

**REPORT No. 121/10**  
CASE 12.431  
MERITS (PUBLICATION)  
CARLOS ALBERTO MOJOLI VARGAS  
PARAGUAY  
October 23, 2010

**I. SUMMARY**

1. On June 12, 2001, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition from Mr. Carlos Alberto Mojoli Vargas (hereinafter “the alleged victim” or “Mr. Mojoli”), against the Republic of Paraguay (hereinafter “the State” or “Paraguay”), setting out a series of allegations against the State and which he describes as persecution instituted against him, whereby: he was allegedly arbitrarily suspended from his position as a member of the Superior Court of Electoral Justice of the Republic of Paraguay (hereinafter “TSJE”) and purportedly later coerced into resigning that position; he was allegedly implicated in four court cases for different matters; and he and members of his family were allegedly the target of threats, harassment, and sundry acts of intimidation.

2. In consideration of this, Mr. Mojoli alleges violations of his right to humane treatment (Article 5), of the right to a fair trial (Article 8), of the principle of legality and freedom from *ex post facto* laws (Article 9), of the right to privacy (Article 11), and of the right to judicial protection (Article 25), as set forth in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). In Admissibility Report No. 84/03, the Commission found that the alleged victim’s claims described incidents that could tend to establish a violation of the rights guaranteed by Articles 8, 9, 11, 25, and 1.1 of the Convention.

3. The State maintains that, as a result of his own actions, the alleged victim was punished by the Supreme Court of Justice (hereinafter “CSJ”) and that through the Superintendency Council of the Supreme Court of Justice (hereinafter “CSCSJ”), proceedings for his removal from office began. The State also says that Mr. Mojoli resigned his position because he had problems with all the country’s political parties and with the courts, and that there were no irregularities in the administrative and judicial proceedings brought against Mr. Mojoli.

4. The Commission concludes that in the case at hand, there was a violation of Mr. Mojoli’s right to a fair trial as enshrined in Article 8.1 of the American Convention, in conjunction with Article 1.1 thereof, by adopting an administrative sanction against him without affording him due procedural guarantees. On the other hand, the Commission concludes that it lacks sufficient evidence to determine the alleged violation of Article 8 of the Convention in connection with Article 1.1 of the same instrument regarding the proceedings for perverting the course of justice, and for falsifying a public document. Likewise, it concludes that the State did not violate the right to an effective remedy, as enshrined in Article 25 of the American Convention, in conjunction with Article 1.1 thereof, in the unconstitutionality suit lodged against Resolution No. 136 of March 22, 1999; and concludes that the State of Paraguay did not violate Articles 9 and 11 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Mr. Mojoli.

5. As noted in Chapter VII of this Report, after evaluating the steps taken by the State to implement its recommendations, the Commission declared them implemented and decided not to refer the case to the Inter-American Court of Human Rights.

## II. PROCESSING BY THE COMMISSION FOLLOWING THE REPORT ON ADMISSIBILITY

6. The Commission adopted Report on Admissibility No. 84/03 on October 22, 2003, in connection with the allegations relating to: (i) the violations alleged by Mr. Mojoli in the adoption of Resolution No. 136, issued by the Superintendency Council of the Paraguayan Supreme Court on March 22, 1999; (ii) the proceedings in the unconstitutionality suit filed by Mr. Mojoli against that resolution; (iii) the trial for perverting the course of justice brought against Mr. Mojoli as ordered by that resolution; and (iv) the pending proceedings against Mr. Mojoli for falsifying a public document; and in connection with Articles 8 (right to fair trial), 9 (principle of legality and freedom from *ex post facto* laws), 11 (right to privacy), and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1.1 thereof. That report was conveyed to the parties in a communication dated October 27, 2003.

7. In a communication received on December 30, 2003, the alleged victim submitted his comments on Report No. 84/03, which were forwarded to the State on February 9, 2004. On March 31, 2004, the State requested a 45-day extension of the deadline for returning its comments on Mr. Mojoli's submission, which was granted in a communication dated April 6, 2004. The IACHR received the State's additional comments on May 26, 2004, and the documentary evidence underlying those comments on June 4, 2004, which were forwarded to Mr. Mojoli on July 12, 2004.

8. The alleged victim submitted additional comments on July 19 and August 11, 2004, which were conveyed to the State on March 15, 2005. In a letter dated March 18, 2005, the Commission made itself available to the parties with a view to reaching a friendly settlement.

9. On April 20 and September 8, 2005, the alleged victim submitted additional information, which was conveyed to the State on April 20 and October 12, 2005, respectively. On November 21, 2005, the State sent the IACHR additional information, which was forwarded to Mr. Mojoli in a communication dated January 10, 2006. The IACHR received the comments of the alleged victim on February 23, 2006, which were conveyed to the State on March 14 of that year. In turn, the State submitted documents on June 21, 2006, which were forwarded to Mr. Mojoli on August 29, 2006.

10. In a communication dated August 30, 2006, the alleged victim submitted additional comments and documents, which were conveyed to the State on October 3, 2006, with a deadline of one month for returning its comments. Similarly, on October 2, 2006, the IACHR received documents sent by Mr. Mojoli. The State submitted additional information in a communication dated November 6, 2006.

11. On July 17, 2007, the IACHR reminded the State of the deadline given in its communication of October 3, 2006. The State submitted a communication to the IACHR on July 25, 2007. By means of a communication dated October 9, 2007, the State returned its comments on the alleged victim's submission of August 30, 2006, which were forwarded to Mr. Mojoli on October 18, 2007.

12. The State submitted a further set of comments on October 25, 2007, which were conveyed to Mr. Mojoli on November 16 of that year. The alleged victim submitted comments in a communication dated November 14, 2007, which were forwarded to the State on December 11 of that year. The IACHR received two further communications from the alleged victim on January 25 and April 3, 2008.

13. In a submission dated March 24, 2008, the State again sent additional comments on the merits, which were forwarded to Mr. Mojoli in a letter of April 2, 2008. Subsequently, on June 14, 2008, the IACHR received another communication from the alleged victim, which was conveyed to the State on September 10, 2008, with a one-month deadline for returning its comments. On October 24 and December 22, 2008, the State submitted information to the IACHR, which was forwarded to Mr. Mojoli on January 7, 2009.

14. In a communication of February 2, 2009, the IACHR asked both Mr. Mojoli and the State for up-to-date information and documentary evidence in connection with the proceedings for the alleged crimes of perverting the course of justice and falsehood in public documents. Mr. Mojoli submitted information on February 4 and 13, 2009, as did the State on April 29, 2009.

### III. POSITIONS OF THE PARTIES

#### A. Alleged victim

##### 1. Regarding Resolution No. 136 of the Superintendency Council of the Supreme Court of Justice of March 22, 1999

15. The alleged victim claims that on March 22, 1999, the Superintendency Council of the Supreme Court of Justice issued Resolution No. 136,<sup>1</sup> imposing disciplinary sanctions on Expedito Rojas and Carlos A. Mojoli, members of the Superior Court of Electoral Justice, and Mr. Samuel Martínez Hustin, member of the Electoral Court of Misiones. Those sanctions were for having set up an *ad hoc* court and issuing Resolution No. 17 of March 17, 1999,<sup>2</sup> (instructing the Colorado Party to convene a Special General Convention to amend its party bylaws), its amendment of March 18, 1999,<sup>3</sup> (stating that TSJE member Alberto Ramírez Zambonini refused to sign the resolution and replacing him with Samuel Martínez Hustin, a member of the Electoral Court of Misiones), and Resolution No. 18 of March 18, 1999,<sup>4</sup> (ordering protective measures for the assets of the electoral justice system) in flagrant violation of the legal provisions governing replacements<sup>5</sup> and abuses of authority in the exercise of functions.

16. The alleged victim states that Resolution No. 136 of March 22, 1999, fined the members of the TSJE who had signed the earlier resolutions 30 times the minimum legal daily wage and suspended them from duties for 30 days. Mr. Samuel Martínez Hustin, a member of the Electoral Court of

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<sup>1</sup> Resolution No. 136 of March 22, 1999, issued by the Superintendency Council of the Supreme Court of Justice:

HAVING SEEN: Resolution No. 17 of March 17, 1999, and its amendment of March 18, and Resolution No. 18 of March 18, 1999, issued by Messrs. Expedito Rojas and Carlos A. Mojoli, members of the Superior Court of Electoral Justice, and Mr. Samuel Martínez Hustin, member of the Electoral Court of Misiones; and,

WHEREAS: The aforesaid resolutions were issued in flagrant violation of the legal provisions governing replacement as provided for by Article 8 of Law No. 635/95, "On Regulating the Electoral Justice System," and they constitute an abuse of authority in the exercise of their functions.

The Supreme Court of Justice, through the Superintendency Council, is responsible for supervision and disciplinary oversight over all agencies of the judiciary, pursuant to the terms of Article 259.1 of the National Constitution, in conjunction with Articles 27, 232, and 233 of Law No. 879/81, "Code of Judicial Organization," and Articles 4 and 23.a of Law No. 609/95, "On Organizing the Supreme Court of Justice."

<sup>2</sup> Resolution No. 17 of March 17, 1999:

Instructing the Executive Committee of the Colorado Party National Republican Association to convene a Special General Convention to reform the party bylaws, to bring them into line with the provisions of Article 118 and 119 of the National Constitution and Articles 32.e and 32.f of Law 834, and to establish the number of members who are to comprise the Court of Honor.

<sup>3</sup> Amendment of Resolution No. 17 of March 17, 1999: "Following the public refusal of Judge Alberto Ramírez Zambonini to sign this resolution, this Court is established with Judge Samuel Martínez Hustin, member of the Electoral Court of San Juan Bautista Misiones. Asunción, March 18, 1999."

<sup>4</sup> Resolution No. 18 of March 18, 1999:

Ordering protective measures for the assets of the electoral justice system, the recovery of goods removed from the electoral justice system, placing the vehicular assets of the transportation department of the electoral justice system in secure keeping, and ordering the commencement of an investigation into the circumstances in which the electoral justice system's goods deposit was breached."

<sup>5</sup> Resolution No. 136 of March 22, 1999, states that replacements are governed by Article 8 of Law No. 635/95, "On Regulating the Electoral Justice System": "Replacement. In the event of the absence, inability, recusal, or disqualification of any of its members, they shall be replaced by the members of the Electoral Courts and, in order, by the judges of the first instance of the same jurisdiction, in accordance with the procedure set in the Code of Civil Procedure."

San Bautista, Misiones, was admonished and fined 30 times the minimum wage. The alleged victim thus holds that Resolution No. 136 was intended to commence a campaign of coercion, intimidation, and persecution against TSJE Judges Carlos A. Mojoli and Expedito Rojas Benítez, with the aim of paralyzing the court and preventing it from discharging its constitutional duties following the murder of Vice President Luís María Argaña and the resignation five days later of President Cubas, who had been in power for six months.

17. He also claims that the Superintendency Council was not the competent body for judging members of the TSJE, since, under Article 255 of the Constitution, that is an exclusive function of the National Congress.<sup>6</sup> He maintains that by issuing Resolution No. 136, the Superintendency Council violated the third paragraph of Article 275 of the Constitution (which states that appeals against the resolutions provided for in the TSJE Law may only be lodged with the CSJ) and Articles 70 to 75 of Law 635 (which only allows appeals against those decisions to be filed through unconstitutionality suits) and, in addition, usurped the authority of the Supreme Court's Constitutional Chamber.

18. Mr. Mojoli claims that the CSCSJ's archives do not contain a valid original copy of Resolution No. 136 and states that the first valid resolution in 1999 is No. 1, dated May 4, 1999, dealing with the case of one Mrs. Rosa Núñez. He also states that according to the CSCSJ's archives, Resolution No. 136 was issued on November 17, 1999.

19. The alleged victim claims that the issuing of Resolution No. 136 violated his right to be heard with due guarantees and within a reasonable time by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him, as enshrined in Article 8.1 of the American Convention. He also holds that it violated Article 8.2.b of the American Convention, which enshrines the accused's right of prior, detailed notification of the charges against him. Contrary to the State's position (which holds that the adoption of the measure did not require the prior summary process described in the Organic Law of the Supreme Court of Justice, because Resolution No. 17 of March 17, 1999, itself contained all the evidentiary elements needed for the adoption of the disciplinary measure), he maintains that prior summary proceedings should have been held and that the resolution violated the right to adequate time and means for the preparation of his defense, as enshrined in Article 8.2.c of the American Convention.<sup>7</sup> In addition, he holds that the resolution violated his right to appeal to a higher court, enshrined in Article 8.2.h of the American Convention, by suspending him from duty even though the resolution had no validity and could not be challenged.

20. Finally, the alleged victim reports that Resolution No. 136 was not enforced, in that he was obliged to resign on April 6, 1999, due to pressure brought to bear by the three branches of government. Further, he claims that following the election, his political and legal persecution continued with the expansion of the charges against him and his prosecution: (1) for his alleged involvement in the assassination of Vice President, in which the charges against the alleged victim and his son, Carlos Daniel Mojoli, were dismissed; (2) for the alleged crime of perverting the course of justice; and, (3) for the crime of sabotaging computer equipment, for which the alleged victim was convicted.

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<sup>6</sup> Article 255 of the National Constitution:

No judge may be accused or interrogated in court for the opinions he may have expressed in the discharge of his duties. He may not be detained or arrested unless he is caught *in flagrante delicto* in relation to a crime meriting a custodial sentence. In this case, the official intervening in the case will place the judge under house arrest, immediately report the case to the Supreme Court of Justice, and submit the case files to the competent judge.

<sup>7</sup> Alleged victim's claims of November 14, 2007.

## 2. Regarding proceedings with the unconstitutionality suit brought by Mr. Mojoli against Resolution No. 136

21. Mr. Mojoli reports that since Resolution No. 136 was in breach of the Constitution and suffered from procedural defects, he filed an unconstitutionality suit against it with the CSJ on March 31, 1999. He says that the first procedural step in those proceedings was an order of May 3, 1999, in which the court requested presentation of the background documents to Resolution No. 136. He reports that during 2001, two of the Supreme Court's justices were recused<sup>8</sup> and that, finally, by notice served on February 8, 2005, he was informed that the proceedings had expired<sup>9</sup> in his unconstitutionality suit.<sup>10</sup>

22. The alleged victim adds that on March 10, 2005, he filed an appeal against the CSJ's decision to declare his unconstitutionality suit expired;<sup>11</sup> this appeal was based on the fact that the final formality in the case was not the order of May 3, 1999, but that there were other later ones, including: the recusal of Justice Lezcano Claude; the order of August 2, 2001, whereby Dr. Jerónimo Irala Burgos was to join the Constitutional Chamber; the recusal of Dr. Sapena Brugada; and the request made by Mr. Carlos A. Mojoli on September 17, 2003, for him to be shown the case documents.

23. He states that between 1999 and 2004, Secretary Héctor Fabián Escobar Díaz failed to comply with the order of May 3, 1999, as a result of which the background documents to Resolution No. 136 were not added to the case file. He says that in the appeal he lodged, he argued that expiration was inadmissible since Article 176 of the Code of Civil Procedure (hereinafter "CPC") states that expiration shall not occur when any resolution is pending in the proceedings and the delay therein is the fault of the judge or the court. According to Mr. Mojoli, the delay in compliance was the fault of either the CSJ's Constitutional Chamber or the Second Judicial Secretariat, which had failed to abide by the terms of the order of May 3, 1999, and because although the law stipulates that such remedies are to be resolved within five days, in the year 2006 he had still not been notified of its resolution.

24. Mr. Mojoli says he was unable to pursue the case because he had no access to it, since it was sent to the "Admissibility Office" created by the CSJ in either 2001 or 2002. He claims that this Admissibility Office was not created by a law or an agreement of the CSJ, and that legal practitioners were denied access to it. He says that under Articles 131 and 132 of the Code of Criminal Procedure in force at the time (hereinafter "CPP"), access to case files was to be secured through the Secretariat and that, prior to this resolution by the CSJ, in September 2003, he filed a written request with the CSJ's Second Judicial Secretariat for the exhibition of the case file, but that his request was denied.

25. He also states that his appeal against the expiration decision invoked the legal absurdity of pursuing a case file "kept at the Admissibility Office" to which he did not have access and consequently impeding his right of legal defense; in addition, he asked for the procedural deadlines to be extended until five days after he was given the case file.

26. The alleged victim explains that in Paraguay, unconstitutionality suits are governed by Articles 550 to 564 of the Code of Civil Procedure and that under Article 554 of the CPC, the Supreme Court was required to issue its ruling in the form of a Final Agreement and Judgment within a period of 30

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<sup>8</sup> The alleged victim refers to the notification of September 13, 2001, from the Supreme Court of Justice.

<sup>9</sup> The alleged victim refers to Article 172 of the Code of Civil Procedure: "Expiration of proceedings. Period: Expiration shall apply in suits of all kinds when proceedings are not pursued during a period of 6 months. This period shall be set by the general laws on statutory limitations, should that period be shorter."

<sup>10</sup> The alleged victim refers to the Notice of the Supreme Court of Justice, dated February 8, 2005, reporting that on October 6, 2004, the Supreme Court issued AI No. 1506 in the proceedings titled "Unconstitutionality Action: Against Resolution No. 136 of March 22, 1999, issued by the Superintendency Council of the Supreme Court of Justice."

<sup>11</sup> Appeal lodged against "AI 1506 re Article 172 of the Code of Civil Procedure. Allegation of defenselessness and falsification of clerk's report, and challenge of that clerk. Requesting his separation from the case pursuant to Article 39 of the Code of Criminal Procedure."

days.<sup>12</sup> He thus maintains that had the order of May 3, 1999, been complied with, notice of the filing should have been given to the Attorney General and the necessary evidence should have been ordered, for the subsequent issuance of the Agreement and Judgment. Consequently, the alleged victim holds that the failure to resolve his unconstitutionality suit violated his right to judicial protection, as enshrined in Article 25 of the American Convention.

**3. Regarding the prosecution for perverting the course of justice brought against Mr. Mojoli pursuant to Resolution No. 136**

27. As stated in Resolution No. 136, the Superintendency Council sent the background documents to the duty criminal judge for him to investigate the possible commission of the crime of perverting the course of justice. Mr. Mojoli states that summary proceedings began on March 30, 1999, and, on August 6, 1999, he gave a statement to the investigation.

28. The alleged victim claims that although the criminal prosecutor in the case and the representative of the defense requested the provisional dismissal of Mr. Mojoli from the proceedings in May 2000, the criminal court hearing the case rejected their request.

29. The alleged victim holds that the resolutions of a duly established court whose members are unanimous in their resolution cannot constitute a perversion of justice by only one of its members, and that in the case at hand, criminal charges were only brought against him. In addition, he holds that perverting the course of justice is a crime committed by a judge who rules in breach of law on behalf of one of the parties, but that Resolution No. 17 of March 17, 1999, had no litigating parties: it was an administrative resolution that, based on the Constitution and on law, demanded a modification of the party bylaws governing the proportional representation system.

**4. Regarding the pending proceedings for falsifying a public document against Mr. Mojoli**

30. The alleged victim claims that on May 16, 1997, Mr. Julio Ramón Gavilán Giménez filed a complaint regarding the possible commission of falsehood in Study Certificate No. 286/90, issued by the Law School of the National University of Asunción (hereinafter "UNA") on June 13, 1990. The certificate in question covered Carlos Alberto Mojoli Vargas's law studies, and he used it in his candidacy for a position on the TSJE's bench. According to the alleged victim, this complaint led to the judicial proceedings "Background to an alleged falsification of a public document," in which no legal formalities to clarify the matter were ever ordered and which was used solely as the base for libelous and defamatory comments against him in the press at the urging of politicians who did not want him to continue organizing the May 1998 elections.

31. He claims that although on March 9, 2000, the judge resolved to open summary proceedings to investigate the complaint, he was not indicted not until July 25, 2002, even though by that time statutory limitations applied to the proceedings. He claims that as a result of the court's resolution of July 25, 2002, (whereby he was indicted) and of the change in the title of the proceedings<sup>13</sup> ordered by the

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<sup>12</sup> The alleged victim refers to Article 554 of the CPC:

Substantiation. The Supreme Court shall substantiate the filing by hearing the Attorney General, in the case of actions of the legislative, executive, or judicial branches. In addition, as applicable, the legal representatives of municipalities or corporations, or the public officials who exercise the public authority from which the action arises, shall also be heard, and shall be cited and summoned at the seat of their position, to reply within a period of eighteen days.

Should there be any matters of fact requiring clarification or substantiation, the Court shall order such actions for properly deciding the case as may be necessary.

The Court shall issue its ruling as a Final Agreement and Judgment within a period of thirty days.

<sup>13</sup> The alleged victim identifies these proceedings as AI 616/2002.

Sixth Sentencing Judge on March 31, 2002, a new set of proceedings began under the title “Carlos Alberto Mojoli re falsehood in particulars,” in spite of the fact that “falsehood in particulars” is not a crime and, in so doing, the State acted in breach of Article 9 of the American Convention.

32. He further maintains that the sentencing judge lacked the authority to order an expansion of the summary proceedings since, under the new CPP, only guarantee judges are competent to bring prosecutions against individuals.<sup>14</sup> He explains that under Law 1444/99 (Article 15) and Agreements Nos. 154 (Article 24) and 155 (Article 1) of February 21, 2000, sentencing judges may only conclude cases initiated under the CPP of 1890 and may not initiate new proceedings.

33. The alleged victim maintains that this case was a result of the judicial persecution ordered by the CSJ and that during the summary proceedings, which lasted five years, the UNA’s Law School was at no time asked for an authentic copy of its records to examine whether there were any differences between the original and the copy contained in the case file. In addition, the validity of the study certificate or public document was not challenged in accordance with Article 383 of the Civil Code; neither was the complainant ordered to give a statement of responsibility before the judge to explain the defects in his complaint; and no prosecution was brought against the alleged signatories of an allegedly falsified public document. In a communication dated February 4, 2009, the alleged victim told the IACHR that as of that date, he had not been notified of any decision and that he had been unable to locate the case file.

34. The alleged victim claims that this persecution against him ended his judicial career, which had begun in 1990. In addition, he states that between 1999 and 2000, it was impossible for anyone to hire his legal services because he was being prosecuted, libeled, persecuted, and on the black list of the Supreme Court, which spread rumors and instructions among the judges and courts so that none of Mr. Mojoli’s legal work in the country’s courts could prosper.

35. Based on the foregoing, the alleged victim maintains that his right to privacy, as enshrined in Article 11 of the American Convention, was violated. In addition, the alleged victim states that both his wife and his mother, and his children – particularly Carlos Daniel, who was charged with the murder of Mr. Argaña – suffered as a result of the above facts.

## **B. State**

### **1. Regarding Resolution No. 136 of the Superintendency Council of the Supreme Court of Justice of March 22, 1999**

36. The State says that to understand this case and see it in its proper context, attention must be paid to the developments that led to Paraguay’s greatest political crisis in recent times. In describing the background, the State noted that Mr. Lino César Oviedo Silva was elected, in internal elections of the National Republican Association (hereinafter “ANR”), as that party’s presidential candidate for the 1998 national election. However, Mr. Oviedo was convicted by a Special Military Court on March 9, 1998:

To a prison term of ten years for crimes against the order and security of the Nation’s armed forces and for insubordination, in addition to the consequent civil liability arising from the crime, together with his dishonorable discharge.<sup>15</sup>

37. That conviction was upheld by the Supreme Court of Justice, whereby Lino César Oviedo Silva’s presidential aspirations were curtailed through his exclusion from the Permanent Civil Register, in

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<sup>14</sup> The alleged victim notes that the new Code of Criminal Procedure came into full effect on March 1, 2000.

<sup>15</sup> State’s submission, received on May 26, 2004.

accordance with the applicable legal provisions.<sup>16</sup> Consequently, on April 18, 1998, the Supreme Court of Electoral Justice deleted Mr. Oviedo's electoral registration, whereby he ceased to be the presidential candidate of the ANR for the 1998 presidential election. Under TSJE Resolution No. 54 of April 18, 1998, the ANR's candidates for president and vice president were Raúl Cubas Grau and Luis María Argaña. Finally, following the elections, Mr. Raúl Cubas assumed the office President of the Republic on August 15, 1998.

38. The State reports that after Mr. Raúl Cubas had assumed the presidency, Mr. Mojoli began to adopt positions that were clearly in support of Mr. Oviedo. The State cites a series of chronological facts to justify the foregoing claim, such as TSJE Resolution No. 98 of August 27, 1998, declaring that Mr. Lino Cesar Oviedo Silva was in full enjoyment of his right to vote and be elected to public office in accordance with the presidential pardon granted by Decree No. 117 of August 18, 1998. Similarly, following the CSJ's resolution of December 2, 1998,<sup>17</sup> to admit an unconstitutionality suit brought by the National Congress against Decree No. 117 of August 18, 1998, the TSJE upheld, on February 11, 1999, the request for referral to a superior court and/or filing of appeal brought before that court by Messrs. Lino César Oviedo and José Manuel Bóveda Melgarejo, whereby Messrs. Oviedo and Melgarejo were reinstated in the Permanent Civil Register.<sup>18</sup>

39. The State says that following Mr. Mojoli's repeated disregarding of resolutions and orders from the Supreme Court of Justice, together with his "provocative, defiant, and seditious" statements to the media regarding the CSJ's authority and the validity of its resolutions, it adopted Resolution No. 136 on March 22, 1999, which resolved, *inter alia*, to impose sanctions on Messrs. Expedito Rojas and Carlos A. Mojoli. The State holds that not only did the alleged victim's actions warrant the sanctions imposed, in consideration of the gravity thereof, but that it was also necessary to put a halt to those actions, which were undermining the institutional order and creating legal chaos by disregarding decisions of the Supreme Court of Justice.

40. The State explains that under Paraguayan law, the CSJ, through its Superintendency Council, has the power to "exercise supervision over all agencies of the judiciary," pursuant to Article 259.1 of the Constitution of the Republic.<sup>19</sup> The State also notes that Law No. 609/95, "On Organizing the Supreme Court of Justice," provides that the CSJ, through the Superintendency Council, shall exercise disciplinary and supervisory power over all courts, tribunals, auxiliaries of justice, and officers and employees of the judiciary.<sup>20</sup> Regarding the alleged victim's claims that on account of his position as a member of the TSJE, he could only be punished through impeachment, the State agrees with the alleged victim that this was the procedure that would have been followed if his removal as a judge had been sought. Nevertheless, the State explains that the Superintendency Council did not remove him from his position as judge, but instead imposed sanctions on him and referred the background documents to the criminal courts in light of the gravity of the incident: for that reason, the alleged victim was prosecuted in a

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<sup>16</sup> The State refers to Articles 153, 197, and 223 of the Constitution of the Republic; Article 26 of Law No. 635/95, which regulates the Electoral Justice System; and Articles 55, 149, and 243 of Law No. 834/96, which establishes the Electoral Code. The State also cites Article 228 of the Constitution: "Requirements. To serve as President or Vice President of the Republic the following are required: (...) (3) to be in full enjoyment of civil and political rights." Similarly, the State cites Article 153 of the Constitution: "Suspension of Citizenship. The exercise of citizenship shall be suspended: (...) (3) When the citizen is serving a prison sentence under a judicial conviction."

<sup>17</sup> The State refers to Agreement and Judgment No. 415 of December 2, 1998.

<sup>18</sup> The State refers to TSJE Agreement and Judgment No. 1/99 of February 11, 1999. The State also notes that Dr. Alberto Ramírez Zambonini, a member of the TSJE's bench, dissented from that decision, arguing that the TSJE could not question a ruling of the Supreme Court of Justice on the grounds that it was the Republic's highest court of law.

<sup>19</sup> Article 259.1 of the Constitution of Paraguay: "The Supreme Court of Justice shall have the following duties and powers: (1) To supervise every agency of the judicial branch."

<sup>20</sup> Article 4 of Law No. 609/95: "Disciplinary and supervisory power. The Supreme Court of Justice, through the Superintendency Council, shall exercise disciplinary and supervisory power over all courts, tribunals, auxiliaries of justice, and officers and employees of the judiciary, on the dependant offices thereof, and on other agencies established by law." In addition, the State says that Article 23 of the same law provides: "Duties and powers. The Superintendency Council shall be responsible for: (a) Exercising disciplinary and supervisory power, pursuant to the provisions of Article 4 of this law."

criminal trial and not through summary administrative proceedings. The State therefore holds that the alleged victim's rights under Article 8.1 were not violated.

41. Regarding the alleged victim's claim that prior to Resolution No. 136 he should have faced summary proceedings, the State says that although prior summary proceedings are obligatory in cases of other kinds, there is no summary requirement in the exercise of disciplinary and supervisory power over courts and tribunals. In addition, the State maintains that Resolution No. 17 of March 17, 1999, itself contained all the evidence and arguments necessary for the measure to be adopted.

42. The State reports that the request for disciplinary measures was made by the conventional representative of the ANR, which was affected by the terms of Resolution No. 17 of March 17, 1999, issued by Carlos A. Mojoli, Expedito Rojas, and Samuel Martínez Hustin. In the State's view, those judges did not even give the President of the TSJE, Dr. Ramírez Zambonini, the opportunity to express his dissenting vote, as they should have; instead, they replaced him, in violation of the applicable legal provisions.

43. The State notes that Article 8 of Law No. 635/95, "On Regulating the Electoral Justice System," states that in the event of the absence, inability, recusal, or disqualification of any of its members,<sup>21</sup> they shall be replaced<sup>22</sup> by the members of the Electoral Courts and, in order, by the judges of the first instance of the same jurisdiction, in accordance with the procedure set in the Code of Civil Procedure. In connection with this, it holds that Dr. Ramírez Zambonini was neither absent, nor unable, nor recused, nor in any way disqualified as provided for in the CPC in such a way as to warrant his replacement by one of his peers. The State maintains that as a result of this, and because of the irregular composition of the TSJE in issuing Resolution No. 17 of March 17, 1999, and Resolution No. 18 of March 18, 1999, Mr. Mojoli incurred in an abuse of authority in the exercise of his functions. The State points out that Mr. Mojoli was a member of the TSJE, attached to the judiciary, and it consequently denies the alleged victim's claims that the disciplinary measures were applied as a form of political revenge.

44. Regarding the alleged victim's claims that the adoption of Resolution No. 136 violated his right of defense, the State holds that Mr. Mojoli was at no time denied that right: on the contrary, it was he himself who failed to make use of it through his own negligence and, consequently, the resolution challenged by the alleged victim was issued. In addition, it maintains that the alleged victim is attempting to establish a nonexistent causal link between the sanction he received under Resolution No. 136 and his subsequent resignation, since Mr. Mojoli resigned after representatives of the Authentic Liberal Party filed for his impeachment and two committees of the Chamber of Deputies ruled in favor of admitting the impeachment request.<sup>23</sup>

45. In its claims on the merits, the State upholds the validity of Resolution No. 136 and explains that there were indeed two resolutions with that same number and different dates. It explains that the doubled number was because the Superintendency Council currently keeps two folders by number: one with administrative resolutions (purchases by the judiciary, scholarships, traveling expenses, etc.) and another containing its resolutions of a jurisdictional nature (warnings, sanctions, etc.). The State notes that when the resolution affecting Mr. Mojoli was adopted, the Superintendency Council had only

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<sup>21</sup> The State refers, in its submission of October 9, 2007, to Article 20 of Code of Civil Procedure in force in Paraguay (grounds for disqualification or recusal).

<sup>22</sup> The State refers, in its submission of October 9, 2007, to Article 200 of Law No. 879/81 "Code of Judicial Organization" (replacement of judges and officers of the judiciary).

<sup>23</sup> In its communication of June 3, 2004, the State reports that the two were the Committee on Constitutional Affairs and the Committee on Petitions, Powers, and Procedure.

one folder with continuous numbering. The State explains that in May 1999, it began to categorize its resolutions as described above. The State notes that the resolution affecting Mr. Mojoli is not the only one with a duplicate number, since the same categorization process was applied to other resolutions, creating a situation that in no way undermines the legal validity of the Superintendency Council's resolutions. The State maintains that what matters in this case is that the persons who issued it were empowered to do so and its existence and content were reaffirmed, as a result of which its existence, applicability, and validity cannot be challenged.

**2. Regarding proceedings with the unconstitutionality suit brought by Mr. Mojoli against Resolution No. 136**

46. Regarding the unconstitutionality suit filed by the alleged victim against Resolution No. 136, the State holds that although it was processed slowly, that in no way injured Mr. Mojoli's interests since he had resigned from his position as a member of the TSJE. The State explains that in civil proceedings, the initiation of action is the responsibility of the parties; thus, if the Court failed to abide by its own order, it fell to the interested party to pursue proceedings with effective and timely demands pursuant to Article 412 of the Code of Civil Procedure.<sup>24</sup> The State explains that the special demand means that the filing must specify the obstacle to be removed (in the case at hand, for example, it would be for the relevant document to be drawn up and referred to the Court's Superintendency Council for conveyance of the background documents sought), but the case file does not indicate any demand of that kind made by Mr. Mojoli.

47. In addition, the State indicates that access to the Supreme Court's case files is computerized. Thus, access is not achieved by mere sight of the documents; instead, the officer in charge of the system informs the applicant appealing to the Secretariat of the last order issued, the current location of the case file, and the reason for it being there. The State clarifies that the filing of a demand is independent of the possibility of securing access to the judicial file. The State holds that Mr. Mojoli was negligent in pursuing the procedure, in that he merely requested exhibition of the documents instead of filing demands, as required by law, which led to the expiration of the proceedings.

**3. Regarding the prosecution for perverting the course of justice brought against Mr. Mojoli pursuant to Resolution No. 136**

48. The State holds that the criminal proceedings culminated with the adoption of Final Sentence No. 8 on March 25, 2003, by the Seventh Criminal Sentencing Court, whereby Mr. Mojoli was acquitted.<sup>25</sup> The State notes that this judgment is final and covered by a writ of execution. The State maintains that the criminal trial was based on information placed before the regular courts, and that its competent agencies acted in accordance with the terms of the 1890 Code of Criminal Procedure. It holds that the investigation was based on reasonable evidence of suspicion regarding the facts examined in the proceedings. However, the court's decision to acquit Mr. Mojoli was based on the absence of a punitive goal sought by the Public Prosecution Service, which, in the State's view, reaffirms that the alleged victim's procedural rights were respected.

**4. Regarding the pending proceedings for falsifying a public document against Mr. Mojoli**

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<sup>24</sup> Article 412 of the Code of Civil Procedure:

Should the deadline for issuing a resolution pass without the judge or court doing so, a request may be lodged by any of the parties at trial. Counsel shall be obliged to request prompt dispatch from the judge or tribunal; and, should a response not be forthcoming, he shall reiterate the request within the following ten days [...] Should the judge or tribunal not issue a resolution within the following twenty days, he shall lodge a complaint with a higher court, except when the court that has incurred in the delay is the Supreme Court of Justice [...].

<sup>25</sup> Communication from the State, received by the IACHR on October 25, 2007.

49. In connection with the proceedings for falsifying a public document brought against the alleged victim, the State notes that Mr. Mojoli bases the alleged violation of the principle of legality on the breach of two provisions of Paraguayan criminal law by Sentencing Judge Sandra Farías de Fernández: (1) charges filed for an alleged crime that was not covered in either the Criminal Code in force up until November 26, 1997, nor in the one that replaced it (Law No. 1160/97), and, (2) the reopening of proceedings to which statutory limitations had already applied, even though more than six months had gone by without the Public Prosecution Service pursuing the criminal trial, as stipulated by Law No. 1444/99.<sup>26</sup>

50. The State holds that the action described as the alleged crime of falsehood in or falsification of a public document with which Mr. Mojoli was charged is covered by both the 1914 Criminal Code (Article 232)<sup>27</sup> and in Law No. 1160/97, enacting the new Criminal Code of the Republic of Paraguay (Articles 250, 251, and 252), which came into force in 1998. The State notes that this trial predates his other criminal cases: in other words, it dates from a time when the alleged victim had no quarrel with the sectors that brought the various actions in which he is and has been involved. The public prosecutor responsible for the investigation issued Ruling 993 on August 19, 1999, requesting that charges be brought against Mr. Carlos A. Mojoli, proposing the preparation of summary proceedings, and summoning the defendant to give a statement to the investigation.

51. The State reports that the court issued Interlocutory Order No. 5 on March 9, 2000, resolving to commence summary proceedings to investigate the alleged publicly actionable crime and to identify and punish the perpetrator(s), accomplices, and accessories after the fact and summoning Mr. Carlos A. Mojoli to give a statement for information purposes (it did not proceed with his indictment). Later, several formalities were carried out in the summary proceedings, as a result of which the prosecutor requested the indictment of Mr. Carlos Alberto Mojoli Vargas in Ruling No. 60 of November 13, 2000; this was ultimately resolved by the judge in a resolution of July 25, 2002, in which charges were brought against the alleged victim.

52. Regarding the claims about a change in the title of the proceedings from “Background to an alleged falsification of a public document” in the year 2002 to “Carlos Alberto Mojoli re falsehood in particulars,” the State explains that the crimes described in the 1914 Criminal Code were not given names; but that the situation is different under Law No. 1160/97, where specific names are given to each criminal offense. Regarding the charges made against Mr. Mojoli for “falsehood in particulars,” the State notes that the title of the case file is a mere administrative formality since, as provided for by Article 17.2 of the Constitution of the Republic, a person facing trial is entitled to be given prior, detailed knowledge of the charges against him – in other words, of the facts under investigation and in which he is a suspected perpetrator, accomplice, or accessory.

53. The State claims that the criminal prosecution of Mr. Carlos A. Mojoli presents no problems of irregularity that could entail a violation of any right or procedural guarantee enshrined in the Constitution of the Republic, in current international law, or in the 1890 Code of Criminal Procedure.

54. The State holds, in connection with the admissibility or inadmissibility of statutory limitations in the criminal action as argued by the alleged victim, that this is a matter to be resolved by the judge in his final ruling in the case, since there is no uniform way for calculating the deadline whereby those circumstances apply. The State notes that from the prosecutor’s filing of the ruling that he submitted to the court on December 26, 2001, up to the decision challenged by the alleged victim (Interlocutory Order No. 616 of July 25, 2002), the prosecutor’s office requested that numerous formalities be pursued.

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<sup>26</sup> Law No. 1444/99, which regulates the “Transition to the New Criminal Procedural System,” is applicable to criminal proceedings since July 9, 1999.

<sup>27</sup> The State refers to Article 232, which provides that: “Any other person who commits falsehood in a public document in any of the ways listed in Article 229 shall be punished by a prison term of two to four years.” Article 229 refers to: “The public official or notary [...].”

55. The State also notes that according to two Agreements of the Supreme Court of Justice,<sup>28</sup> legal and procedural deadlines do not run during the month of January, since that is a period during which the regular activities of all the Republic's courts and tribunals come to a halt and they deal exclusively with urgent criminal matters. Thus, in calculating the time needed for a publicly brought criminal action with unidentified defendants to be sent to the archive or to expire, the month of January is not taken into consideration.

56. The State points out that in the case at hand, the final formality is the prosecutor's ruling of December 26, 2001, which was admitted by the judge in the order of February 4, 2002. In connection with this, the State explains that under Article 144 of the 1890 Code of Criminal Procedure (applied retroactively by Articles 1 and 2 of Law No. 1444/99), formalities may only take place when so ordered by the trial judge. The State holds that Interlocutory Order No. 616 of July 25, 2002, was issued before the circumstances provided for in Article 7 and the corresponding Article 8 of Law No. 1444/99 could operate. This result is obtained by calculating the time from the prosecutor's ruling of December 26, 2001, to February 4, 2002, which gives a total duration of five months and twenty-two days. The State later reported that these proceedings were at the plenary stage, pursuant to AI No. 37 of March 12, 2004.<sup>29</sup>

57. The State claims that when the IACHR resolved to admit the petition, criminal formalities were still pending before domestic venues. In connection with that, the State claims that the Public Prosecution Service has not admitted any complaint for the incidents described by the alleged victim and that reportedly violated his rights, in which he himself could identify the suspected perpetrators, given the essentially personal nature of criminal law, in accordance with Article 106 of the Constitution, which establishes: "The direct responsibility of the public official and the subsidiary responsibility of the State." The State holds that were the Commission to decide to refer this case to the Inter-American Court of Human Rights, it would be subrogating powers of a State's domestic law, under an alleged violation of Articles 8, 9, 11, and 25 of the American Convention.<sup>30</sup>

#### **IV. MERITS**

##### **A. Considerations of fact**

##### **1. Context**

58. The information furnished by the parties, and the general information available to the IACHR, indicates that in 1997, Gen. Lino Oviedo Silva was elected, in the internal primaries of the National Republican Association (ANR), to be that political party's candidate in the 1998 presidential election. However, on March 9, 1998, a special military court sentenced Gen. Oviedo to ten years in prison for the crimes of rebellion and insubordination.<sup>31</sup> Since this conviction was upheld by the Supreme Court of Justice on April 17, 1998,<sup>32</sup> the Supreme Court of Justice Electoral proceeded to delete his electoral registration under Resolution No. 54 of April 18, 1998.

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<sup>28</sup> Agreements No. 7 of May 10, 1946, and No. 3 of November 26, 1983.

<sup>29</sup> Reported by the State in its communication of October 9, 2007, received by the IACHR on October 25, 2007.

<sup>30</sup> Claim made by the Government in a communication received by the IACHR on March 26, 2008.

<sup>31</sup> IACHR, *Annual Report 1998*, OEA/Ser.L/V/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region (Paraguay), paragraph 16.

<sup>32</sup> The Supreme Court found that the judgment of March 9, 1998, was in accordance with law, including the accessory penalties of dishonorable discharge from the armed forces and the suspension of his civil and political rights. See: OEA/Ser.L/V/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region, paragraph 16.

59. On August 18, 1998, the newly elected President of the Republic of Paraguay, Raúl Cubas, issued Decree No. 117 whereby he commuted Gen. Lino César Oviedo Silva's punishment.<sup>33</sup> In addition, the Decree ordered the "disappearance" of the accessory penalties of dishonorable discharge and suspension of civic rights handed down against the convicted men.<sup>34</sup> Consequently, on August 27, 1998, the TSJE issued Resolution No. 98, ruling that Gen. Lino César Oviedo was in full enjoyment of his rights to vote and to be elected to public office.

60. Against that backdrop, the National Congress, with a clear majority opposed to the President, adopted a Declaration repudiating this decree "for violating express constitutional and statutory provisions, attacking the rule of law, affronting the independence of the judiciary, constituting an abuse of power, and enshrining impunity as the law."<sup>35</sup> In addition, Congress filed an unconstitutionality motion against Decree No. 117 with the CSJ,<sup>36</sup> which was resolved on December 2, 1998, with a ruling that the aforesaid decree was unconstitutional. On February 5, 1999, the new president of the CSJ, Dr. Wildo Rienzi, sent a communication to the Directorate of the Electoral Register seeking compliance with the judgment ordering the two convicted members of the armed forces, including Mr. Oviedo, to be struck from the electoral roll.<sup>37</sup>

61. On February 8, 1999, Mr. Lino César Oviedo sent the TSJE a request for referral to a higher court and/or the lodging of an appeal against compliance with the earlier judgment. On February 11, 1999, the TSJE adopted Agreement and Judgment No. 1/99 of February 11, 1999, with the dissenting vote of Judge Alberto Ramírez Zambonini and the concurring votes of Judges Expedito Rojas and Carlos A. Mojoli, whereby Gen. Lino César Oviedo's name was restored to the Permanent Civil Register. Mr. Carlos A. Mojoli, one of the members of the TSJE who voted to disregard the CSJ's order, publicly stated that the President of the TSJE, Dr. Zambonini, lacked the authority to sign the order, in that he had not been elected in the presence of all the Court's members (at that time, no replacement had been appointed for Dr. Oscar Paciello, a judge of the court who had died in December 1998).<sup>38</sup>

62. On February 12, 1999, the eight members of the Supreme Court of Justice issued a statement admonishing Dr. Carlos A. Mojoli for "disregarding the authority of the highest court of the land" and announcing they would study other measures with respect to him and to Dr. Expedito Rojas, the other electoral judge who voted with him, for noncompliance with their legal obligations.<sup>39</sup>

63. On February 15, 1999, a member of the Chamber of Deputies formalized the request for the impeachment of Judges Carlos Alberto Mojoli and Expedito Rojas of the Superior Court of Electoral Justice for "contempt, perverting the course of justice, frustration of prosecution and criminal enforcement, violation of the principle of legality, and breach of legal obligation."<sup>40</sup>

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<sup>33</sup> In Presidential Decree No. 117, President Cubas commuted the 10-year prison term to three months. OEA/Ser.LV/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region, paragraph 18.

<sup>34</sup> IACHR, *Annual Report 1998*, OEA/Ser.LV/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region (Paraguay), paragraph 18.

<sup>35</sup> National Congress of Paraguay, Declaration No. 1, "Energetically repudiating Decree No. 117 of August 13, 1998, and demanding that the executive revoke it," Article 1, August 19, 1998; OEA/Ser.LV/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region, paragraph 19.

<sup>36</sup> National Congress, Declaration No. 1, "Energetically repudiating Decree No. 117 of August 13, 1998, and demanding that the executive revoke it," Article 5.

<sup>37</sup> IACHR, *Annual Report 1998*, OEA/Ser.LV/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region (Paraguay), paragraph 26.

<sup>38</sup> IACHR, *Annual Report 1998*, OEA/Ser.LV/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region (Paraguay), paragraph 26.

<sup>39</sup> IACHR, *Annual Report 1998*, OEA/Ser.LV/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region (Paraguay), paragraph 27.

<sup>40</sup> IACHR, *Annual Report 1998*, OEA/Ser.LV/II.102, Doc. 6 rev., Chapter IV: Human Rights Developments in the Region (Paraguay), paragraph 28.

## 2. Facts

64. From the copies of the legal proceedings contained in the case file, the information furnished by the parties, and Paraguayan law, the Commission establishes the following facts regarding the standards applicable to the Superior Court of Electoral Justice:

a) Mr. Carlos A. Mojoli Vargas was a member of the Superior Court of Electoral Justice<sup>41</sup> in 1999, along with Judges Expedito Rojas and Alberto Ramírez Zambonini, with the latter serving as President of the Court.

b) The National Constitution of the Republic of Paraguay of 1992<sup>42</sup> (hereinafter “the Constitution”) “establishes the electoral justice system as a part of the judiciary”<sup>43</sup> and regulates the electoral justice system in the following fashion:

### **SECTION V ELECTORAL JUSTICE SYSTEM COMPETENCE**

**Article 273:** The calling, judging, organization, direction, supervision, and oversight of the proceedings and matters arising from general, departmental, and municipal elections, and of the rights and entitlements of the persons elected thereby, shall be the sole competence of the electoral justice system.

It shall also have jurisdiction over matters stemming from any type of popular consultation, as well as over the elections and functioning of political parties and movements.

### **COMPOSITION**

**Article 274:** The electoral justice system shall comprise a Superior Court of Electoral Justice, courts, tribunals, prosecutors’ offices, and other agencies as defined by law, which shall also stipulate its organization and functions.

### **SUPERIOR COURT OF ELECTORAL JUSTICE**

**Article 275:** The Superior Court of Electoral Justice shall comprise three members, to be elected and removed in the fashion established for justices of the Supreme Court of Justice.

Members of the Superior Court of Electoral Justice shall meet the following requirements: be a Paraguayan citizen; be at least thirty-five years of age; hold a university degree in law; and, for at least ten years, have been a practicing lawyer or a law professor or have held judicial office, whether simultaneously, separately, or successively.

The law will establish those cases in which its decisions may be appealed before the Supreme Court of Justice, which shall decide such appeals following summary proceedings.

c) Article 261 of the Constitution, referred to by Article 275, sets rules for the removal and dismissal of Supreme Court justices, stating that “Justices of the Supreme Court of Justice may be removed only through impeachment. Their mandatory retirement age is seventy-five.”

d) Similarly, Article 225 of the Constitution deals with impeachment, stipulating:

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<sup>41</sup> Under Article 275 of the Constitution of Paraguay, members of the Superior Court of Electoral Justice must meet the following requirements: be a Paraguayan citizen; be at least thirty-five years of age; hold a university degree in law; and, for at least ten years, have been a practicing lawyer or a law professor or have held judicial office, whether simultaneously, separately, or successively.

<sup>42</sup> Constitution of the Republic of Paraguay of June 20, 1992, at: [http://www.tsje.gov.py/constitucion\\_nacional.php#je](http://www.tsje.gov.py/constitucion_nacional.php#je).

<sup>43</sup> Web page of the Superior Court of Electoral Justice, at: <http://www.tsje.gov.py/estructura.php> as of July 28, 2009.

The President and Vice President of the Republic, ministers of the executive branch, justices of the Supreme Court of Justice, the Attorney General of the State, the People's Defender, the Comptroller General and Deputy Comptroller of the Republic, and the members of the Superior Court of Electoral Justice may only be impeached for malfeasance in office, for crimes committed in discharging their duties, or for common crimes.

Charges shall be brought by a two-thirds majority of the Chamber of Deputies. The Senate, by an absolute majority of two thirds, shall conduct a public trial of those charged by the Chamber of Deputies and, if appropriate, shall declare them guilty for the sole purpose of removing them from office. In cases in which common crimes have allegedly been committed, the case file shall be referred to a competent court.

e) Law No. 635/95,<sup>44</sup> enacted on July 20, 1995, (hereinafter "Law 635") regulates the electoral justice system and provides as follows:

## CHAPTER II SUPERIOR COURT OF ELECTORAL JUSTICE

### Article 4. Composition.

1. The Superior Court of Electoral Justice shall be composed of three members, elected as established in the Constitution, who shall take oath before the Senate.
2. The Superior Court of Electoral Justice shall appoint annually, from among its members, a President and a Vice President.
3. The President shall be responsible for legally representing the electoral justice system and for its administrative oversight.

### Article 5. Nature. Seat.

1. The Superior Court of Electoral Justice is the ultimate authority in electoral matters, and the only appeal admissible against its resolutions is unconstitutionality action. It shall have its seat in the capital of the Republic and shall exercise its jurisdiction nationwide.  
[...]

Article 6. Duties and powers. The following are the duties and powers of the Superior Court of Electoral Justice:

- (a) Complying with and enforcing the Constitution and law;
- (b) Resolving remedies for replacement, clarification, or expansion lodged against its decisions;
- (c) Hearing remedies for appeal, annulment, and complaints for denied appeals or judicial delays lodged against the decisions of the Electoral Courts in the cases provided for by law;
- (d) Resolving remedies lodged against the decisions of the Directorate of the Electoral Register, including assuming *ex officio* responsibility for hearing the same;
- (e) Hearing challenges and disqualifications of the members of the Superior Court and of the Electoral Courts;
- (f) Judging, pursuant to Articles 3.e and 38 of this Law, internal matters and disputes of a national nature of parties, political movements, and electoral alliances;
- (g) Exercising oversight, with disciplinary authority, over the organization of the Republic's elections;
- (h) Calling, directing, and overseeing elections and popular consultations, as well as cases of vacancies as provided for in the Constitution and in law;
- (i) Determining the number of seats in the Chamber of Deputies and Departmental Councils in each of the departments and the capital of the Republic, in compliance with Article 221 of the Constitution;

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<sup>44</sup> Law 635/95 "On Regulating the Electoral Justice System," at: <http://www.tsje.gov.py/legislacion/635.htm>.

- (j) Conducting counts and final decisions in elections and popular consultations, and proclaiming the winners, except in municipal elections;
- (k) Declaring, at the final instance and on appeal, the annulment of departmental or district elections and popular consultations;
- (l) Declaring, upon request and at the sole instance, the annulment of elections and popular consultations at the national level;
- (m) Deciding, at the sole instance, on the suspension of national, departmental, or municipal elections, for a period of up to sixty days;
- (n) Distributing, among parties, political movements, and electoral alliances, the free spaces for electoral propaganda provided for in the Electoral Code;
- (ñ) Approving systems and programs for the electronic processing of electoral data and information;
- (o) Exercising supervision and oversight over the funds of parties, political movements, and electoral alliances, by examining their documents, books, and accounting statements;
- (p) Distributing state contributions and subsidies to parties, political movements, and electoral alliances;
- (q) Preparing its own preliminary budget, in accordance with Organic General Budget Law of the Nation;
- (r) Administrating the funds assigned to the electoral justice system by the General Budget of the Nation;
- (s) Authorizing distribution of all the materials used in the various functions required by compliance with the Electoral Code;
- (t) Authorizing production of rolls, lists for each electoral section, and ballot papers, within the periods set by and in accordance with the requirements contained in the Constitution and in law;
- (u) Adopting the decisions necessary to perform the functions assigned to it by this law and the Electoral Code;
- (v) Preparing rules of procedure to regulate its functions and other regulations necessary for compliance with electoral law;
- (w) Appointing and removing, on its own initiative, the Director and Assistant Director of the Electoral Register. Appointing other judicial and administrative officers of the electoral justice system and removing them in compliance with the Civil Service Statute;
- (x) Providing, as promptly as possible, the parties, political movements, electoral alliances, and internal movements with such information and copies of registers and public deeds as they may request;
- (y) Informing the Supreme Court of Justice of vacancies in the electoral justice system; and,
- (z) All others established in this law.

Article 7. Immunity. Dismissals. The members of the Superior Court of Electoral Justice shall enjoy the same immunities and incompatibilities as are established for judicial magistrates, and their removal from office shall obey the grounds and the procedure set out in Article 225 of the Constitution.

Article 8. Replacement. In the event of the absence, inability, recusal, or disqualification of any of its members, they shall be replaced by the members of the Electoral Courts and, in order, by the judges of the first instance of the same jurisdiction, in accordance with the procedure set in the Code of Civil Procedure.

A permanent vacancy shall be filled by means of a new appointment.

f) Under Article 7 of Law 635, members of the TSJE may only be removed from office on the grounds and through the procedure indicated in Article 225 of the Constitution, which provides that:

No judge may be accused or interrogated in court for the opinions he may have expressed in the discharge of his duties. He may not be detained or arrested unless he is caught *in flagrante delicto* in relation to a crime meriting a custodial sentence. In this case, the official intervening in the case will place the judge under house arrest, immediately report the case to the Supreme Court of Justice, and submit the case files to the competent judge.

g) Article 259.1 of the Constitution provides that “the following are the duties and powers of the Supreme Court of Justice: (1) To supervise every agency of the judicial branch [...].”

h) Article 27 of the Code of Judicial Organization<sup>45</sup> provides that the CSJ “in addition to judging, shall exercise oversight, with disciplinary authority, over the courts, tribunals, auxiliaries of justice, and subsidiary offices of the judiciary.” Similarly, Articles 232 and 233 of that Code stipulate:

Article 232. The Supreme Court of Justice shall exercise supervisory and disciplinary authority over all courts, tribunals, and other offices of the judiciary. This supervision covers the following powers: [...]

- (b) issuing provisions for the orderly processing of trials and the issuing of judgments in accordance with the terms of the law;
- (c) complying with and enforcing those regulations and provisions; establishing and implementing disciplinary measures in the event of an infraction; [...]

Article 233. The Supreme Court of Justice shall punish actions offensive to the dignity of the administration of justice, failures to abide by its mandates, and negligence in the performance of duties by members of courts, judges, defenders, and subalterns, imposing on them disciplinary measures that may range from warnings or admonishments up to fines of thirty times the minimum daily wage for sundry unspecified activities in the capital of the Republic and temporary suspension for a period of up to one month.

i) Law No. 609, “On Organizing the Supreme Court of Justice,”<sup>46</sup> provides as follows:

Article 4: Disciplinary and supervisory power. The Supreme Court of Justice, through the Superintendency Council, shall exercise disciplinary and supervisory power over the courts, tribunals, auxiliaries of justice, and officers and employees of the judiciary [...]

Article 23: The Superintendency Council shall be responsible for: (a) Exercising disciplinary and supervisory power, in accordance with the terms of Article 4 of this law.

65. From the copies of the legal proceedings contained in the case file, the information furnished by the parties, and Paraguayan law, the Commission establishes the following facts in connection with the disciplinary sanction imposed on Mr. Mojoli:

a) On March 15, 1999, TSJE member Carlos Alberto Mojoli presented the president of the TSJE, Alberto Ramírez Zambonini, with a request for the preparation of a file titled “Member of the TSJE promoting amendment of the bylaws of the Colorado Party National Republican Association to call upon the Executive Committee of the Colorado Party to convene a special general convention to bring the party bylaws into line with the provisions of the National Constitution and the Electoral Code [...]”<sup>47</sup>

b) On March 16, 1999, TSJE President Alberto Ramírez Zambonini issued Presidential Resolution No. 124/99, ordering the electoral assistance requested by the Authentic Radical Liberal Party and the National Encounter Party in January and February 1999, respectively, for the holding of their internal elections on March 21, 1999.<sup>48</sup>

c) On March 17, 1999, TSJE President Alberto Ramírez Zambonini rejected the request made by Judge Carlos Alberto Mojoli on March 15, 1999, finding that the requesting judge:

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<sup>45</sup> Code of Judicial Organization of Paraguay, at: [http://www.pj.gov.py/ley\\_organica.asp](http://www.pj.gov.py/ley_organica.asp).

<sup>46</sup> Law No. 609, “On Organizing the Supreme Court of Justice,” at: [http://www.pj.gov.py/ley\\_organica.asp](http://www.pj.gov.py/ley_organica.asp).

<sup>47</sup> Superior Court of Electoral Justice No. 008/99, File “Member of the TSJE promotes amendment of the bylaws of the Colorado Party National Republican Association.”

<sup>48</sup> Presidential Resolution No. 124/99, March 16, 1999, signed by Judge Alberto Ramírez Zambonini; and Presidential Resolution No. 125/99, March 18, 1999.

lacked the authority to request the preparation of such files and to indicate that provisions of the bylaws of the Colorado Party are unconstitutional, since that is a power reserved to the Constitutional Chamber of the Supreme Court of Justice or to the plenary of that Court (Constitution, Article 260; Law No. 609/95, Articles 1, 3.a, 11, and 16).<sup>49</sup>

d) On March 17, 1999, the TSJE issued Resolution No. 17, which was signed by Judges Expedito Rojas and Carlos A. Mojoli and by Samuel Martínez Hustin, a member of the Electoral Court of Misiones,

instructing the Executive Committee of the Colorado Party National Republican Association to convene a Special General Convention to reform the party bylaws, to bring them into line with the provisions of Article 118 and 119 of the National Constitution and Articles 32.e and 32.f of Law 834, and to establish the number of members who are to comprise the Court of Honor.

e) On the final page of Resolution No. 17 appears a handwritten amendment to the text of the resolution, which reads:

Following the public refusal of Judge Alberto Ramírez Zambonini to sign this resolution, this Court is established with Judge Samuel Martínez Hustin, member of the Electoral Court of San Juan Bautista, Misiones. Asunción, March 18, 1999.<sup>50</sup>

f) In connection with Presidential Resolution No. 124/99 of March 16, 1999, on March 18, 1999, the TSJE – comprising Judges Expedito Rojas and Carlos A. Mojoli, and Samuel Martínez Hustin, a member of the Electoral Court of Misiones – adopted Resolution No. 18, stating “there are no legal grounds for the President of the TSJE. acting alone, to assign assets of the electoral justice system to the internal elections of political parties.”<sup>51</sup>

g) That same day, March 18, 1999, attorney Dario Filártiga, representing the National Republican Association, filed a complaint with the CSJ’s Superintendency Council against TSJE member Carlos A. Mojoli, for perverting the course of justice and malfeasance in office, on the basis that the judge in question: (1) had publicly and repeatedly denied the legitimacy of the CSJ and of its President; (2) had disturbed the normal functioning of the TSJE by assuming the role of an interested party in promoting amendments to the ANR’s bylaws with the filing of a suit with the TSJE on March 15, 1999, thus consummating the crime of perverting the course of justice in that he was required to disqualify himself pursuant to Article 20.f of the Code of Civil Procedure; (3) had signed and published, in the absence of legal authority to do so, a document that he styled a resolution of the TSJE admitting the suit that he himself brought for the amendment of the ANR’s bylaws, without it being signed by the President of the TSJE; (4) had continued to serve as a judge in all proceedings before the electoral justice system in which the ANR was a party, even though the complainant had filed challenges to his involvement that to date had not yet been resolved.<sup>52</sup>

h) Article 305 of the Criminal Code<sup>53</sup> defines the crime of perverting the course of justice in the following terms:

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<sup>49</sup> Judicial Branch, Electoral Justice System, document of March 17, 1999, signed by Alberto Ramírez Zambonini.

<sup>50</sup> Amendment dated March 18 of Resolution No. 17 of March 17, 1999.

<sup>51</sup> The case file contains a document sent by Carlos A. Mojoli, Vice President of the TSJE, to Alberto Ramírez Zambonini, President of the Court, dated March 6, 1999, in which the signatory states that the TSJE lacks the competence to commit its resources in support of any internal business of political parties, and he opposes any such outlay by TSJE.

<sup>52</sup> Case titled “Complaint lodged by the National Republican Association (Colorado Party) v. Dr. Carlos A. Mojoli, Member of the Superior Court of Electoral Justice.”

<sup>53</sup> Criminal Code of Paraguay, Law No. 1160/97, at: [http://www.oas.org/juridico/MLA/sp/pry/sp\\_pry-int-text-cp.pdf](http://www.oas.org/juridico/MLA/sp/pry/sp_pry-int-text-cp.pdf).

1. A judge, arbiter, or other public servant who is entrusted with handling or deciding a given legal matter and who delivers a judgment in breach of law in favor of or against one of the parties shall be punished by a prison term of up to five years or by a fine.

2. Should a grave injury as defined in Article 112 be caused, the perpetrator shall be punished by a prison term of between two and fifteen years.

i) Article 20 of the Code of Civil Procedure provides that:

Disqualification shall apply if the judge, or his/her spouse, maintains any of the following relationships with any of the parties or their representatives or attorneys: [...]

(f) having acted as a defendant, or having issued an opinion, ruling, or recommendations regarding the dispute, either prior to or following its commencement; [...]

j) On March 19, 1999, the CSJ's Superintendency Council asked the TSJE to forward the background documents of the complaint filed by the representative of the ANR.<sup>54</sup>

k) On that same date, March 19, 1999, TSJE President Alberto Ramírez Zambonini sent the Superintendency Council a document<sup>55</sup> with photocopies of Case 008/99 and of the draft resolution with the signatures of Judges Mojoli, Rojas, and Martínez Hustin. In that document, Dr. Ramírez Zambonini stated that although on March 17, 1999, he received a draft resolution containing Judge Mojoli's proposal, signed by Judges Mojoli and Rojas, he declined to sign it. He also stated that he later learned that, on March 18, 1999, Judges Mojoli and Rojas had signed this draft, along with Judge Martínez Hustin, a member of the Electoral Court of Misiones, identifying it as No. 17 of the General Secretariat of the TSJE.

l) On March 22, 1999, the Superintendency Council issued Resolution No. 136, imposing sanctions on Judges Expedito Rojas and Carlos A. Mojoli for having set up an *ad hoc* court and replacing TSJE President Alberto Ramírez Zambonini with the member of the Electoral Court of Misiones, Samuel Martínez Hustin, absent the legal requirements established for the purpose (absence, inability, recusal, or disqualification of any of its members). The sanction posed on the members of the TSJE was a fine of 30 times the minimum daily wage and a thirty-day suspension from duties, and the sanction imposed on the member of the Electoral Court was Misiones an admonishment and a fine of 30 times the minimum daily wage for sundry activities.

m) Notice of Resolution No. 136 was given to Mr. Mojoli on March 23, 1999,<sup>56</sup> and was based on the following evidence and findings:

HAVING SEEN: Resolution No. 17 of March 17, 1999, and its amendment of March 18, and Resolution No. 18 of March 18, 1999, issued by the members of the Superior Court of Electoral Justice, Messrs. Expedito Rojas and Carlos A. Mojoli, and the member of the Electoral Court of Misiones, Mr. Samuel Martínez Hustin; and,

WHEREAS: The aforesaid resolutions were issued in flagrant violation of the legal provisions governing replacement as provided for by Article 8 of Law No. 635/95, "On Regulating the Electoral Justice System," and they constitute an abuse of authority in the exercise of their functions.

The Supreme Court of Justice, through the Superintendency Council, is responsible for supervision and disciplinary oversight over all agencies of the judiciary, pursuant to the terms of Article 259.1 of the National Constitution, in conjunction with Articles 27, 232, and 233 of Law No. 879/81, "Code of

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<sup>54</sup> CSCSJ document, dated March 19, 1999.

<sup>55</sup> Document of March 19, 1999, in which the President of the TSJE, Alberto Ramírez Zambonini, responds to CSCSJ Note No. 1 of March 19, 1999.

<sup>56</sup> Notification of Resolution No. 136 of March 22, 1999, signed by Carlos A. Mojoli and Lourdes Raquel Rojas F., Judicial Secretary.

Judicial Organization,” and Articles 4 and 23.a of Law No. 609/95, “On Organizing the Supreme Court of Justice.”<sup>57</sup>

n) In Resolution No. 136, in addition to imposing disciplinary sanctions on the electoral judges, the Superintendency Council stated that the reported irregularities constituted actions above and beyond its investigative and punitive powers and so resolved to refer the case to the competent criminal judge.<sup>58</sup>

66. From the copies of the legal proceedings contained in the case file, the information furnished by the parties, and Paraguayan law, the Commission establishes the following facts in connection with the unconstitutionality suit lodged by Mr. Mojoli:

a) On March 31, 1999, Mr. Mojoli filed an unconstitutionality suit against Resolution No. 136 of March 22, 1999, in which he challenged the members of the CSJ who issued it in their capacity as members of the CSJ’s Superintendency Council<sup>59</sup> and requested that the Court be set up in accordance with the Constitution and applicable law.

b) Unconstitutionality suits are provided for in the Paraguayan Constitution in the following terms:

Article 132: Unconstitutionality. The Supreme Court of Justice shall have the power to rule court decisions and rulings unconstitutional, in the way and with the scope set out in this Constitution and in law.

c) In his filing, Mr. Mojoli claimed that the CSCSJ lacked jurisdiction to judge the members of the TSJE, since, under Article 225 of the Constitution, that was a power reserved to the National Congress. He also held that in issuing Resolution No. 136, the CSCSJ violated the right of due process and the right of defense enshrined in Article 16 of the Constitution by denying the accused participation, by examining no evidence, and by not hearing their defense.<sup>60</sup>

d) Article 16 of the Constitution deals with defense at trial by stating that “the right of defense at trial of persons and their rights shall be inviolable. All persons shall be entitled to be judged by competent, independent, and impartial judges and courts.”

e) On May 3, 1999 the Supreme Court of Justice issued an order that read:

Before proceeding in accordance with law, present to this Court an authenticated photocopy of Resolution No. 136 of March 22, 1999, issued by the Superintendency Council of the Court, with the corresponding background documents.<sup>61</sup>

f) On February 26 and March 21, 2001, Supreme Court Justices Luis Lezcano Claude and Raúl Sapena Brugada both recused themselves from continuing to hear the unconstitutionality action. Mr. Carlos A. Mojoli was informed, on September 13, 2001, of the appointments of Drs. Jerónimo Irala Burgos and Enrique Sosa as members of the CSJ for hearing his suit.<sup>62</sup>

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<sup>57</sup> CSCSJ Resolution No. 136 of March 22, 1999.

<sup>58</sup> CSCSJ Resolution No. 136 of March 22, 1999.

<sup>59</sup> Justices of the Supreme Court of Justice Elixio Ayala, Wildo Rienzi Galeano, and Luis Lezcano Claude.

<sup>60</sup> Unconstitutionality suit against Resolution No. 136 of March 22, 1999, issued by the Superintendency Council of the Supreme Court of Justice, presented by Carlos A. Mojoli V., member of the Superior Court of Electoral Justice.

<sup>61</sup> Supreme Court of Justice, May 3, 1999, signed by Raúl Sapena Brugada.

<sup>62</sup> Supreme Court of Justice, notification document of September 13, 2001.

g) On October 6, 2004, the CSJ ruled that the proceedings had expired under Article 172 of Code of Civil Procedure, since there no interested party had pursued the action for more than six months and because the last formality in the case file was dated May 3, 1999.<sup>63</sup> Notification of that resolution was given to Mr. Mojoli on February 8, 2005.<sup>64</sup>

h) Article 172 of the Code of Civil Procedure<sup>65</sup> establishes with regard to the deadline for expiration that:

Expiration shall apply in suits of all kinds when proceedings are not pursued during a period of six months. This period shall be set by the general laws on statutory limitations, should that period be shorter. Pursuit of proceedings by one of the parties in the suit shall benefit the remaining parties.

i) Similarly, Article 554 of the Code of Civil Procedure provides:

Substantiation. The Supreme Court shall substantiate the filing by hearing the Attorney General, in the case of actions of the legislative, executive, or judicial branches. In addition, as applicable, the legal representatives of municipalities or corporations, or the public officials who exercise the public authority from which the action arise, shall also be heard, who shall be cited and summoned at the seat of their position, to reply within a period of eighteen days.

Should there be any matters of fact requiring clarification or substantiation, the Court shall order such actions for properly deciding the case as may be necessary.

The Court shall issue its ruling as a Final Agreement and Judgment within a period of thirty days.

j) On February 9, 2005, Mr. Mojoli asked the CSJ for a full and authenticated copy of the case file, and to acknowledge his change of address. In addition, he requested the suspension of the procedural deadlines and reiterated his claims.<sup>66</sup> On February 25, 2005, the CSJ agreed to take note of Mr. Mojoli's change of address and to deliver him a copy of the authenticated case file.

k) On March 10, 2005, Mr. Mojoli filed a document with the CSJ alleging defenselessness and falsification of a report by the clerk, who, in his opinion, was the officer responsible for omitting various formalities, for falsifying certain documents, and for not including the background documents to Resolution No. 136 in the file, even though instructed to do so by the order of May 3, 1999.<sup>67</sup>

l) The Commission has no information about how this remedy was resolved. However, in a document submitted by the State of Paraguay dated May 31, 2006, the State reported the clarification remedy filed by Mr. Mojoli against Interlocutory Order No. 1506 of October 6, 2004, was being studied.<sup>68</sup>

67. From the copies of the legal proceedings contained in the case file, the information furnished by the parties, and Paraguayan law, the Commission establishes the following facts regarding the prosecution for perverting the course of justice brought against Mr. Mojoli:

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<sup>63</sup> Supreme Court of Justice, AI No. 506, October 6, 2004.

<sup>64</sup> Notification document of the Supreme Court of Justice dated February 8, 2005, reporting that on October 6, 2004, the Supreme Court had issued AI No. 1506 in the proceedings "Unconstitutionality Suit: Against Resolution No. 136 of March 22, 1999, issued by the Superintendency Council of the Supreme Court of Justice."

<sup>65</sup> <http://www.noraruoti.com.py/cd/juridica/protegido/OtrasLeyes/Ley133788.htm>.

<sup>66</sup> Submission by Carlos A. Mojoli V. to the President of the CSJ, received by the Secretariat on February 9, 2005.

<sup>67</sup> Replacement of AI 1506 re Article 172 of the CPC. "Allegation of defenselessness and falsification of clerk's report, and challenge of that clerk. Requesting his separation from the case pursuant to Article 39 of the CPC," filed with the Secretariat of the Supreme Court of Justice on March 10, 2005.

<sup>68</sup> Document from the Human Rights Unit of the Supreme Court of Justice to the Ministry of Foreign Affairs, Directorate of Human Rights, dated March 11, 2006.

a) In Resolution No. 136, the Superintendency Council stated that the reported irregularities constituted actions above and beyond its investigative and punitive powers and so resolved to refer the case to the competent criminal judge.

b) On March 30, 1999, the first-instance criminal judge began summary proceedings to investigate and corroborate the allegations made by attorney Dario Filártiga. In addition, on April 5, 1999, he notified the legislative branch<sup>69</sup> and forwarded authenticated copies of the background documents submitted to the court to the President of the Senate<sup>70</sup> since under the Constitution, judges of the TSJE may only be removed through impeachment.<sup>71</sup>

c) On April 6, 1999, Judge Carlos Alberto Mojoli submitted his resignation from his position as a member of the TSJE.<sup>72</sup> His resignation was accepted by the Senate on April 15, 1999.<sup>73</sup>

d) On May 13, 1999, the Senate adopted Resolution No. 245, returning the background documents presented to its president to the First-instance Criminal Court of the Second Shift, on the grounds that Mr. Mojoli had lost the immunity established by Article 225 of the Constitution.<sup>74</sup>

e) On July 26, 1999, the First-instance Criminal Court of the Second Shift, based on the ruling of the criminal prosecutor, indicted Mr. Mojoli in the summary proceedings initiated on March 30, 1999.<sup>75</sup> The Court also set a date for a statement to be taken from Mr. Mojoli, which took place on August 6, 1999.<sup>76</sup>

f) On February 28, 2000, Mr. Mojoli asked the Court for his provisional or definitive dismissal on account of the prosecutor's failure to initiate proceedings within six months, as required by Article 8 of Law 1449/99, "On Regulating the Transition to the New Criminal Procedural System,"<sup>77</sup> which stipulates that "should the Public Prosecution Service fail to initiate proceedings in six months, the court shall order their provisional dismissal, if at the summary stage."

g) Mr. Mojoli argued that since the last formality by the prosecutor in the case file was on August 6, 1999, more than six months had gone by without the Public Prosecution Service initiating

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<sup>69</sup> File AI No. 304 of March 30, 1999, signed by Criminal Judge Gustavo A. Ocampos González.

<sup>70</sup> Document No. 396 of April 5, 1999, from First-instance Criminal Judge Gustavo A. Ocampos González to the President of the Senate of the Nation, Mr. Juan Carlos Galaverna.

<sup>71</sup> Article 225 of the Constitution:

The President and Vice President of the Republic, ministers of the executive branch, justices of the Supreme Court of Justice, the Attorney General of the State, the People's Defender, the Comptroller General and Deputy Comptroller of the Republic, and the members of the Superior Court of Electoral Justice may only be impeached for malfeasance in office, for crimes committed in discharging their duties, or for common crimes.

Charges shall be brought by a two-thirds majority of the Chamber of Deputies. The Senate, by an absolute majority of two thirds, shall conduct a public trial of those charged by the Chamber of Deputies and, if appropriate, shall declare them guilty for the sole purpose of removing them from office. In cases in which common crimes have allegedly been committed, the case file shall be referred to a competent court.

<sup>72</sup> Communication from Dr. Carlos Alberto Mojoli to the President of Congress, received at the Senate on April 6, 1999.

<sup>73</sup> Resolution No. 226 accepting the resignation presented on April 6, 1999, by Dr. Carlos A. Mojoli from his position as a member of the Superior Court of Electoral Justice, given in the sessions chamber of the Senate on April 15, 1999.

<sup>74</sup> Resolution No. 245 of May 13, 1999, signed by Juan Carlos Galaverna D., President of the Senate, and Ada Solalinde de Romero, Parliamentary Secretary. Notice of this resolution was given to the First-instance Criminal Judge of the Second Shift in a communication dated May 18.

<sup>75</sup> Resolution of July 26, 1999, signed by Judge Agustín Lovera Cañete in AI No. 1017.

<sup>76</sup> Investigation statement of August 6, 1999.

<sup>77</sup> Law 1449/99, "On Regulating the Transition to the New Criminal Procedural System," states in Article 1 that the transition period shall run from July 9, 1999, to February 28, 2003.

proceedings.<sup>78</sup> On April 3, April 13, and July 18, 2000, the alleged victim again lodged this request with the court.

h) On May 16, 2000, the Public Prosecution Service presented the judge with the request for provisional dismissal requested by Mr. Mojoli.<sup>79</sup> That same day, the Public Prosecution Service asked the court to order that statements be taken from Dr. Expedito Rojas, from Dr. Samuel Martínez Hustin, and, through the appropriate legal channels, from Dr. Alberto Ramírez Zambonini, and to ask the representatives of the ANR to give statements to the investigation and ratify their complaint of March 18, 1999.<sup>80</sup>

i) On August 23, 2000, Mr. Carlos A. Mojoli was notified that the court had resolved to reject his request for provisional dismissal, based on the request for formalities and for progress in the investigation by the prosecutor.<sup>81</sup> Based on that resolution, the judge convened a hearing for August 24 and 25, 2000, for statements to be taken from Messrs. Expedito Rojas and Samuel Martínez Hustin.

j) On August 23, 2000, Mr. Mojoli lodged an appeal against the decision to reject the provisional dismissal with the judge that had ordered it, but it was rejected as inadmissible that same August 23, 2000.<sup>82</sup>

k) On November 30, 2001, and February 7, 2002, the prosecutor again urged the judge to take statements from Dr. Expedito Rojas, Dr. Samuel Martínez Hustin, and, through the appropriate legal channels, from Dr. Alberto Ramírez Zambonini, and to ask the representatives of the ANR to give statements to the investigation and ratify their complaint, as had been requested by the prosecutor on May 16, 2000.<sup>83</sup> According to the documents in the case file, that evidence was not taken.

l) On March 25, 2002, the Seventh Criminal Court for Sentencing ruled that the summary proceedings in “Carlos A. Mojoli re perverting the course of justice – capital” had concluded and ordered the matter referred to the plenary.<sup>84</sup> In addition, on that same date, the Seventh Criminal Court for Sentencing resolved to provisionally identify the alleged actions of Carlos A. Mojoli as the crime of perverting the course of justice, as described in Article 305.1 of the Criminal Code (Law 1160/97).<sup>85</sup>

m) On April 1 and May 27, 2002, the prosecutor asked the judge to open the proceedings for evidence.<sup>86</sup> In turn, Mr. Mojoli asked the judge hearing the proceedings to rule that criminal action had expired on June 6 and 11, 2002,<sup>87</sup> but both requests were rejected as inadmissible.

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<sup>78</sup> Document submitted on February 28, 2000, in proceedings “Carlos Mojoli re perverting the course of justice,” First-instance Criminal Court of the First Shift, Secretariat No. 2.

<sup>79</sup> Ruling UT No. 262, presented by Criminal Prosecutor Carlos Advin Calcena Rojas, in proceedings “Carlos A. Mojoli re perverting the course of justice – capital.”

<sup>80</sup> Ruling UT No. 263, presented on May 16, 2000, by Criminal Prosecutor Carlos Advin Calcena Rojas, in proceedings “Carlos A. Mojoli re perverting the course of justice – capital.”

<sup>81</sup> AI No. 1673, Resolution signed by the Seventh Criminal Sentencing Judge, dated August 16, 2000.

<sup>82</sup> Document presented by the alleged victim appealing against and claiming the invalidity of AI No. 1673 of August 16, 2000, and resolution of August 23, 2000, signed by the Seventh Criminal Sentencing Judge, Hugo Ramón López Sanabria.

<sup>83</sup> Ruling No. 367 of November 30, 2001, signed by Marta Saldoval de Fretes, prosecutor in proceedings “Carlos A. Mojoli re perverting the course of justice – capital,” with the purpose of taking statements and requesting formalities; Ruling No. 02 of February 2, 2002, signed by Prosecutor Marta Sandoval de Fretes, and received by the Secretariat on February 7, 2002.

<sup>84</sup> AI No. 159 of March 25, 2002, signed by Hugo Ramón López Sanabria, Seventh Criminal Sentencing Judge.

<sup>85</sup> AI No. 160 of March 25, 2002, signed by Hugo Ramón López Sanabria, Seventh Criminal Sentencing Judge.

<sup>86</sup> Ruling No. 46 of April 1, 2002, and Order No. 115, signed by Prosecutor Marta Sandoval de Fretes.

<sup>87</sup> Document signed by Dr. Carlos A. Mojoli and Carlos Aquino Gilardi, presented to and lodged with the Secretariat on June 6, 2002; Document signed by Dr. Carlos A. Mojoli and Carlos Aquino Gilardi, presented to and lodged with the Secretariat on June 11, 2002.

n) On March 25, 2003, the Seventh Criminal Court for Sentencing acquitted Mr. Carlos A. Mojoli in Final Judgment No. 8, as had been requested by the prosecutor in the case, on the grounds that there was no evidence of the crime of perverting the course of justice in the alleged victim's actions.<sup>88</sup> Mr. Carlos Mojoli sought a clarification of this final judgment, requesting that the complaint be declared false and that the court declare that the summary proceedings did not affect his good name and reputation. That request for clarification was resolved in a judgment of August 25, 2003, that rejected the first item as inadmissible and accepted the second.<sup>89</sup>

68. From the copies of the legal proceedings contained in the case file, the information furnished by the parties, and Paraguayan law, the Commission establishes the following facts regarding the prosecution for falsehood in a public document brought against Mr. Mojoli:

a) On May 16, 1997, Mr. Julio Ramón Gavilán Giménez lodged a complaint for falsification of a public document. In that complaint he claimed that the copy of the study certificate that Mr. Mojoli presented to the Magistrature Council in seeking a position with the judiciary showed an incorrect figure for his general grade average: 3.82, whereas calculating it arithmetically from his grades yielded an average of 2.48.<sup>90</sup>

b) In his complaint, Mr. Gavilán asked the judge to request certified copies of Mr. Mojoli's certificate of studies both from the School of Law and Social Sciences of the UNA and from the Magistrature Council, and to initiate summary criminal proceedings.

c) Since the complaint failed to indicate clearly the date on which the alleged crime was committed, a negative jurisdictional dispute arose between three courts, which was finally resolved on November 6, 1997, by the Supreme Court of Justice when it stated that it took the exact date the crime was committed to be the date on which the copy of the study certificate was issued: June 13, 1990.<sup>91</sup> That was because it was the copy that Mr. Mojoli obtained from the UNA and presented to the Superior Council of the Magistrature in applying for a position as a TSJE judge.

d) On March 11, 1998, after the jurisdiction of the First-instance Criminal Court of the Twelfth Shift had been established, the prosecutor requested that the formalities proposed by Mr. Gavilán Giménez in his complaint be carried out.

e) On May 19, 1998, the Magistrature Council sent the prosecutor's office a certified copy of Study Certificate No. 286/90 issued by the UNA's School of Law and Social Sciences, which had been submitted by Mr. Carlos A. Mojoli in applying to the Council for a position as member of the TSJE. Similarly, on May 27, 1998, the School of Law and Social Sciences of the UNA submitted a certified copy of Mr. Mojoli's study certificate.<sup>92</sup>

f) On June 15, 1998, after comparing the certificates (Study Certificate No. 286/90 submitted to the Magistrature Council by Mr. Mojoli had an overall average of 3.82, whereas Mr. Mojoli's average on the certificate sent by the UNA's School of Law and Social Sciences was 2.56), the prosecutor asked the judge hearing the proceedings to refer the case to parliament, given that it was the

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<sup>88</sup> Judgment of March 25, 2003, in proceedings "Carlos Mojoli re perverting the course of justice – capital."

<sup>89</sup> Judgment of August 25, 2003, in proceedings "Carlos Mojoli re perverting the course of justice – capital."

<sup>90</sup> Complaint lodged by Julio Ramón Gavilán Giménez on May 16, 1997, with the Sixth Criminal Sentencing Judge.

<sup>91</sup> AI No. 1354 of November 6, 1997, issued by the Supreme Court of Justice in proceedings "Alberto Mojoli re falsification of public document." In that resolution, the Court determined that the competent court to hear the case was the First-instance Criminal Court of the Twelfth Shift.

<sup>92</sup> Ruling No. 608 of June 15, 1998, of Criminal Prosecutor Marco Antonio Alcaraz, requesting referral of the complaint to parliament, in proceedings "Carlos Alberto Mojoli re falsification of a public document."

competent body for judging a member of the electoral justice system, pursuant to Article 225 of the Constitution.<sup>93</sup>

g) On June 18, 1999, the first-instance criminal judge of the tenth shift referred the complaint to parliament.<sup>94</sup>

h) On August 17, 1999, the criminal prosecutor asked the CSJ General Secretariat to forward Mr. Mojoli's resignation, presented on April 6, 1999, to the Public Prosecution Service.<sup>95</sup> His resignation was forwarded on August 18, 1999.<sup>96</sup>

i) On August 19, 1999, the prosecutor asked the judge to indict Mr. Carlos A. Mojoli for the alleged commission of "crimes against documentary evidence" as described in Articles 250, 251 and 252 of the new Criminal Code (Law 1160/97), since he no longer enjoyed immunity from prosecution.<sup>97</sup>

j) The cited articles of the Criminal Code<sup>98</sup> provide as follows:

Article 250. Direct production of public documents with false content.

1. An official empowered to prepare a public document who, acting within the constraints of his powers, falsely certifies a fact of legal relevance or sets down the same in books, registers, or files of public data, shall be punished by a prison term of up to five years or by a fine.
2. Attempts to do the same shall also be punished.
3. In particularly serious cases, the prison term may be increased to up to ten years.

Article 251. Indirect production of public documents with false content.

1. A person who leaves false record of statements, actions, or facts of relevance to legal rights or relations in documents, books, files, or public records shall be punished by a prison term of up to three years or by a fine.
2. The record shall be understood as false when such statements, actions, or facts were not given, did not take place, occurred in another fashion, came from another person, or came from person not empowered to do so.
3. In cases in which the perpetrator acts with the intent of securing a pecuniary advantage for himself or another party, or of causing harm to a third party, the prison term may be increased to up to five years.
4. Attempts to do the same shall also be punished.

Article 252. Use of public documents with false content.

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<sup>93</sup> Ruling No. 608 of June 15, 1998, of Criminal Prosecutor Marco Antonio Alcaraz, requesting referral of the complaint to parliament, in proceedings "Carlos Alberto Mojoli re falsification of a public document."

<sup>94</sup> Document of June 18, 1998, Arnulfo Arias, First-instance Criminal Judge of the Tenth Shift, to Atilio Martínez Casado, President of the Chamber of Deputies.

<sup>95</sup> Note No. 16 of August 17, 1999, from Criminal Prosecutor Andrés Casati Caballero to Marial Bellmar Casal, General Secretary of the Supreme Court of Justice.

<sup>96</sup> NP No. 136 of August 18, 1999, from the Supreme Court of Justice.

<sup>97</sup> Ruling No. 993 of August 19, 1999, from Criminal Prosecutor Andrés Casati Caballero to the Sixth Criminal Sentencing Court, for the opening of summary proceedings.

<sup>98</sup> Criminal Code of Paraguay, Law No. 1160/97, at: [http://www.oas.org/juridico/MLA/sp/pry/sp\\_pry-int-text-cp.pdf](http://www.oas.org/juridico/MLA/sp/pry/sp_pry-int-text-cp.pdf).

A person who, with the intent to cause an error, makes use of a document or file of those indicated in Article 250, shall be punished in accordance with that article.

k) Subsequently, Mr. Carlos A. Mojoli presented the judge with a document requesting the ratification of the complaint lodged by Mr. Gavilán Giménez and a ruling of statutory limitations with regard to an alleged crime committed on June 13, 1990, by the persons who prepared and signed Study Certificate No. 286/90.<sup>99</sup> He indicated that since the punishments provided by Articles 229 and 232 of the 1890 Criminal Code ranged from 3 to 7 years, the action had prescribed. In addition, he claimed that the prosecutor was attempting to apply the Criminal Code in force since 1998 (Law 1160/97) to an incident that occurred in 1990, in contravention of Article 14 of the Constitution, whereby “no law shall have retroactive effects, except when such effect favors the accused or the convict.”

l) On October 7 and November 4, 1999, and on February 3 and 28, 2000, Prosecutor Andrés Casati Caballero asked the judge to indict Mr. Mojoli for the alleged commission of the crime described in Article 236 of the previous Criminal Code and in Articles 251 and 252 of the new Criminal Code (Law 1160/97).<sup>100</sup>

m) On March 9, 2000, the Sixth Criminal Sentencing Judge resolved to initiate summary proceedings to investigate and corroborate the allegations made, and to identify the perpetrator(s), accomplices, and accessories in the crime defined by Article 236 of the previous Criminal Code,<sup>101</sup> on the grounds that it was a publicly actionable offense.<sup>102</sup>

n) On March 27, 2000, Mr. Carlos Mojoli gave an informational statement to the Sixth Sentencing Judge. After taking various informational statements and pursuing various formalities, on November 13, 2000, the prosecutor requested that Mr. Mojoli be indicted as a defendant in the proceedings.<sup>103</sup>

o) On July 25, 2002, the Sixth Sentencing Judge indicted Carlos A. Mojoli.<sup>104</sup> In addition, on July 31, 2002, the Sixth Sentencing Judge ordered the title of the proceedings changed to “Carlos Alberto Mojoli re falsehood in particulars 2002.”<sup>105</sup>

p) On July 31, 2002, Mr. Mojoli was notified of his indictment and summoned to a hearing to give a statement to the investigation, which he did on August 8, 2002. On August 13, 2002, Mr. Carlos A. Mojoli filed an appeal against the order of August 8, 2002, on the grounds that the proceedings should have been archived following six months of inactivity by the prosecutor<sup>106</sup> and because the final formality

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<sup>99</sup> Undated submission by Carlos A. Mojoli Vargas to the criminal judge in connection with the request for the initiation of summary proceedings made by Prosecutor Andrés Casati Caballero in Ruling No. 993, in proceedings “Background to an alleged falsification of a public document.”

<sup>100</sup> Ruling (unnumbered) of October 7, 1999, signed by Prosecutor Andrés Casati Caballero in proceedings “Background to an alleged falsification of a public document”; Ruling No. 1191 of November 4, 1999; Ruling No. 4 of February 3, 2000; Ruling No. 73 of February 28, 2000.

<sup>101</sup> Article 236 of the previous Criminal Code (1914): “Any other person who commits falsehood in a public document in any of the ways listed in Article 233 shall be punished by a prison term of two to four years. If the falsification is a copy of a public document, the prison term shall be of one to three years.”

<sup>102</sup> AI No. 5 of March 9, 2000, signed by Arnulfo Arias, Criminal Sentencing Judge in proceedings “Background to an alleged falsification of a public document.”

<sup>103</sup> Ruling No. 061 of November 13, 2000, signed by Criminal Prosecutor Juan de Rosa Avalos.

<sup>104</sup> AI No. 616 of July 25, 2002, signed by Sandra Farias de Fernández, Sixth Sentencing Judge, in proceedings “Carlos Alberto Mojoli re Falsehood in Particulars.”

<sup>105</sup> Clerk’s Report AS/31/07/02 of July 31, 2002, “in the proceedings titled ‘Carlos Alberto Mojoli re falsehood in particulars,’ because of a material error, ‘1997’ was entered in the year field in the document title when it should have been ‘2002.’”

<sup>106</sup> Articles 7 and 8 of Law 1444/99.

entered by the prosecutor took place on December 24, 2001. This appeal was denied as inadmissible on August 20, 2002.<sup>107</sup>

q) The Commission has no information about the decision pending in the proceedings. However, the State reported in April 2009 that the last formality in the proceedings was dated March 12, 2004, consisting of an order for the summary proceedings to be concluded and for the case to be referred to the plenary.<sup>108</sup> The State also maintained that the case was not closed and that “the Court will inform the Public Prosecution Service of the status of the proceedings.”<sup>109</sup>

## **B. Considerations of law**

### **1. Preliminary considerations**

69. Pursuant to the procedural principle of estoppel – which assumes that the stages of a process progress successively through the final closure of each and prevents returning to procedural stages and moments already extinguished and consummated – the Commission will not refer to the Paraguayan State’s admissibility arguments at this stage in the proceedings. The Commission has already ruled on those matters in its Admissibility Report No. 84/03 of October 22, 2003.

### **2. The right to a fair trial (Article 8) and the right to judicial protection (Article 25), in conjunction with the obligation to respect rights (Article 1.1), under the American Convention on Human Rights**

70. Article 8 of the Convention provides as follows:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. 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:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;
- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. the right not to be compelled to be a witness against himself or to plead guilty; and
- h. the right to appeal the judgment to a higher court.

71. Article 25 of the Convention stipulates that:

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<sup>107</sup> Sixth Criminal Sentencing Court, judgment of August 20, 2002, AI 633.

<sup>108</sup> Judicial Branch, Deed No. 253 of April 17, 2009.

<sup>109</sup> Reported by the State in its communication dated October 9, 2007, received at the IACHR on October 25, 2007, and in a communication received on April 29, 2009.

1. 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.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

72. Article 1.1 of the Convention reads as follows:

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

**a. Disciplinary sanction**

73. First, the Commission will analyze whether the proceedings for the disciplinary sanctioning of Carlos A. Mojoli Vargas, at the time a member of the TSJE, under Resolution No. 136 of March 22, 1999, respected the right to a fair trial enshrined in Article 8, sections 1 and 2, of the American Convention.

74. As regards Article 8.1 of the American Convention, the alleged victim claims that the issuing of Resolution No. 136 of March 22, 1999, violated his right to be heard with all due guarantees and within a reasonable time by a competent, independent, and impartial tribunal or judge previously established by law in the substantiation of any accusation of a criminal nature. Mr. Mojoli holds that the Superintendency Council of the CSJ lacked the authority to judge members of the TSJE, since that is a power reserved exclusively for the National Congress under Article 225 of the Constitution,<sup>110</sup> which established the alleged victim's judicial immunity.

75. The State, in turn, maintains that the Superintendency Council neither removed nor tried Judge Carlos A. Mojoli; instead, it imposed sanctions on him and referred the background documents to a criminal judge, in light of the seriousness of the facts. The State notes that the CSJ, through the Superintendency Council, is responsible for supervising all agencies of the judiciary, as stipulated in Article 259.1 of the Constitution and Article 4 of the Law Organizing the Supreme Court of Justice (Law 609/95) and that, consequently, it was the competent body for issuing the disciplinary sanction.

76. The right to trial by a competent, independent, and impartial tribunal previously established by law has been interpreted by the Commission and by the Inter-American Court as imposing certain conditions and standards that must be satisfied by tribunals charged with judging the substantiation of any accusation of a criminal nature or with the determination of a person's rights and obligations of a civil, fiscal, labor, or other nature.<sup>111</sup> In that regard, two aspects of Mr. Mojoli's claim must

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<sup>110</sup> Article 255 of the Constitution:

No judge may be accused or interrogated in court for opinions he may have expressed in the discharge of his duties. He may not be detained or arrested unless he is caught *in flagrante delicto* in relation to a crime meriting a custodial sentence. In this case, the official intervening in the case will place the judge under house arrest, immediately report the case to the Supreme Court of Justice, and submit the case files to the competent judge.

<sup>111</sup> IACHR, *Report on Terrorism and Human Rights* 2002, OEA/Ser.LV/II.116 Doc. 5 rev. 1 corr., October 22, 2002; Chapter III: D.1.b, paragraph 228.

be analyzed: first, whether the Superintendency Council of the Supreme Court of Justice was competent, independent, and impartial tribunal, and, second, whether Mr. Mojoli was afforded all due guarantees in the substantiation of the accusation made against him.

77. According to the established facts before the Commission, Resolution No. 136 of March 22, 1999, imposed a disciplinary sanction on Mr. Mojoli for violating the legal provisions governing replacements. This had occurred – as established by the amendment to Resolution No. 17 of March 17, 1999 – when TSJE President Alberto Ramírez Zambonini was replaced because he had publicly refused to sign Resolution No. 17.

78. By replacing the President of the TSJE with Samuel Martínez Hustin, a member of the Electoral Court of Misiones, in signing Resolution No. 17 of March 17, 1999, and Resolution No. 18 of March 18, 1999 – absent the circumstances stipulated in Article 8<sup>112</sup> of the Law on Regulating the Electoral Justice System (Law No. 635/95) – Mr. Mojoli participated in the establishment of an *ad hoc* court in violation of the law in force in Paraguay at the time. Those wrongdoings were subjected to disciplinary sanctions by the CSJ's Superintendency Council in its Resolution No. 136 of March 22, 1999.

79. Regarding the competence of the CSJ's Superintendency Council, under the Constitution of 1992,<sup>113</sup> which “establishes the electoral justice system as part of the judiciary,”<sup>114</sup> and under Article 259.1 of the Constitution (*supra* paragraph 63.g), Article 27 of the Code of Judicial Organization (Law No. 879/81) (*supra* paragraph 63.h) and Articles 4 and 23 of the Law Organizing the CSJ (Law 609/95) (*supra* paragraph 63.i), the Supreme Court of Justice exercises supervisory and disciplinary authority, through the Superintendency Council, over all agencies and offices of the judiciary, including the TSJE. In that connection, and pursuant to the constitutional mandate, the Code of Judicial Organization establishes the specific powers of the Supreme Court's Superintendency Council, including the authority to “establish and implement disciplinary measures” (*supra* paragraph 63.h).

80. Mr. Mojoli attests that the CSJ's Superintendency Council lacked the authority to judge the members of the TSJE, since that was a function exclusively reserved to the National Congress. In this regard, the IACHR notes that, as the State has acknowledged and as the Constitution stipulates,<sup>115</sup> members of the TSJE may only be removed through impeachment. Nevertheless, the CSJ's Superintendency Council did not rule on Mr. Mojoli's removal; instead, pursuant to its authority and in accordance with Article 7 of Law 635 (*supra* paragraph 63.e), read in conjunction with Article 225 of the Constitution (*supra* paragraph 63.f), it proceeded to impose administrative sanctions on him and to refer the case to the competent judge. Indeed, as indicated in the established facts (*supra* paragraphs 64.n and 66.a), the judge referred the matter to the Senate; however, following Mr. Mojoli's resignation, the Senate returned the background documents submitted to its president to the court, in light of the fact that Mr. Mojoli had lost the immunity that gave the Senate jurisdiction for his possible impeachment (*supra* paragraph 66).

81. In consideration whereof, based on the established facts and the claims of the parties, the Commission concludes that the Superintendency Council of the Supreme Court of Justice was the competent authority, under the law in force in Paraguay at the time of the events, for imposing disciplinary sanctions on Mr. Mojoli, and it finds that the State of Paraguay did not violate Mr. Carlos Alberto Mojoli's rights under Article 8.1 of the Convention, in conjunction with Article 1.1 thereof, in the disciplinary sanction that was imposed.

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<sup>112</sup> In the event of the absence, inability, recusal, or disqualification of any of its members, they shall be replaced by the members of the Electoral Courts and, in order, by the judges of the first instance of the same jurisdiction, in accordance with the procedure set in the Code of Civil Procedure.

<sup>113</sup> Political Constitution of the Republic of Paraguay of June 20, 1992, at: [http://www.tsje.gov.py/constitucion\\_nacional.php#je](http://www.tsje.gov.py/constitucion_nacional.php#je).

<sup>114</sup> Web site of the Superior Court of Electoral Justice, at: <http://www.tsje.gov.py/estructura.php> as of July 28, 2009.

<sup>115</sup> See: Articles 275 and 261 of the Constitution.

82. In addition, Mr. Mojoli claims that the issuing of Resolution No. 136 violated his right to be heard with due guarantees and within a reasonable time, his right to prior notification in detail of the charges against him, his right to adequate time and means for the preparation of his defense, and his right to appeal the judgment to a higher court.

83. The State maintains that Resolution No.17 of March 17, 1999, itself contained all the evidentiary elements needed for the adoption of the disciplinary measure. According to the documentary evidence, the judges who signed Resolutions No. 17 of March 17 and No. 18 of March 18, 1999, did not afford Judge Ramírez Zambonini the opportunity to set down his dissenting vote, as should have occurred; instead, they simply replaced him, in breach of the applicable legal provisions.

84. In connection with this, the IACHR believes reference should be made to the jurisprudence of the Inter-American Court of Human Rights, in order to underscore that it has determined in previous cases that the guarantees established by Article 8.1 of the Convention:

[...] must be observed during the different procedures in which State entities adopt decisions that determine the rights of the individual, because the State also empowers administrative, collegiate, and uni-personal authorities to adopt decisions that determine rights.<sup>116</sup>

119. Consequently, the guarantees established in Article 8.1 of the Convention are also applicable when a public authority adopts decisions that determine such rights, bearing in mind that, although the guarantees inherent in a jurisdictional body are not required of him, he must comply with the guarantees designed to ensure that his decision is not arbitrary. [...]

126. The Court has established that all State bodies which exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the American Convention.<sup>117</sup>

85. As the Commission established in the *Case of the Dismissed Congressional Employees*,<sup>118</sup> and as the Court agreed in its judgment, in applying judicial guarantees, which exist to determine labor-related obligations protected by Article 8.1 of the American Convention, it is essential to examine, or re-examine, the legality of any decision that imposes on an individual an irreparable encumbrance, or an encumbrance that has a negative impact on fundamental rights or freedoms.<sup>119</sup>

86. Similarly, the Inter-American Court has addressed the scope of the right to due process:

In any subject matter, even in labor and administrative matters, the discretionality of the administration has boundaries that may not be surpassed, one such boundary being respect for human rights. It is important for the conduct of the administration to be regulated and it may not invoke public order to reduce discretionally the guarantees of its subjects. For instance, the administration may not dictate punitive administrative actions without granting the individuals sanctioned the guarantee of the due process.<sup>120</sup>

<sup>116</sup> See: I/A Court H. R., *Case of Claude Reyes v. Chile*, paragraph 118.

<sup>117</sup> See: I/A Court H. R., *Case of Claude Reyes v. Chile*; *Case of Palamara Iribarne*, paragraph 164; *Yatama Case*, paragraph 149; and *Ivcher Bronstein Case*, paragraph 104.

<sup>118</sup> <http://www.cidh.oas.org/demandas/11.830%20Trabajadores%20Cesados%20del%20Congreso%20Peru%204feb05.pdf>, paragraph 79.

<sup>119</sup> See: IACHR, Report 119/99, Peru, October 6, 1999, *Case of Susana Higuchi Miyagawa*, paragraph 54, in which the IACHR considered the decision concluding a judicial proceeding should not be merely formal, because it should examine the merits of the facts and verify whether they occurred as has been alleged and proved. It should establish the responsibility of the person who caused by his or her conduct the violative act or omission, and then decide on the merits. If it fails to do so, the judicial remedy becomes inconclusive, in addition to ineffective, on not protecting the individual from the violation, nor providing adequate reparation.

<sup>120</sup> Emphasis added. I/A Court H. R., *Baena Ricardo et al. Case v. Panama*. Judgment of February 2, 2001. Series C No. 72, paragraph 126.

87. As the Court has already ruled, Article 8 of the Convention:

is not strictly limited to judicial remedies, but “rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees” so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights.<sup>121</sup>

88. Similarly, in its judgment in the *Constitutional Court* case, the Court said:

The Court recalls that the purpose of international human rights law is to provide the individual with the means of protecting internationally recognized human rights before the State. In the international jurisdiction, the parties and the issue in dispute are, by definition, different from those in the domestic jurisdiction.<sup>122</sup> When establishing the international responsibility of the State for the violation of the human rights embodied in Articles 8.1 and 25 of the American Convention, a substantial aspect of the dispute before the Court is not whether judgments or administrative decisions were issued at the national level or whether certain provisions of domestic law were applied with regard to the violations that are alleged to have been committed to the detriment of the alleged victims of the facts, but whether the domestic proceedings ensured genuine access to justice, in keeping with the standards established in the American Convention, to determine the rights that were in dispute.<sup>123</sup>

89. The IACHR notes that, as indicated in the established facts (*supra* paragraph 64), following the adoption of Resolution No. 17 and its amendment, and of Resolution No. 18, on March 17 and March 18, 1999, respectively, and following receipt of the complaint lodged against Mr. Mojoli by the ANR’s representative on March 18, 1999, the CSJ’s Superintendency Council asked the TSJE to forward it the background documents covering the complaint made by the ANR’s representative.<sup>124</sup> On March 19, the President of the TSJE conveyed the documents requested, along with a communication stating his position<sup>125</sup> and, on March 22, 1999, the Superintendency Council issued Resolution No. 136, in which it sanctioned Mr. Mojoli with a fine of 30 times the minimum daily wage and a thirty-day suspension from office.

90. In consideration whereof, based on the established facts, the parties’ claims, and the jurisprudence of the inter-American system, the Commission concludes that the State did violate Mr. Mojoli’s rights under Article 8.1 in accordance with Article 1.1 of the American Convention by adopting an administrative sanction against him without affording him due procedural guarantees.

#### **b. Unconstitutionality suit**

91. In second place, the Commission will analyze whether the alleged victim was afforded a simple and prompt remedy for the protection of his rights, as established by Article 25 of the American Convention, in the disciplinary sanction imposed by Resolution No. 136 of March 22, 1999.

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<sup>121</sup> I/A Court H. R., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001, Series C No. 71, paragraph 69, citing: I/A Court H. R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 27.

<sup>122</sup> See: *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, paragraph 365; *Case of the “Mapiripán Massacre,” v. Colombia*. Judgment of September 15, 2005, Series C No. 134, paragraph 211; and *Case of the Serrano Cruz Sisters v. El Salvador*. Judgment of March 1, 2005. Series C No. 120, paragraph 56.

<sup>123</sup> See: *Case of the Ituango Massacres, supra* note 65, paragraph 339; *Case of the Massacre of Pueblo Bello, supra* note 6, paragraph 206; and *Case of the “Mapiripán Massacre,” supra* note 65, paragraph 211.

<sup>124</sup> CSCSJ document, dated March 19, 1999.

<sup>125</sup> See paragraph 64 *supra*, reporting that the TSJE President stated that in spite of receiving, on March 17, 1999, a draft resolution containing Judge Mojoli’s proposal, signed by Judges Mojoli and Rojas, he declined to put his own signature to it. He also stated that he later learned that, on March 18, 1999, Judges Mojoli and Rojas had signed this draft, along with Judge Martínez Hustin, a member of the Electoral Court of Misiones, identifying it as No. 17 of the General Secretariat of the TSJE.

92. Mr. Mojoli filed an unconstitutionality suit against Resolution No. 136 and challenged the members of the CSJ, acting as members of the CSCSJ, who had issued that resolution on March 31, 1999. On May 3, 1999, the CSJ requested that the background documents relating to Resolution No. 136 be brought before it. Although the order of May 3, 1999, was never complied with, and although the challenge was never resolved, on February 8, 2005, Mr. Mojoli was notified that the “proceedings had expired” in his unconstitutionality suit.<sup>126</sup> On March 10, 2005, Mr. Mojoli lodged an appeal against the CSJ’s decision.

93. The alleged victim explains that in Paraguay, unconstitutionality suits are governed by Articles 550 to 564 of the Code of Civil Procedure and, under Article 554 of the CPC, the Supreme Court must adopt a decision, as a Final Agreement and Judgment, within a period of 30 days (*supra* paragraph 65.h). He therefore claims that had the order of May 3, 1999, been obeyed, notice of the suit would have been served on the Attorney General and the necessary evidence for the subsequent adoption of an Agreement and Judgment would have been ordered. Consequently, he holds that the failure to resolve his unconstitutionality filing violated his right of judicial protection, as enshrined in Article 25 of the American Convention.

94. The State maintains that although the case proceeded very slowly, this caused no harm to Mr. Mojoli’s interests since he had resigned his position with the TSJE. The State explains that in civil proceedings, the initiation of action is the responsibility of the parties; thus, if the Court failed to abide by its own order, it fell to the interested party to pursue proceedings with effective and timely demands pursuant to Article 412 of the Code of Civil Procedure.<sup>127</sup> The State explains that the special demand means that the filing must specify the obstacle that must be removed (in the case at hand, for example, it would be for the relevant document to be drawn up and referred to the Court’s Superintendency Council for conveyance of the background documents sought), but the case file does not indicate any demand of that kind made by Mr. Mojoli.<sup>128</sup>

95. In addition, the State indicates that access to the Supreme Court’s case files is computerized. Thus, access is not achieved by mere sight of the documents; instead, the officer in charge of the system informs the applicant appealing to the Secretariat of the last order issued, the current location of the case file, and the reason for it being there. The State clarifies that the filing of a demand is independent of the possibility of securing access to the judicial file. The State holds that Mr. Mojoli was negligent in pursuing the procedure, in that he merely requested exhibition of the documents instead of filing demands, as required by law, which led to the expiration of the proceedings.

96. The Commission observes that Article 412 of the Paraguayan Code of Civil Procedure establishes the mechanism to request prompt dispatch of the pending decision and the “duty” (*supra* note 24) of the party interested in the dispatch to require it; however, the facts of the case do not indicate that the alleged victim complied with his duty to promote a decision regarding the unconstitutionality suit. In this regard, the first paragraph of Article 25 of the Convention establishes, in broad terms, the obligation

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<sup>126</sup> The alleged victim refers to the Notice of the Supreme Court of Justice, dated February 8, 2005, reporting that on October 6, 2004, the Supreme Court had issued AI No. 1506 in the proceedings titled “Unconstitutionality Suit: Against Resolution No. 136 of March 22, 1999, issued by the Superintendency Council of the Supreme Court of Justice.”

<sup>127</sup> Article 412 of the Code of Civil Procedure:

Should the deadline for issuing a resolution pass without the judge or court doing so, a request may be lodged by any of the parties at trial. Counsel shall be obliged to request prompt dispatch from the judge or tribunal; and, should a response not be forthcoming, he shall reiterate the request within the following ten days [...] Should the judge or tribunal not issue a resolution within the following twenty days, he shall lodge a complaint with a higher court, except when the court that has incurred in the delay is the Supreme Court of Justice [...].

<sup>128</sup> The State noted in its submission of October 9, 2007, that this claim can be corroborated in the case file covering the unconstitutionality action.

of states to provide all persons within their jurisdiction with an effective judicial remedy to violations of their fundamental rights and of rights recognized in the Constitution or in law.<sup>129</sup>

97. In the case at hand, Resolution No. 136 of March 22, 1999, which imposed disciplinary sanctions on Mr. Mojoli, could be challenged domestically through the unconstitutionality suit provided for in Article 132 of the Constitution (*supra* paragraph 65.b). That action was lodged, however, the interested party did not promote its dispatch, as established by the Code of Civil Procedure, and it was judged to have expired. Consequently, the Commission concludes that the State of Paraguay did not violate Article 25.1 in conjunction with Article 1.1 of the American Convention to the detriment of Mr. Mojoli. Likewise, the Commission notes that since Mr. Mojoli resigned as a member of TSJE on April 6, 1999, and the disciplinary sanction imposed on him (a suspension and a fine) was never enforced.

### **c. Prosecution for perverting the course of justice**

98. Third, the Commission will analyze whether Mr. Carlos A. Mojoli's right to be judged within a reasonable time, as enshrined in Article 8.1 of the American Convention, was violated in the criminal prosecution for perverting the course of justice brought against him under the complaint filed by attorney Darío Filártiga, representing the National Republican Association (ANR), and Resolution No. 136 of March 22, 1999.

99. In the case at hand, the alleged victim claims that summary proceedings were initiated on March 30, 1999, and, on August 6, 1999, he gave a statement to the investigation. Later, in May 2000, although the criminal prosecutor and representatives of the defense called for the provisional dismissal of Mr. Carlos A. Mojoli from the proceedings, the criminal court hearing the case refused.

100. The State, in turn, claims that the criminal proceedings concluded with Final Judgment No. 8 of March 25, 2003, handed down by the Seventh Criminal Sentencing Court, in which Mr. Mojoli was acquitted. The State maintains that the criminal trial began on the basis of background documents placed before the regular courts, and that the investigation was based on reasonable evidence of suspicion regarding the facts examined in the proceedings. The State holds that the court's decision to acquit Mr. Mojoli was based on the absence of a punitive goal sought by the Public Prosecution Service, which reaffirms that the alleged victim's procedural rights were respected.

101. The Commission emphasizes that the right of access to justice means that disputes must be resolved within a reasonable time,<sup>130</sup> since a delay, in and of itself, can constitute a violation of the right to a fair trial.<sup>131</sup> For that reason, three points must be taken into account in determining what is a "reasonable time": (a) the complexity of the matter, (b) the judicial activity of the interested party, and (c)

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<sup>129</sup> I/A Court H. R., *Constitutional Court Case v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraph 89, citing: I/A Court H. R., *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 23.

<sup>130</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C No. 192, paragraph 154; *Case of Suárez Rosero v. Ecuador*. Merits, Judgment of November 12, 1997, Series C No. 35, paragraph 73; *Case of Heliodoro Portugal*, paragraph 148; and *Case of Salvador Chiriboga v. Ecuador*, Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, paragraph 59.

<sup>131</sup> I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 154; I/A Court H.R., *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case*. Judgment of June 21, 2002. Series C No. 94., paragraph 145; *Case of Heliodoro Portugal vs. Panama*, *supra* note 13, paragraph 148; and *Case of Salvador Chiriboga v. Ecuador*. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, paragraph 59.

the behavior of the judicial authorities.<sup>132</sup> To that respect, the Inter-American Court has recently established that, additionally,

in this analysis of reasonableness, the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it must be taken into account; bearing in mind, among other elements the matter in dispute. If the passage of time has a relevant impact on the judicial situation of the individual, the proceedings should be carried out more promptly so that the case is decided as soon as possible.<sup>133</sup>

102. As indicated in the established facts, the proceedings for perverting the course of justice brought against the alleged victim lasted for approximately four years. To that respect, the Commission lacks sufficient evidence to conclude that there has been a violation to the right of access to justice of Mr. Mojoli or that the length of the proceedings that resulted in his acquittal had a relevant impact on Mr. Mojoli's judicial situation, in this specific case. Consequently, the Commission concludes that the State of Paraguay did not violate Mr. Carlos Alberto Mojoli's right to be judged within a reasonable time, as enshrined in Article 8.1 of the American Convention in conjunction with Article 1.1 thereof.

**d. Prosecution for falsehood in a public document**

103. In fourth place, the Commission will analyze whether the criminal prosecution for falsification of a public document brought against Mr. Mojoli for allegedly falsifying a copy of the study certificate that he presented to the Magistrature Council violated the alleged victim's right to be tried within a reasonable time, as enshrined in Article 8.1 of the Convention.

104. The alleged victim claims that although the judge ruled, on March 9, 2000, to open a summary investigation of the alleged facts, he was not indicted in the proceedings until July 25, 2002. The alleged victim maintains that by July 25, 2002, statutory limitations applied to the proceedings and that during the summary investigation, which lasted five years, no authentic copy of the records were sought from the Law School of the National University of Asunción in order to verify whether there were discrepancies between the original and the copy contained in the case file; neither was his accuser ordered to give a statement of responsibility before the judge to explain the defects in his complaint, in spite of the requests that were made; and no prosecution was brought against the alleged signatories of an allegedly falsified public document. Mr. Mojoli claims he has not been notified of any judgment in the proceedings, and so his prosecution remains ongoing.

105. The State claims that the criminal prosecution of Mr. Carlos A. Mojoli presents no substantial problems of irregularity that could entail a violation of any right or procedural guarantee enshrined in the Constitution of the Republic, in current international law, or in the Code of Criminal Procedure of 1890.

106. In regard to the right to a fair trial, the Commission notes that Article 8.1 of the Convention imposes on the states parties the obligation of organizing their legal systems in such a way that the courts can meet each and every one of the requirements set in that article of the Convention, including the obligation of resolving the matters placed before them in a reasonable time.<sup>134</sup>

107. In that regard, regarding the total duration of the prosecution, the Commission notes that -although the criminal proceedings began on May 16, 1997- the alleged victim was indicted on July 25, 2002 (*supra* para. 67(o)). The Commission also notes that between March 12, 2004, when the conclusion

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<sup>132</sup> See: *Case of Genie Lacayo v. Nicaragua*. Merits, Reparations, and Costs. Judgment of January 29, 1997. Series C No. 30, paragraph 77; *Case of Bayarr v. Argentina*, *supra* note 13, paragraph 107; and *Case of Heliodoro Portugal v. Panama*, *supra* note 13, paragraph 149.

<sup>133</sup> I/A Court H.R., *Valle-Jaramillo and et al. v. Colombia Case*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 155.

<sup>134</sup> ECHR, *Case of Pélissier and Sassi v. France*, Application No. 25444/94, Judgment of March 25, 1999, paragraph 74.

of the summary proceedings was ordered, and August 2009, no formalities have been carried out and the case has not expired.<sup>135</sup>

108. In accordance with the established facts and the parties' claims, together with the elements for determining what is a reasonable time (*supra* paragraph 105), the Commission understands that the alleged victim's actions have not hindered the criminal proceedings and that the trial itself is not by nature a complex matter. Neither has the State offered any argument about the need to prolong this criminal prosecution for more than 10 years.

109. Consequently, the Commission concludes that the State did violate Mr. Carlos Alberto Mojoli's right to be judged in a reasonable time, as enshrined in Article 8.1 of the American Convention, in conjunction with Article 1.1 thereof.]

**3. Principle of legality and freedom from *ex post facto* laws (Article 9), in conjunction with the obligation to respect rights (Article 1.1),<sup>136</sup> of the American Convention on Human Rights**

110. Article 9 of the American Convention provides that:

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

111. In his prosecution for falsehood in a public document, Mr. Mojoli claims that as a result of the court's order of July 25, 2002, which indicted him, and the change in the title of the proceedings ordered by the Sixth Sentencing Judge on March 31, 2002, a new set of proceedings were opened, under the title "Carlos Alberto Mojoli re Falsehood in Particulars." The alleged victim claims that the Sentencing Judge lacked jurisdiction to order this expansion of the summary proceedings, given that the new Code of Criminal Procedure stipulates that only guarantee judges may bring prosecutions.<sup>137</sup>

112. In addition, Mr. Mojoli states that under Article 15 of Law 1444/99<sup>138</sup> and Agreements Nos. 154 (Article 24) and 155 (Article 1), both of February 21, 2000, sentencing judges may only conclude cases begun under the terms of the Code of Criminal Procedure of 1890 and may not initiate proceedings.

113. The State holds that the action described as the allegedly punishable offense of falsehood in or falsification of a public document which Mr. Mojoli was charged is provided for both in the 1914 Criminal Code (Article 232)<sup>139</sup> and in Law No. 1160/97, enact the new Criminal Code of the

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<sup>135</sup> Reported by the State in a communication received on April 29, 2009.

<sup>136</sup> Article 1.1 of the American Convention on Human Rights: "The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

<sup>137</sup> The alleged victim notes that the new Code of Criminal Procedure came into full effect on March 1, 2000.

<sup>138</sup> Article 15 of Law 1444/99: "Until such time as the Execution Judges are appointed, the powers granted to them by Law No. 1286/98 shall be exercised by the judge who issued the resolution or, for judgments issued by a Sentencing Court, by the appointed member thereof. Compliance with precautionary measures and final judgments issued by a justice of the peace, as established in the competence of the judge of execution, shall be the responsibility of another of the same group, appointed by the President of the Criminal Chamber of the Supreme Court of Justice in the capital and by the District President in the interior of the country. For the purposes of the oversight to be exercised by justices of the peace, once the corresponding resolution has been issued, they shall notify the appointed judge thereof."

<sup>139</sup> The State refers to Article 232, which states that: "Any other person who commits falsehood in a public document in any of the ways listed in Article 229 shall be punished by a prison term of two to four years." Article 229: Any public servant or notary...."

Republic of Paraguay (Articles 250, 251, and 252) that came into force in 1998. Regarding the alleged victim's claims about the change in the title of the proceedings, the State explains that the crimes described in the 1914 Criminal Code were not given names, but that the situation is different under Law No. 1160/97, where specific names are given to each criminal offense.

114. Regarding the charges of falsehood in particulars made against Mr. Mojoli, the State notes that the title of the case file is a mere administrative formality since, as provided in Article 17.2 of the Constitution of the Republic, a person facing trial is entitled to be given prior, detailed knowledge of the charges involved – in other words, of the facts under investigation and in which he is a suspected perpetrator, accomplice, or accessory. The State claims that the criminal prosecution of Mr. Carlos A. Mojoli presents no problems of irregularity that could entail a violation of any right or procedural guarantee enshrined in the Constitution of the Republic, in current international law, or in the Code of Criminal Procedure of 1890.

115. The Commission notes that in accordance with the established facts, on March 9, 2000, the Sixth Criminal Sentencing Judge resolved to initiate summary proceedings to investigate and corroborate the allegations, and to identify the perpetrator(s) and accessories, in the alleged commission of the crime described in Article 236 of the previous Criminal Code,<sup>140</sup> on the grounds that it was a publicly actionable offense.<sup>141</sup> After taking statements from various people and carrying out different formalities, on November 13, 2000, the prosecutor requested that Mr. Carlos A. Mojoli be indicted in the proceedings,<sup>142</sup> and his indictment took place on July 25, 2002.<sup>143</sup>

116. The Commission emphasizes that in accordance with the Inter-American Court's jurisprudence, the principle of legality in criminal matters means that:

The elaboration of penal categories presumes a clear definition of the criminalized conduct, which establishes its elements, and allows it to be distinguished from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.

According to the principle of the non-retroactivity of the unfavorable penal norm, the State is prevented from exercising its punitive power in the sense of applying retroactively penal laws that increase sanctions, establish aggravating circumstances or create aggravated types of offenses. It is also designed to prevent a person being penalized for an act that, when it was committed, was not an offense or could not be punished or prosecuted.<sup>144</sup>

117. The Commission notes that in the case at hand, the crime with which Mr. Mojoli was accused at the time proceedings began was the one described in Article 236 of the 1914 Criminal Code, applicable to alleged offenses committed prior to 1998, as shown by the resolution of the Sixth Criminal

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<sup>140</sup> Article 236 of the previous Criminal Code (1914): "Any other person who commits falsehood in a public document in any of the ways listed in Article 233 shall be punished by a prison term of two to four years. If the falsification is a copy of a public document, the prison term shall be for one to three years."

<sup>141</sup> AI No. 5 of March 9, 2000, signed by Arnulfo Arias, Criminal Sentencing Judge in proceedings "Background to an alleged falsification of a public document."

<sup>142</sup> Ruling No. 061 of November 13, 2000, signed by Criminal Prosecutor Juan de Rosa Avalos.

<sup>143</sup> AI No. 616 of July 25, 2002, signed by Sandra Farias de Fernández, Sixth Sentencing Judge, in proceedings "Carlos Alberto Mojoli re falsehood in particulars."

<sup>144</sup> I/A Court H. R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004, Series C No. 111, paragraphs 174 and 175.

Sentencing Judge of March 9, 2000, which ordered summary proceedings to investigate and corroborate the allegations. In the case at hand, the proceedings have not expired, and a violation of Article 9 of the Convention, in conjunction with Article 1.1 thereof, has not been established. In addition, the alleged victim has not claimed nor presented documentary evidence about ambiguity in the offense with which he was charged or about the retroactive enforcement of an unfavorable criminal statute.

118. Based on the foregoing, and on the basis of the evidence furnished by the parties, the established facts, and the fact that the proceedings have not yet concluded, the Commission concludes that it has not been shown that the case at hand entailed a violation of Mr. Mojoli's rights under Article 9 of the American Convention, in conjunction with Article 1.1 thereof.

**4. Right to privacy (Article 11), in conjunction with the obligation to respect rights (Article 1.1), of the American Convention on Human Rights**

119. Article 11 of the American Convention provides that:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

120. The alleged victim claims that this persecution against him ended his judicial career, which had begun in 1990. In addition, he states that between 1999 and 2000, it was impossible for anyone to hire his legal services because he was being prosecuted, libeled, persecuted, and on the black list of the Supreme Court, which spread rumors and instructions among the judges and courts so that none of Mr. Mojoli's legal work in the country's courts could prosper.

121. In contrast, the State claims that as a result of his own actions, the alleged victim received a sanction from the Supreme Court of Justice, steps were taken toward his impeachment, he had problems with all the country's political parties, he resigned his position, and he had problems with the justice system.

122. With regard to the alleged victim's claims, the Commission notes that:

A judicial proceeding does not, in itself, constitute unlawful harm to the honor or dignity of the individual. Despite the fact that it can indirectly cause difficulties to those who must undergo a trial, its purpose is to settle a dispute.<sup>145</sup>

123. Based on the established facts and on the parties claim's, the Commission believes that it has not been shown that in the case at hand there was a violation of Mr. Carlos A. Mojoli's rights under Article 11 of the Convention, in conjunction with Article 1.1 thereof.

**V. CONCLUSIONS**

124. Based on the foregoing analyses and conclusions, the Commission concludes that in the case at hand, there was a violation of Mr. Mojoli's right to a fair trial as enshrined in Article 8.1 of the American Convention, in conjunction with Article 1.1 thereof, by adopting an administrative sanction against him without affording him due procedural guarantees. The Commission further concludes that it lacks sufficient evidence to determine the alleged violation of Article 8 of the Convention in connection with Article 1.1 of the same instrument regarding the proceedings for perverting the course of justice, and for falsifying a public document. Likewise, it concludes that the State did not violate the right to an effective remedy, as enshrined in Article 25 of the American Convention, in conjunction with Article 1.1

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<sup>145</sup> I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, paragraph 176.

thereof, in the unconstitutionality suit lodged against Resolution No. 136 of March 22, 1999. Additionally, the Commission concludes that the State of Paraguay did not violate Articles 9 and 11 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Mr. Mojoli. Finally, the Commission concludes that this the judgment constitutes, *per se*, a form of reparation.

## VI. RECOMMENDATION

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF PARAGUAY:

1. Take the necessary steps to guarantee the right to be heard in disciplinary proceedings brought against judges.
2. Take the necessary steps to conclude the proceedings against Mr. Carlos Alberto Mojoli for falsifying a public document.

## VII. ACTIONS SUBSEQUENT TO THE MERITS REPORT No. 115/09

### A. Proceedings before the IACHR

125. On October 28, 2009, during its 137th session, the Commission approved Report No. 115/09 on the merits of this case, in accordance with Article 50 of the American Convention. On November 23, 2009 the report was forwarded, along with the Commission's recommendations, to the Paraguayan State, which was given two months to report on measures taken to implement the recommendations, counting from the date the report was sent.

126. On November 23, the petitioner was informed that the Commission had approved Report No. 115/09, and he was asked to report within one month on his views about submitting the case to the Inter-American Court; the position of the victim and the grounds for considering that the case should be referred to the Court. He was also asked to submit by the same deadline information on the victim; the authority to represent the victim; available evidence beyond what was presented during the proceedings before the Commission; details on witnesses and experts to appear before the Court; and claims for reparations and costs. On December 15, 2009, the petitioner requested a one-month extension, which was granted. On December 18, 2009, the IACHR forwarded to the petitioner under confidentiality notice the relevant portions of Report No. 17/07. For its part, the State on January 22, 2010 requested a 30-day extension, which was granted.

127. In a letter dated January 23, 2010, Mr. Carlos Alberto Vargas Mojoli manifests his disconformity with Report No. 115/09 and requests that it be amended. He states that he disagrees with its conclusions and believes that many of the facts it presents are untrue while others are errors, and that the interpretation of Paraguayan law is mistaken. In addition, he believes that in its interpretation of treaty rules the Commission failed to apply the principles of good faith and *pro homine*.

128. The petitioner cites among material errors committed by the Commission its statement that there was no harm against him because Resolution 136 had not been fulfilled as he had resigned his position. He states that his resignation was the result of coercion. He adds that omitted from consideration are "circumstances referred to over the course of nine years, such as evidence provided by the Paraguayan state itself of unfavorable developments, the lack of background on R136, and the report on the CSCSJ secretariat report."<sup>146</sup> Among other things, he also alleges that there was never any order from the Electoral Tribunal to carry out the order to remove Mr. Oviedo from the voter's list and that the Report is wrong to state that the Electoral Justice is a part of the judiciary. Mr. Mojoli further argues that the State sent information slandering him during the proceedings of this case, information which he

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<sup>146</sup> Statement from the petitioner, dated January 23, 2010.

denies. He incorporates details about his professional career. Based on the foregoing, he is requesting that a new report be issued and referred to the Inter-American Court.<sup>147</sup>

129. In its letter dated February 22, 2010, the State presented information on steps taken to implement the recommendations of the IACHR.<sup>148</sup>

130. On February 23, 2010, the IACHR decided not to refer the case to the Court, based on the fact that in its evaluation of the steps taken by the State, described in section IX, the State had implemented the recommendations issued by the IACHR.

131. On October 23, 2010, the IACHR approved Report No. 121/10, in accordance with Article 51 of the American Convention.

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<sup>147</sup> Statement from the petitioner, dated January 23, 2010.

<sup>148</sup> Information discussed in Section IX.

## **IX. ANALYSIS OF THE IMPLEMENTATION OF RECOMMENDATIONS**

- A.** Take the necessary steps to guarantee the right to be heard in disciplinary proceedings brought against judges

132. The State informs that the rules to carry out disciplinary proceedings have been amended as of 2007 in order to guarantee due process in administrative proceedings and guarantee anyone under investigation the effective right to defense, pursuant to the recommendation set forth in Report No. 115/09.<sup>149</sup> Those amendments were established by a Supreme Court of Justice (CSJ) Decree issued by virtue of the powers conferred on it under Article 232 of the Code of Judicial Organization. Decree No. 470 of 2007 establishes, specifically, that in a preliminary investigation, a person under investigation shall be given 5 days to mount his/her defense; administrative appeals of final decisions by the government attorney during the trial of a case, as well as appeals of final decisions and their effects; and, in relation to sanctions, the principle of proportionality. The State also reports that the disciplinary proceeding is being held before the General Superintendency of Justice according to a Disciplinary Office operations and procedures manual that the Superintendency Council approved by Resolution No. 2158 of December 6, 2007; and that sanctions imposed by the Council can be appealed for reconsideration, interrupting a ruling entering into effect. Finally, the State indicates that the Supreme Court created the Office of Grievance and Complaints as a subsidiary body of the Superintendency Council, and invokes applicable laws in disciplinary proceedings. Accordingly, the Commission concludes that the State of Paraguay has fully complied with this recommendation.

- B.** Take the necessary steps to conclude the proceedings against Mr. Carlos Alberto Mojoli for falsifying a public document.

133. The State reports that on May 22, 2009, the Criminal Court of Settlement and Ruling No. 3 decided to dismiss the charges of falsifying documents, lodged against Carlos Alberto Mojoli.<sup>150</sup> Consequently, the Commission concludes that this recommendation is fully implemented by State of Paraguay.

## **X. CONCLUSIONS AND NOTIFICATION**

134. The Inter-American Commission on Human Rights concludes that the Paraguayan state implemented the recommendations made in Report No.115/09. Pursuant to Article 51 of the American Convention, the Commission hereby decides to publish this report and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23<sup>rd</sup> day of the month of October, 2010. (Signed): Felipe González, Presidente; Dinah Shelton, Segunda Vicepresidenta, Luz Patricia Mejía Guerrero, José de Jesús Orozco Henríquez, María Silvia Guillén, members of the Commission.

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<sup>149</sup> Communication from the State, dated February 22, 2010. Appendix 1. Letter from the Supreme Court of Justice to the Ministry of Foreign Affairs advising of new agreements issued by the Court.

<sup>150</sup> Communication from the State, dated February 22, 2010. Appendix 5. Criminal Court Case Settlement and Decision No.3, dated May 22, 2009.