete case.

2. Analysis of the case

51. According to the established facts, the defense of Mr. Gorigoitia filed a cassation, extraordinary federal, and complaint appeal against the judgment of September 12, 1997, which ruled that he was responsible for the crime of manslaughter and sentenced him to 14 years prison. According to national criminal procedural legislation and the legislation of the Province of Mendoza, cassation is the remedy that is applicable to challenge a judgment of criminal conviction in a court of first instance. In that regard, this is the principal appeal that the IACHR must analyze in order to determine if it meets the requirements of the right enshrined in Article 8.2 h) of the Convention.

52. First of all, the Commission underscores that Article 474 of the CPPM regulates the two motives that can be alleged in a cassation appeal: failure to observe or erroneous application of substantive law: or the failure to observe procedural standards under certain circumstances. In that respect, the regulation itself confines the cassation appeal to both substantive and procedural errors of law.

53. Second, the Commission observes that this legal framework led to a judicial practice described in the section of established facts, recognized by the Supreme Court of Justice of the Nation in the federal sphere and which is applicable to the present case bearing in mind the convergence in the regulation for the cassation appeal in this area and in the Province of Mendoza, among other provinces. This practice consisted of interpreting, restrictively, the legal framework governing the cassation appeal, so that issues of fact and appraisal of evidence were excluded.

54. By virtue of the above, in general terms, there was a serious limitation in the law and in practice regarding the prospects for effectiveness of any allegation that did not fall within the purview of what had historically been considered as "reviewable" by means of a cassation appeal.

55. The Commission is not responsible for determining the possible questions that could have been asked in the present case if the restrictive factors had not been applied. As indicated by the Commission, "it is enough to determine that the alleged victims embarked on the appeals procedure under legal constraints as to what allegations they were able to make. (...) [A]n automatic exclusion of issues of fact or of evidence appraisal was in effect, thus doing away with any examination of the importance or nature of said issues in light of the concrete case. This exclusion is, in and of itself, incompatible with the comprehensive scope of the remedy as provided for in Article 8.2.h of the American Convention."⁵¹

56. In any case, the limited scope of the cassation appeal was reflected in how these appeals were ruled in this concrete case. As concluded from the established facts, the cassation appeal filed by Mr. Gorigoitia's defense incorporated a series of arguments in connection with the facts and whether or not they were in line with the willful intent of the perpetration of the crime of homicide. Arguments were also submitted in connection with the appraisal of the evidence conducted in the court of first instance.

⁴⁹ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 188.

⁵⁰ IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Iván Teleguz, United States, July 15, 2013, para. 105.

⁵¹ IACHR, Report No. 33/14, Case 12.820, Merits, Manfred Amrhein et al., Costa Rica, April 4, 2014, para. 208.

57. As an example, in the cassation appeal, it was indicated that “willful misconduct is a fact and as such it was not proven.” It also argued that it was inadequate to use evidence about the personality of the accused to show that it was related to the willful misconduct. The defense added in the cassation appeal that, in his opinion, Mr. Gorigoitia breached the rules of the Police Force Manual, with recklessness and absence of caution. This appraisal of the facts by the defense led to the argument, as indicated, that willful misconduct was not proven.

58. Bearing in mind that the cassation appeal was declared “formally inadmissible” by the Second Chamber of the Supreme Court of Justice of Mendoza, in accordance with the Criminal Procedures Code of the Province of Mendoza, the IACHR considers that the arguments put forth by the defense questioning aspects of fact and appraisal of evidence were considered by said court as obviously inadmissible. Therefore the court did not begin to analyze the allegations of the merits but rather they were inadmissible *in limine*. This judicial authority’s ruling on the cassation appeal includes motives highlighting that dismissal of the appeals was due to the judicial practice of restrictively interpreting the regulation governing cassation appeals.

59. Thus, the IACHR stresses that the Second Chamber itself indicated that it “could not re-examine or judge the motives comprising the conviction of the lower Court.” The Second Chamber then contended that the appeal had to be dismissed *in limine* because the arguments of the defense “reveal, in short, the discrepancy of the complainant’s assessment with the ruling of the chamber in connection with the evidence incorporated legally into the discussion.” The Commission also underscores that the Second Chamber is confined to determining if the Chamber’s judgment was motivated, providing a record of said motivation in the points of law alleged by the defense but without conducting any assessment on said motivation let alone a second court ratification (*doble conforme*) in terms of its contents.

60. As indicated earlier, the cassation appeal is the ordinary remedy to be filed against a judgment of conviction, and therefore it is the main one that must be analyzed in the light of Article 8.2 h) of the Convention.

61. The above is consistent with what was indicated by the IACHR and the Inter-American Court regarding the extraordinary appeal, which is ruled upon by the same court that issued the judgment that is being challenge and, if it is admitted, its merits are decided by the Supreme Court of Justice of the Nation.⁵² In particular, the Court indicated that said remedy does not constitute a way to challenge criminal proceedings and that “the causal elements that condition the admissibility of such a remedy are limited to review issues relating to the validity of a law, treaty, or constitutional provision, or the arbitrariness of a judgment, factual and evidentiary issues, as well as those of a non-constitutional legal nature.”⁵³

62. Without detriment to the above, the Commission also takes into account that the extraordinary appeal filed by Mr. Gorigoitia was declared formally inadmissible by the Supreme Court of Justice of the Province of Mendoza, following the doctrine of arbitrariness drawn up by the Supreme Court of Justice of Argentina. This inadmissibility was ratified afterwards by this High Court with a ruling of inadmissibility for the complaint appeal. Thus the extraordinary appeal was dismissed *in limine*.

63. By virtue of the considerations above, the Commission concludes that Mr. Gorigoitia did not benefit from any appeal filed before a higher-ranking authority that would conduct a comprehensive review of the judgment of conviction against him, including issues of fact and appraisal of evidence alleged by the

⁵² Inter-American Court. *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 103. See also: IACHR, Report No. 173/10, Case 11.618, Oscar Alberto Mohammed, Merits, Argentina, April 13, 2011.

⁵³ Inter-American Court. *Case of Mohamed v. Argentina*. Judgment of Preliminary Objection, Merits, Reparations and Costs. November 23, 2012. Series C No. 255, para. 104.

defense on the basis of a cassation appeal. In that respect, the Commission concludes that the State of Argentina violated, to his detriment, his right to appeal the judgment as set forth in Article 8.2 h) of the Convention, in connection with the obligations established in Articles 1.1 and 2 thereof. The Commission also concludes that, as a result of the limited nature of the cassation appeal and the even more limited nature of the extraordinary appeal, the victim did not have simple and effective judicial remedies in the framework of the criminal proceedings that led to his conviction, in violation also of the right set forth in Article 25.1 of the Convention, in connection with the obligations of articles 1.1 and 2 thereof.

3. Consideration regarding subsequent developments on the right to appeal a judgment

64. The Commission has concluded that the State of Argentina violated the right to appeal the judgment, as enshrined in Article 8.2 h) of the American Convention, to the detriment of Mr. Gorigoitia.

65. These violations did not occur because of an isolated interpretation by a judge in the specific case of the victim, but rather occurred in the context of a legislation and practice that excluded a review of the facts and the appraisal and reception of evidence. Because of this, the Commission concluded that the State failed to fulfill not only the right enshrined in Article 8.2 h) of the American Convention but also the obligation to adopt domestic law provisions as indicated in Article 2 thereof.

66. Bearing in mind the more general scope of these conclusions, the Commission cannot refrain from referring to the developments that have appeared subsequent to the decisions analyzed in the preceding paragraphs. In particular, the Commission highlights the judgment issued by the Supreme Court of Justice of the Nation on September 20, 2006, known as the “Casal judgment.”

67. As indicated in the section on established facts, on the basis of this decision, the Supreme Court of Justice of the Nation reviewed the judicial practice of the courts in Argentina, especially the Court of Criminal Cassation Appeals, regarding the restrictive interpretation of the norms governing the cassation appeal and the resulting denial of said appeal when a request was made to review the issues involving facts or appraisal of evidence. Taking into account the relevant provisions of international human rights law and expressly mentioning Article 8.2 h) of the American Convention and Article 14.5 of the International Covenant on Civil and Political Rights, the Supreme Court of Justice of the Nation indicated the need to change this restrictive interpretation for a broader one that would not confine the review to issues of law, but rather would include those issues of fact or appraisal of evidence, with the limitation to what is exclusively reserved to those who have been present as judges in the oral proceedings.⁵⁴

⁵⁴ Some relevant excerpts of the decision:

[I]t must be interpreted that Article 8.2 h) of the Convention and Article 14.5 of the Covenant [International Covenant on Civil and Political Rights] require the review of all that is not exclusively reserved to those who have been present as judges in the oral proceedings. This is the only thing that cassation appeal judges cannot assess, not only because it would nullify the principle of transparency, but also because they do not directly examine it; in other words, regarding them there is a real limitation in terms of knowledge. It directly involves a factual limitation, imposed by the nature of things, and which must be assessed in each case.

(...)

Although it is certain that this can only be established in each case, what is certain is that, in general, there is not much present in the characteristic of the knowledge coming exclusively from the intermediation. As a rule, a large part of the evidence can be found in the case itself recorded in writing, whether as a document or expertise. The principal question is generally confined to witnesses.

(...)

[I]n short, it must be understood that Article 456 of the Criminal Procedures Code of the Nation must be construed to mean that it authorizes a broad review of the judgment, as extensively as possible on the basis of the maximum effort for review by the cassation appeal judges, in line with the possibilities and records of each particular case without magnifying the questions reserved for intermediation, inevitable only because of the prevalence of orality, in conformity with the nature of things.

This understanding is imposed as a result of [...] (b) the practical impossibility of differentiating between issues of fact and law, which inevitably tends to establish a sphere of selective arbitrariness (...).

68. The Commission positively assesses the Casal judgment and views it as a preliminary effort to ensure the compatibility between judicial practices and Argentina's international human rights obligations. The clarification provided by the Supreme Court of Justice of the Nation is especially relevant, in the sense that the distinction between issues of fact and law must not be the determining element for the admissibility of a cassation appeal. The only limitation envisaged in the Casal judgment is the limitation associated with the evidence that was directly heard by the judge present at the oral proceedings, mainly testimonial evidence.

69. Nevertheless, according to available information, on the basis of IACHR's case system and monitoring work, this judgment has not led to sufficient changes in order to address the problems highlighted in the present analysis. One of the obstacles encountered by the Commission to conclude that the State has remedied this problem is the absence of enforceability of the Casal judgment. The Commission observes that the Supreme Court of Justice of the Nation abstained from declaring that Article 456 of the CPPN—governing the admissibility of cassation appeals and which, as indicated, is almost identical in terms of contents to Article 474 of the CPPM—said judgment constitutes a milestone in terms of interpretation but judges are not legally bound to enforce it.⁵⁵ Even further, the Commission notes that the milestone in terms of interpretation provided by the Casal judgment is not evident in the standard's wording.

70. It should be mentioned that, in 2010, the Human Rights Committee of the CCPR referred to the persistence of problems that prevent a substantive review of the judgments of conviction in Argentina. According to the above-mentioned Committee:

The Committee notes with concern the absence of procedural law and practice that would guarantee the effective implementation of the right set out in article 14, paragraph 5, of the Covenant throughout the country (article 14 of the Covenant). The State party should take the necessary and effective measures to guarantee the right of every person who is convicted of a crime to have the conviction and sentence reviewed by a higher tribunal. In this connection, the Committee recalls its general comment No. 32 on the right to equality before courts and tribunals and to a fair trial, which emphasizes, in paragraph 48, the need to review substantively the conviction and sentence.⁵⁶

71. Afterwards, in 2013, the Inter-American Court issued its judgment in the case of *Mendoza et al.*, adopting the same stance as the IACHR regarding the Casal judgment. With respect to this, it pointed out that it "assesses positively the Casal judgment [...] with regard to the criteria it reveals with regard to the scope of the right to appeal the judgment before a higher judge or court." The Court considered "that judges in Argentina must continue exercising control of conformity with the Convention in order to ensure the right to appeal a judgment pursuant to Article 8(2)(h) of the American Convention." Without detriment to the above, it instructed, as a reparation measure, the State to adapt its domestic laws to the parameters of the present court's case law on the right to appeal the judgment before a judge or higher court.

72. Although the Inter-American Court called upon judicial authorities to monitor the enforcement of conventions regarding this, and in any case considered it was necessary to order, in the light of Article 2 of the Convention, an adaptation of the legal regulatory framework in line with the parameters of the judgment.

⁵⁵ In the "Casal" judgment, it is indicated that Article 456 of the CPPN permits a restrictive interpretation but also admits a broad interpretation. In the words of the Supreme Court of Justice of the Nation: "(...) it is clear that, in the text of subparagraph 2 of Article 456 of the CPPN, there is nothing preventing another interpretation. The only thing that determines a restrictive interpretation of the scope of the cassation appeal is the legislative and historical tradition of this institution in its original version. The wording itself allows both a restrictive and a broad interpretation: the semantic resistance of the text is not altered nor does it go beyond the latter (...)."

⁵⁶ Human Rights Committee. Concluding observations on Argentina. CCPR/C/ARG/CO/4. 31 March 2010. Para. 19.

VI. CONCLUSIONS AND RECOMMENDATIONS

73. The Commission concludes that the State of Argentina is responsible for violating the rights to appeal the judgment and to judicial protection as enshrined in Article 8.2 h) and Article 25.1 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 thereof, to the detriment of Oscar Raúl Gorigoitia.

74. By virtue of the conclusions above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF ARGENTINA

1. Order the measures needed for Mr. Gorigoitia, if he wishes, to file an appeal whereby he can obtain a broad review of the judgment of conviction, pursuant to Article 8.2 h) of the American Convention.
2. Provide comprehensive reparations for the violations declared in the present report, including tangible or intangible damages.
3. Order the legislative measures needed to adjust domestic law regarding cassation appeals to the standards set forth in the present report on the right enshrined in Article 8.2 h) of the American Convention. Furthermore, apart from the adjustment of the regulatory framework, ensure that judicial authorities exercise control over the enforcement of conventions when ruling on appeals against judgments of conviction in line with the standards set forth in the present report.