REPORT No. 99/11
CASE 12.597
MERITS
MIGUEL CAMBA CAMPOS ET AL.
"JUDGES OF THE CONSTITUTIONAL COURT"
ECUADOR
July 22, 2011

I. SUMMARY

1. On February 23, 2005, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a complaint filed by Miguel Camba Campos and seven other former judges of the Constitutional Court of Ecuador, for the violation of various provisions of the American Convention on Human Rights (hereinafter "the American Convention," "the Convention," or "the ACHR") by the Republic of Ecuador (hereinafter "the Ecuadorian State," 'the State," or "Ecuador"). The petitioners alleged that on November 25, 2004, they were dismissed by an irregular and arbitrary procedure from their positions as judges of the Constitutional Court by the National Congress, that in impeachment proceedings held on December 1, 2004 they were not censured, and that a new impeachment proceeding was held on December 8, 2004, by which they were removed. According to the petitioners, the decision to terminate them was issued in repudiation of the procedures established in the Constitution and by statute to that end, and the second impeachment trial was conducted without respecting due process guarantees. In addition, the petitioners made reference to the absence of a judicial remedy in the face of that situation. Finally, the petitioners stated that being terminated prevented them from continuing to exercise the right to hold public office, and that they were subjected to discriminatory treatment, both in relation to other judges of the same Court who were ratified in their duties and in relation to the entire population, as they were impeded from being able to file *amparo* actions to safeguard their rights.

2. In this regard, the Commission considers it appropriate to refer to the specific situation of each of the petitioners. The Constitutional Court of Ecuador was made up of nine full judges (*magistrados titulares*) and nine alternate judges (*magistrados suplentes*). The petitioners in this case are seven principal members of the Constitutional Court: Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, and Simón Zabala Guzmán, and one alternate member, Manuel Jaramillo Córdova. The 18 principal and alternate members of the Constitutional Court were terminated by the National Congress on November 25, 2004. In addition, Miguel Camba Campos, Oswaldo Cevallos Bueno, Jaime Nogales Izurieta, Luis Rojas Bajaña, and René de la Torre (another full judge of the Constitutional Court who was terminated on November 25 and newly designated on that same date) were impeached based on having participated in Resolution No. 0004-2003-TC. Miguel Camba Campos, Luis Rojas Bajaña, Jaime Nogales Izurieta, Simón Zavala Guzmán, and Manuel Jaramillo Córdova were impeached for having participated in Resolution No. 025-2003-TC.

3. In turn, the State of Ecuador claimed that the petitioners were not dismissed or removed from their positions, but rather that they were simply terminated, for in the session of November 25, 2004, the Congress noted that the appointment of the members of the Constitutional Court in 2003 had been illegal and resolved to remedy that situation. It added that as a result, the guarantees of due process were not applicable, nor the principle of legality, for they were not sanctioned for any violation whatsoever, rather, they were merely "terminated". In addition, the State indicated that the petitioners did not have recourse to suitable legal means for channeling their claims and, consequently, there was no breach of the right to judicial protection. Finally, the State

contends that the facts do not establish any violation of the rights enshrined in Articles 23 and 24 of the Convention.

4. On February 27, 2007, the Commission adopted Report No. 5/07, in which it found itself competent to hear the petition and ruled it admissible with respect to the possible violation of the rights enshrined in Articles 8, 9, and 25 of the Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof.

5. After analyzing the positions of the parties, the Inter-American Commission concluded that the State of Ecuador was responsible for violating the rights to a fair trial, to the freedom from ex post facto laws, and to judicial protection, enshrined in Articles 8, 9, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán y Manuel Jaramillo Córdova. The IACHR also made recommendations.

II. PROCESSING BEFORE THE IACHR

6. The initial petition was received on February 23, 2005. Developments taking place between the presentation of the petition and the adoption of the admissibility decision are set out in the admissibility report adopted on February 27, 2007.[2]

7. On March 15, 2007, the Commission notified the parties of that report, informed them that the petition had been registered as Case No. 12.597, and, under Article 38.1 of the Rules of Procedure then in force, set a two-month deadline for the petitioners to submit additional comments on the merits. Similarly, in compliance with Article 48.1.f of the American Convention, the Commission made itself available to the parties with a view to reaching a friendly settlement of the matter.

8. On May 15, 2007, the petitioners submitted their additional comments on the merits of the case and requested a hearing. Their submission was forwarded to the State on May 24, along with a one-month deadline for it to return its comments. On June 21, 2007, the IACHR informed the petitioners that the hearing had not been granted on that occasion, on account of the large number of hearing requests received.

9. On July 18, 2007, the petitioners filed additional information about the case. On March 10, 2008, the IACHR held a hearing on the merits. On that same date, the petitioners presented additional information concerning the merits of the case. On July 25, 2008, and November 18, 2009, the petitioners presented additional information on the case. On April 16, 2008, and May 17, 2010, the State presented additional information on the case. On February 16, 2010, the Commission forwarded the pertinent parts of an *amicus curiae* brief filed by attorney Alejandro Ponce Martínez in the instant case to the petitioners and the State.

[2] IACHR, Report No. 5/07 (Admissibility), Petition 161-05, Miguel Camba Campos and others, Ecuador, February 27, 2007, paras. 5 and 6.

III. THE PARTIES' POSITIONS

A. The petitioners

10. The petitioners alleged that they were unconstitutionally and arbitrarily removed from their positions as judges (*vocales magistrados*) of the Constitutional Court, to which they were legitimately elected by the National Congress in 2003 for a period of four years.

11. In that regard, they indicated that Article 275 of the Constitution establishes the Constitutional Court (Tribunal Constitucional) as the highest-level authority in charge of ensuring the supremacy and efficacy of the constitutional provisions, the highest-level body for constitutional review and independent with respect to the other branches of government, and that its regulation is established in the Organic Law on Constitutional Review.

12. The petitioners argued that pursuant to the constitutional and statutory provisions in force, the National Congress, at its session of January 9, 2003, designated Enrique Herrería Bonnet and Oswaldo Cevallos Bueno as the judges for the legislature on the Constitutional Court for the 2003-2007 period. On March 19, 2003, the legislature designated the other members of the Constitutional Court from the shortlists whose members are drawn from the sectors determined in the Constitution. The petitioners indicated, moreover, that all the members assumed office before the President of the National Congress on March 24, 2003.

13. The petitioners alleged that the only legal means for removing a member of the Constitutional Court before the end of his or her term is impeachment, which is a power of the National Congress that can only be initiated upon formal request of at least one-fourth of the members of the legislature.

14. The petitioners indicated that on November 9, 2004, an attempted application for the impeachment of the President of the Republic, Col. Lucio Gutiérrez, for the alleged crime of embezzlement, was thwarted, leading to an "irregular process of restructuring several agencies of the State." In that context, on November 24, 2004, the President of the Republic announced the Executive's intent to promote, in the Congress, a reorganization of the Supreme Court of Justice in order to "depoliticize" it. The petitioners alleged that in the face of the government threat the Constitutional Court published a communiqué in the national press anticipating that the removal of the judges of that Court by a mere resolution would constitute a violation of the rule of law.

15. According to the petitioners, on November 24, 2004, the majority of Congress, supportive of the Government, asked the President of the Congress to amend the previously adopted Order of Business for legislative debate in order to consider a draft resolution that declares the removal (*cesación en funciones*) of the members of the Constitutional Court. While that request was rejected by the President of the Congress, on that same day six full judges of the Constitutional Court, Oswaldo Cevallos Bueno, Miguel Camba Campos, Luis Rojas Bajaña, Jaime Nogales Izurrieta, René De la Torre, and Simón Zabala Guzmán, and alternate to the President of the Court, Manuel Jaramillo Córdova, were called to appear for impeachment on December 1.

16. The petitioners argued that the call for impeachment was based on the judges having voted in favor of resolutions adverse to the interests of certain political parties represented in Congress, that those cases had been resolved more than a year prior to the call, and that as a result the Congress had lost the power to impeach the judges on those grounds.

17. The petitioners alleged that on November 25, 2004, despite the call for impeachment, the National Congress, by mere resolution No. 25-160, ruled that the full judges of the Constitutional Court had been designated illegally in 2003 and terminated them. On that same date the National Congress elected new members of the Constitutional Court, using the same shortlists that were sent in 2003, and once again designated Milton Burbano and René de la Torre, who had been elected in 2003 and also dismissed like the rest of the members of the Court on November 25, for their alleged affinity with the legislative majority.

18. In addition, they indicated that on December 1, the debate on the censure motions raised in the impeachment trials against Oswaldo Cevallos Bueno, Miguel Camba Campos, Luis Rojas Bajaña, Jaime Nogales Izurrieta, René de la Torre, Simón Zabala Guzmán, and Manuel Jaramillo Córdova was included on the Order of Business. The members removed attended that hearing and reiterated that they could not be held liable for the votes they may issue and the opinions they may formulate in the exercise of their position, according to Article 275 of the Constitution. The petitioners stated that the impeachment trial concluded without the approval of any censure motion, despite which the Congress did not overturn Resolution 25-160.

19. The petitioners argue that in the face of these circumstances, on December 2, 2004, Oswaldo Cevallos Bueno, Miguel Camba Campos, Simón Zavala, Luis Rojas, and Mauro Terán filed judicial *amparo* actions, which were rejected given that the judges of first instance applied a decision that emanated from the d*e facto* Constitutional Court that illegally impeded the *amparo* action from going forward to call into question the resolutions issued by the National Congress, expressly the one that ordered the removal of the judges.

20. In addition, they stated that on December 5, the President of the Republic convened a special session of the National Congress for December 8 in order to resolve, among other things, the vote in the impeachment trial of the former members of the Constitutional Court. At that session, according to the petitioners, the Congress repeated the vote of the impeachment a second time, and, without observing the rules of due process or guaranteeing the appearance of the persons put on trial, censured the former judges. For the petitioners, the session convened by the President and the new vote "sought to give a public appearance of legality to Resolution 21-160 of November 25, 2004, by which they were unlawfully removed from their functions."

21. In addition, the petitioners indicated that Oswaldo Cevallos did not participate in the resolution by which the impeachment trial was held, that Enrique Herrería and Mauro Terán were terminated despite not having been called to an impeachment trial, and that René De La Torre, supportive of the Government, was exonerated even though he had voted in the resolution by which all the other judges were impeached, which would constitute discriminatory treatment.

22. The petitioners hold that these facts constituted violations of the rights enshrined in Articles 8, 9, 23, 24, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof. The following sections summarize the petitioners' claims with respect to those articles.

23. As for the **right to judicial guarantees enshrined in Article 8 of the Convention**, the petitioners indicated that "the irremovability of judges is implicitly guaranteed in Article 8(1) of the Convention" and that "the independence of any judge presupposes that one has an adequate appointment process, with an established duration in the position, and with a guarantee against outside pressure. According to the Ecuadorian legal system, the members of the Constitutional Court are elected for a period of four years, and the only way to remove them is by impeachment. In addition, they argued that all judicial and non-judicial procedures, such as legislative ones, in which determinations are made of the liability of individuals with respect to the commission of alleged infractions should contain all the guarantees of due process, and that the application of due

process guarantees is not limited to judicial remedies strictly speaking, but that it encompasses the set of requirements that should be observed in the various judicial procedures.

24. Specifically, the petitioners argued that:

- The State violated the right to due process, the right to be heard with proper guarantees, and the right of defense, given that on November 25, 2004, despite the convening of an impeachment proceeding, the National Congress, by a mere resolution – which was adopted in a very brief process, against express provisions of the Constitution and in violation of the procedures of an impeachment trial – resolved to terminate the judges, considering that they had been illegally designated in 2003.
- The State violated the principles of *res judicata* and *non bis in idem,* since the second vote, on December 8, 2004, by the National Congress, was equivalent to subjecting the judges to a new trial for the same facts for which they had already been absolved on December 1, 2004, plus they were not given notice of the new convening of the impeachment proceeding, which is why they were unable to exercise their rights to reply and defense, and were tried in absentia.
- The State violated the guarantee of "impartial tribunal," for the National Congress acted as "party" and "judge at the same time," and, additionally, the majority already had formed a conviction with respect to the case.
- The State violated the guarantee of "competent tribunal" insofar as the National Congress went forward with an impeachment proceeding for votes cast by some members of the Constitutional Court in the performance of their functions, therefore it did not have subject matter jurisdiction.
- The State violated the guarantee of "independent tribunal" insofar as the impeachment proceeding provided for in the Constitution cannot be used to control the exercise of the jurisdiction of the Constitutional Court or to bring pressure to bear against its judges, for this would constitute, as effectively happened, illegitimate interference in the judicial function, which would weaken the democratic form of government. In addition, the Executive branch pressured Congress to remove the members of the Constitutional Court by means of an unconstitutional call to special sessions.
- The State violated the right to appeal the judgment insofar as there is no higher body to appeal to in order to controvert the unconstitutional ruling by Congress.
- Consequently, they hold, the State violated the rights enshrined in Articles 8.1, 8.2 (b), (c), (d), (h), and 8.4 of the American Convention.

25. Regarding the **freedom from ex post facto laws enshrined in Article 9 of the American Convention**, the petitioners submit that in accordance with the precedents set by the Inter-American Court, that principle is applicable to administrative matters, in that they represent the State's exercise of punitive power. They add that the freedom from ex post facto laws entails not only that actions and omissions be identified as offenses, but also that the procedure and possible penalty be defined. Specifically, the petitioners submitted the following arguments:

- The judges were terminated (*cesados*), i.e. administratively sanctioned, for a situation that is not provided for in the legal order, and against express provisions of the Constitution. The National Congress established a sanction by means of a procedure – resolution – not provided for in the law, thus the guarantee of a prior proceeding was impaired.
- As regards the first impeachment proceeding of December 1, 2004, the members of the Constitutional Court had already been terminated, which meant that they were

convened to and notified of the impeachment proceeding after having been removed. The Constitution does not provide for conducting an impeachment proceeding subsequent to the termination of the judges.

- The members of the Constitutional Court were terminated because it was noted that there was an "illegality in the appointment," but they were subjected to an impeachment proceeding because of their participation in two resolutions of this Court, which is expressly prohibited by the Constitution.
- The second vote, on December 8, 2004, constituted a mere vote, and not an impeachment trial. The second impeachment trial was not provided for in the Constitution, and therefore could not "legalize" the sanction imposed on November 25.

26. Regarding the **right to judicial protection enshrined in Article 25 of the Convention,** the petitioners state that the *amparo* constitutional relief provided for in the Ecuadorian Constitution meets the requirements of a "simple, prompt, and effective recourse" set out in that article. They note that as the Court has ruled, such remedies must serve to protect the rights set out both in the Convention and in states parties' constitutions and laws. The petitioners' arguments on Article 25 of the Convention can be summarized as follows:

- Even though the *amparo* action was in order, the *de facto* Constitutional Court, heeding the presidential petition and violating the procedure, established by a decision that the only action that could be brought against resolutions of termination (*las resoluciones de cese*) issued by the National Congress was the action challenging constitutionality. That action is regulated at Article 277 of the Constitution and imposes requirements difficult to meet such as the initiative of certain authorities or of one thousand citizens. In addition to not meeting the requirement of simplicity, such an action is not swift since it does not have defined time periods for resolution, it is not adequate because it is not designed to protect human rights but to challenge acts that generally attack the Constitution, nor is it effective because it does not make reparation for human rights violations. In any event, if the action challenging constitutionality had been adequate, the motion was going to be heard by the Constitutional Court, which was not independent or impartial, and which, moreover, had already advanced its opinion on the issue.
- As for the requirement of effectiveness, the petitioners indicated that the Constitutional Court ruled that it was out of order to request *amparos* against the resolutions of Congress, even the resolution that terminated the members of the Constitutional Court, which is why the judges of first instance refused to hear the *amparo* cases that were filed. In addition, they stated that it didn't make sense to appeal the denials of the *amparo* actions before the Constitutional Court, which was the organ that asked the judges to disqualify themselves from hearing the cases, and because if the Constitutional Court were to rule favorably on the *amparos* sought, "it would mean that they are removing themselves from their positions."
- In addition, the petitioners argued that the judges in the *amparo* actions suffered from arbitrary meddling that impaired their independence and impartiality, through the resolution issued by the Constitutional Court to impede the processing of the *amparo* actions, and the threats with sanctions imposed on judges who processed those requests for *amparo* judgments handed down by members of the *de facto* Constitutional Court and by legislators. In addition, the judges elected on November 25, 2004, lacked independence due to their commitment to the majority that elected them.
- The contentious-administrative jurisdiction did not constitute an adequate or effective remedy insofar as, in the last resort, the motion would be ruled on by a

Supreme Court of Justice that was not independent or impartial, and whose judges had also been removed unconstitutionally.

27. As regards the **obligations established in Article 2 of the American Convention,** the petitioners argued that control of the Constitutional Court was performed by means of an impeachment proceeding, and that the National Congress has used this instrument repeatedly as a pressure tactic. In addition, the petitioners indicated that there is a proposed Organic Law on the Constitutional Court, submitted in 2001, which would be an important means of regulating the operations of the Constitutional Court and relations with Congress, yet Congress has not given impetus to or approved the bill in a reasonable time. Moreover, the petitioners argued that while the Constitution provides for the impeachment of the members of the Constitutional Court, it does not set forth the grounds for which it should prosecute them, does not meet the guarantees of independence and impartiality, nor does it foresee the possibility of appealing the decisions of the National Congress when it acts as a judicial body. In addition, they alleged a violation of Article 2 of the Convention as a result of the adoption of measures contrary to the Convention, such as the resolution of termination (*resolución de cese*), the two calls to impeachment, the impediment established by the Constitutional Court in terms of the presentation of the *amparo* actions, the call to special sessions, and the constitutional powers of the Congress to appoint and remove the judges.

28. Finally, during the merits stage the petitioners continued to submit arguments on the alleged violation of the rights enshrined in Articles 23 and 24 of the American Convention, even though in the admissibility phase, the Commission found that the facts described did not tend to establish violations of those provisions.[3]

29. Regarding **Article 23 of the Convention**, they contend that Ecuador's Constitution recognizes the right of both access to and holding public office and discharging public functions. In the petitioners' view, the termination resolution adopted by the National Congress prevented them from the continued exercise of their right to perform public functions. As for **Article 24 of the American Convention**, the petitioners indicated that they received different and unjustified treatment at two moments: (i) the termination of seven of the nine principal members who made up the Constitutional Court implied a different, exclusionary, restrictive, and preferential treatment, because they were not supportive of the Government, and (ii) when the resolution of the Constitutional Court left the Supreme Court justices and the Constitutional Court judges in a state of termination, as the only citizens who could not file for *amparo* constitutional relief to defend their human rights. According to the petitioners, no objective or reasonable grounds were given for this treatment.

B. The State

30. The State argued that the former members of the Constitutional Court were not removed for having committed any constitutional or statutory violation in the performance of their functions, but rather they were terminated ("*cesados*") for having been elected without heeding the Constitution in force, as the National Congress recognized by resolution No. R-25-160 of November 25, 2004.

31. In that regard, the State indicated that on November 25, 2004, the National Congress convened a regular permanent morning session in which some legislators stated that the election of the members of the Constitutional Court, in early 2003, had been illegal since the procedure was not in keeping with Article 275 of the Constitution. In other words, they were not

[3] See: IACHR, Report No 5/07, Petition 161-05, Admissibility, Miguel Camba Campos and others, Ecuador, February 27, 2007, para. 36 and operative paragraph 2.

elected individually from each of the shortlists presented, but rather the "tactic of the straight-party vote" ("*la táctica de la plancha*") was used. Accordingly, the Congress adopted the resolution in which it declared the designation of the members of the Constitutional Court illegal and conducted a new designation in keeping with the Constitution and the statute, from the shortlists that the Congress already had. The State indicated that in this way the Congress – in the exercise of its powers – resolved to amend the unconstitutional act that had occurred. In this respect, the State argued that "the judges arrogated to themselves functions that did not correspond to them, for in Ecuador the only organ authorized to interpret the Constitution is the legislative branch, which is what motivated their termination."

32. In addition, the State indicated that even though the most correct thing would have been for the appointments to have been declared invalid or non-existent, this would not have been advisable for it would have provoked a major degree of institutional legal crisis. The State held that had that been done, the resolutions issued by the Court during the period when the judges performed functions illegally would have been declared null and without any legal effect whatsoever, with the consequent detriment to the citizenry and institutional structure of the country.

33. As regards due process, the State considered that one cannot apply Articles 8, 9, and 25 of the Convention, for those articles only operate vis-à-vis judicial proceedings, whereas this was a mere termination case.

34. In addition, in relation to the guarantees of independence and impartiality, the State argued that they don't apply either, insofar as the action of Congress did not take place in the context of its oversight function, but rather its corrective function, so as to answer to "a unanimous call from the Ecuadorian people to end the situation of institutional chaos that prevail[ed] in the public organs." Similarly, the State alleged that the impartiality of a judge is to be presumed, and the contrary must be duly proven and cannot be based solely on the subjective fear of the victims.

35. As regards the impeachment proceeding, the State argued that on May 9, May 12 and May 15, 2003, some legislators publicly accused the members of the Constitutional Court of not having abided by certain constitutional and statutory provisions. The State indicated that in all these impeachment proceedings the accused were able to present their arguments in their defense, the case was opened up for evidence for five days (in keeping with the provisions of the Organic Law on the Legislative Function) so that the public servants accused could exercise their right to defense before the Committee on Inspection and Political Control, orally and in writing, with the same right, whether the moving party is it or the accusing legislators, which is why the accused had all due guarantees available to them, and they exercised their right to defense. The State also held that "among so many steps that have been taken" the members of the Constitutional Court were called to appear for impeachment proceedings on December 1, 2004. Finally, the State affirmed that the Congress acted as the legitimate interpreter of the Constitution, on bringing impeachment proceedings against the judges, and in this regard the IACHR cannot review the content of domestic decisions.

36. As regards the right to judicial protection enshrined in Article 25 of the Convention, the State alleged that the petitioners had two remedies available to them: an unconstitutionality suit (*acción de inconstitucionalidad*) and the contentious-administrative remedy. As regards the first of these remedies, the State argued that once the requirements established in Articles 277 of the Constitution were complied with, if the petitioners considered that they were removed unconstitutionally and arbitrarily, they would have brought an unconstitutionality suit before the Constitutional Court. As regards the contentious-administrative remedy, the State affirmed that it can be filed by natural or juridical persons against administrative regulations, acts, and resolutions of the public administration or of juridical or semi-public persons become final and violate a direct right

or interest of the complainant. That remedy can also be invoked against administrative resolutions that harm private rights established or recognized by a statute, so long as such resolutions were adopted as a result of some general provisions, and that this violates the law from which those rights arise.

37. In particular, the State indicated that the petitioners filed an *amparo* action but that the adequate remedy was an unconstitutionality suit for as it is a legislative action, an action can be brought against it only by a remedy whose effect is *erga omnes*.

38. Additionally, the State argued that the judges who heard the *amparo* motions filed by the petitioners and the National Congress met the standards of "competence," "impartiality," and "independence" required by Article 8(1) of the Convention, and that the petitioners did not prove otherwise with objective evidence or coherent and conclusive indicia. In addition, the State indicated that all the administrative and judicial remedies pursued by the petitioners were resolved and rejected on reasonable and non-arbitrary procedural grounds, which is why the petitioners' arguments merely reveal their disagreement with the unfavorable results obtained.

39. As regards the principle of legality enshrined in Article 9 of the American Convention, the State held this case does not involve a removal from office, but a legislative resolution that declares illegal the petitioners' appointment as members of the Constitutional Court. In addition, the State considered that the resolution of the Congress "that declares this illegality does not constitute an administrative, political, civil, or criminal sanction."

40. As regards political rights, the State indicated that the facts set forth do not constitute violations of the rights enshrined in Article 23 of the American Convention. Moreover, the State did not present specific arguments with respect to the violations of the rights enshrined in Article 24 of the American Convention.

IV. PROVEN FACTS

A. Designation of the judges of the Constitutional Court

41. Article 275 of the Constitution of the Republic of Ecuador, of 1998, establishes that the Constitutional Court, with national jurisdiction, shall have its seat in Quito. It shall be made up of nine judges, who shall have their respective alternates. They shall perform their functions for four years and may be re-elected. The scope of jurisdiction of the Constitutional Court is established in Article 276 of the Constitution.[4]

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[4] Article 276 of the Constitution of the Republic of Ecuador establishes: The Constitutional Court shall have the authority to:

1. Hear and resolve unconstitutionality suits, on substantive and procedural issues, that may be filed regarding organic and regular statutes, decree-laws, decrees, ordinances, statutes, regulations, and resolutions, issued by organs of the State institutions, and suspend their effects in full or in part.

2. Hear and rule on the unconstitutionality of the administrative acts of all public authorities. A declaration of unconstitutionality entails the revocation of the act, without prejudice to the administrative agency adopting the measures necessary to preserve respect for the provisions of the Constitution.

3. Hear the resolutions that deny *habeas corpus*, *habeas data*, and *amparo* actions, and appeals provided for in *amparo* actions.

4. Rule on the objections of unconstitutionality made by the President of the Republic in the process of adopting laws.

5. Rule in keeping with the Constitution, international treaties or conventions prior to their approval by the National Congress.

6. Settle conflicts over jurisdiction or powers assigned by the Constitution.

7. Exercise all other powers conferred on it by the Constitution and statutes. The rulings of judicial bodies shall not be subject to review by the Constitutional Court.

42. On January 9, 2003, the National Congress designated Enrique Herrería Bonnet and Oswaldo Cevallos Bueno, along with his alternate judge, Manuel Jaramillo Córdova, as the judges from the Congress to the Constitutional Court for the period 2003-2007.[5] On March 19, 2003, based on the shortlists sent[6], the Congress designated Milton Burbano and Simón Zabala Guzmán (from the panel presented by the President of the Republic), René de la Torre and Miguel Camba Campos (from the panel, presented by the Supreme Court), Jaime Nogales (from the panel presented by the mayors and governors), Mauro Terán Cevallos (from the panel presented by the union federations and indigenous organizations), and Luis Rojas Bajaña (from the panel presented by the Chambers of Industry) as the members of the Constitutional Court.[7] All of the judges of the Constitutional Court took office before the President of the National Congress on Monday, March 24, 2003.[8]

43. In the course of this regular session, a discussion arose as to the mechanism for electing the persons proposed on the different panels; while some legislators argued that the proper procedure was to vote on a nominative basis, shortlist by shortlist, others thought that the vote should be a straight-party vote ("*votar en plancha*") with the selection and initial proposal made by one of the legislators, without discussing, individually, the persons proposed in each panel. In that context, the President of the Congress carried a prior motion, by simple vote, to consult on the "election of judges of the Constitutional Court be done by the procedure of straight-party voting." The result of the vote was 53 legislators in favor, of 95 present. Accordingly, the vote proceeded on the candidates proposed in the panels using the procedure of straight-party voting.[9]

1. Resolution to terminate (*resolución de cese*) the judges of the Constitutional Court

44. In November 2004, to promote the restructuring of the Supreme Electoral Tribunal, the Constitutional Court, and other entities, the pro-government parties had introduced a draft resolution that had included the removal of the President of the National Congress.[10] In the face of this situation, the Constitutional Court issued and published a press release in which it stated that "we the judges of the Court are ready to respond for acts in the performance of our duties by means of the constitutional process, that is, impeachment; any other procedure is at odds with the constitutional provision and so would violate the very Constitution."[11]

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[5] **Annex 1.** Resolution of the Congress No. R-24-016, dated January 9, 2003, signed by the President of the Congress and by the Secretary General (annex to the petitioners' initial petition).

[6] Article 275, third paragraph of the Constitution of the Republic of Ecuador establishes: [The judges of the Constitutional Court] shall be designated by the National Congress by majority of its members, as follows:

. Two, from shortlists sent by the President of the Republic.

· Two, from shortlists sent by the Supreme Court of Justice, not to include any of its members.

· Two, elected by the National Congress, who do not hold office as legislators.

· One, from the shortlist sent by the mayors and governors.

· One, from the shortlist sent by the union federations and indigenous and peasant organizations that are national in scope and legally recognized.

· One, from the shortlist sent by the legally recognized Chambers of Industry.

[7] **Annex 2.** Resolution of Congress No. R-24-054, dated March 19, 2003, signed by the President of the Congress and the Secretary General (annex to the petitioners' initial petition).

[8] **Annex 3.** Acts of taking office of the petitioners (annex to the brief filed by the petitioners on March 10, 2008).

[9] **Annex 4.** National Congress, Minutes No. 24-031 of March 19, 2003 (annex to the petitioners' initial petition).

[10] **Annex 5.** El Telégrafo, *Gobierno busca reorganizar Tribunal Constitucional,* November 24, 2004 (annex to the petitioners' initial petition).

[11] **Annex 6.** La Hora, *El Tribunal Constitucional al País,* November 24, 2004 (annex to the petitioners' initial petition).

45. On November 24, 2004, some legislators had asked the President of the Congress to amend the Order of Business so as to consider a draft resolution that declared the termination (*la cesación en funciones*) of the judges of the Constitutional Court.[12] That same day, in view of the proposal, the President of the Congress issued a summons to appear for impeachment proceedings, on December 1, to Miguel Camba Campos, Oswaldo Cevallos Bueno, Jaime Nogales Izurieta, Luis Rojas Bajaña, René de la Torre, and Simón Zabala Guzmán, and to alternate judge, Manuel Jaramillo.[13]

46. On November 25, 2004, Congress adopted Resolution No. R-25-160 whereby it decided "to rule that the full judges of the Constitutional Court and their deputies were appointed illegally and to proceed to appoint them as ordered by the Constitution of the Republic and by law, from the shortlists of three names received in due course by Congress." In this way, it appointed "the two full judges of the Constitutional Court and their deputies that the National Congress is empowered to appoint (…) The appointees (…) shall remain in their positions until they are legally replaced in January 2007."[14]

47. On the same date, the National Congress issued resolutions R-25-161, 162, 163, 164, 165, 166, 167, 168, and 169, by which it designated – based on the shortlists sent in 2003-: from the shortlists sent by the President of the Republic and by the Supreme Court of Justice – four full judges, and four alternate judges of the Constitutional Court. In addition, it designated one full judge and one alternate judge of the Constitutional Court from the shortlist sent by the mayors and governors, one full judge and one alternate judge of the Constitutional Court from the shortlist sent by union federations and indigenous organizations, and one full judge and one alternate judge of the Constitutional Court from the shortlist sent by the chambers of industry. In those resolutions, the National Congress invoked Articles 130.11 and 275 of the Constitution of the Republic.[15]

C. Impeachment of the judges terminated from the Constitutional Court on December 1, 2004

48. On June 13, 2003, legislator Luis Villacís Maldonado proposed a motion to censure Constitutional Court judges Oswaldo Cevallos Bueno, Luis Rojas Bajaña, Jaime Nogales Izurieta, Miguel Camba Campos, and René de la Torre insofar as legislative functions were arrogated in the "Resolution of the Constitutional Court in Case No. 0004-2003-TC on the declaration of unconstitutionality of Law No. 2002-88, which interprets Article 113 of the Labor Code."[16] On June 16, 2003, legislator Marco Proaño proposed the motion to censure Constitutional Court judges Miguel Camba Campos, Oswaldo Cevallos Bueno, Jaime Nogales Izurieta, Luis Rojas Bajaña, and René de la Torre on the same grounds.[17]

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[12] **Annex 7.** El Universo, *Oposición desacelera a gobiernistas*, November 25, 2004 (annex to the petitioners' initial petition).

[13] **Annex 8.** National Congress, Official Note No. 1212-PCN directed to Oswaldo Cevallos Buenos, of November 24 2004 (annex to the petitioners' initial petition)

[14] **Annex 9.** National Congress, Resolution No. R-25-160, dated November 25, 2004. Included in Official Registry No. 485 of December 20, 2004 (annex to the initial petition of the petitioners).

[15] **Annex 9.** National Congress Resolutions R-25-161, 162, 163, 164, 165, 166, 167, 168, and 169, dated November 25, 2004. Included in Official Registry No. 485 of December 20, 2004 (annex to the initial petition of the petitioners).

[16] **Annex 10.** Motion of Censure introduced by legislator Luis Villacís Maldonado, Official Note No. 141 CN BMPD LVM, of June 13, 2003 (annex to the petitioners' initial petition).

[17] **Annex 11.** Motion of Censure presented by legislator Marco Proaño Maya on June 16, 2003 (annex to the petitioners' initial petition).

49. Resolution No. 0004-2003-TC was the result of an unconstitutionality suit filed by engineer Gustavo Pinto Albornoz with the backing of more than 1,000 citizens in order to challenge the constitutionality of Law No. 2002-88, in relation with Article 113 of the Labor Code on both substantive and procedural grounds. In relation to the form, the motion indicated that the National Congress erroneously characterized the law as one of interpretation and not as an amendment, and therefore sent it to the Official Registry for publication without having previously sent it to the President of the Republic for his approval or objection, as provided for in the Constitution. As for the merits, the unconstitutionality suit indicated that the modification of the legal reference for calculating the 14th remuneration or educational bond established by that law – which ceased being the general vital minimum salary (SMVG: *salario mínimo vital general*) and became the minimum basic remuneration – was three times the value of this supplemental wage, even for public sector workers, which implied a violation of the constitutional provision that only the President of the Republic shall be able to introduce legislation to increase public spending. The Constitutional Court ruled favorably on the positions put forth, and declared the unconstitutionality of Law No. 2002-88 on procedural grounds.[18]

50. On May 31, 2004, legislator Segundo Serrano Serrano filed a motion of censure against Constitutional Court members Oswaldo Cevallos Bueno, Jaime Nogales Izurieta, Miguel Camba Campos, Luis Rojas Bajaña, Simón Zabala Guzmán, and Manuel Jaramillo Córdova, given that in Resolution No. 025-2003-TC "[they repudiated] a way of calculating proportional representation, which allows for plural and democratic representation, with the participation of the majorities and minorities.[19] On July 7, 2004, legislator Antonio Posso Salgado filed a motion to censure Constitutional Court members Miguel Camba Campos, Manuel Jaramillo Córdova, Luis Rojas Bajaña, Jaime Nogales Izurieta, and Simón Zavala Guzmán, on the same grounds.[20]

51. Resolution No. 025-2003-TC resolved the unconstitutionality suit based on Articles 105 and 106 of the Electoral Law, brought by economist Xavier Neira Menéndez, with the clearance report (*informe de procedencia*) by the Human Rights Ombudsperson (Defensor del Pueblo), which indicates that the D'Hondt system for distributing legislative seats thwarted the intent of the electorate in those countries that have open-list electoral systems. The Constitutional Court ruled favorably on the arguments put forth and found Articles 105 and 106 of the Electoral Law to be unconstitutional.[21]

52. Based on the call that went out on November 25, in the December 1 session, the first point of the Order of the Day was the debate on the censure motions filed in the four impeachment proceedings against the members of the Constitutional Court who were removed.

> As the first point on the Order of Business of the regular session for Wednesday, December 1, 2004. The censure motions that were raised in the impeachment proceedings against the following were debated: Oswaldo Cevallos, Luis Rojas, Jaime Nogales, Miguel Camba, Manuel Jaramillo, René de la Torre, and Simón Zavala, in their capacity as judges of the Constitutional Court, proposed by legislators Luis Villacís Maldonado, Antonio Posso Salgado, Marco Proaño Maya, and Segundo Serrano Serrano. In addressing this issue, it was decided to vote in chronological order; once this provision was executed, the following facts ensued. In chronological order, the first censure motion presented corresponds to legislator Segundo Serrano, who presented it on June 11, 2003. It was decided to vote on it, and the results

[18] **Annex 11.** Resolution No. 004-2003-TC (annex to the petitioners' brief of March 10, 2008).

[19] **Annex 12.** Motion of Censure introduced by legislator Segundo Serrano Serrano, Official Note No. 106-SISS-KB-HCN-JP, of May 31, 2004 (annex to the petitioners' initial petition).

[20] **Annex 13.** Motion of Censure presented by legislator Antonio Posso Salgado, Official Note No. 535-APS-DPI-HCN, of July 7, 2004 (annex to the petitioners' initial petition).

[21] **Annex 13.** Resolution No. 025-2003-TC (annex to petitioners' brief of March 10, 2008).

> were: 20 votes in favor, 21 votes against, 43 abstentions, therefore, 41 valid votes. Once the results were proclaimed by the Secretariat, the President declared as follows: "there is no resolution." The second motion corresponds chronologically to that of June 13, 2003, presented by legislator Luis Villacís Maldonado, who verbally withdrew the motion in said session of December 1, 2004. The third corresponds to legislator Marco Proaño Maya, presented on June 16, 2003, who also withdrew the censure motion on November 30, 2004, with Official Note 663. The fourth censure motion corresponds to legislator Antonio Posso Salgado, who in the session of December 1 to which we are referring stated as follows: "Mr. President, fellow legislators, I believe that one must be practical, let's not get into another vote on the same question, it's clear, there is already a pronouncement by Congress on this matter, what now makes sense is for us to vote on the spirit of the other aspect that has to do with the D'Hon[dt] issue, with a single additional vote, we can even culminate this session." The President of the Congress stated and ruled: "and so it is, I believe that this initiative is properly before us, it refers to the same issue raised by legislators Posso and Serrano, accordingly a vote and this session will conclude. Read the other motion and take the nominal vote. The two motions that come together on the same subject and it will be a single vote." As ruled, the vote on motions five and six in chronological order were taken together, that is, the one introduced by legislators Segundo Serrano and Antonio Posso. This censure motion obtained the following results, 50 votes in favor, 20 votes against, seven abstentions, therefore 70 valid votes. Once the results were proclaimed, the President stated as follows: "The motion is denied, because there are not sufficient valid votes, but there are not 51 to approve the motion to censure.…'"[22]

53. In the course of the session, one of the accusing legislators who withdrew the motion to censure the judges understood that pursuing the impeachment proceedings was useless, time-barred, and untimely insofar as "there are already consummated facts."[23] Even though the censure motions were denied in the four impeachment proceedings against the terminated judges of the Constitutional Court, Resolution R-25-160 were not overturned.

D. Decision of the Constitutional Court on the inadmissibility of the *amparo* actions

54. On December 2, 2004, the Constitutional Court issued a ruling in response to a request made by the President of the Republic "to prevent trial judges from admitting for processing constitutional *amparo* actions against Parliamentary Resolution 25-160, adopted by the National Congress on November 25, 2004." The Constitutional Court resolved:

> To rule that to suspend the effects of a parliamentary resolution, such as No. 25-160, adopted by the National Congress on November 25, 2004, for an alleged violation of the Constitution, in substance or in form, the only action admissible is an unconstitutionality suit, which must be placed before the Constitutional Court, in line with the resolution of the Supreme Court of Justice adopted on June 27, 2001, and published in Official Register No. 378 on July 27 of that year; and that any *amparo* remedy lodged with the country's courts in connection with the aforesaid resolution must be rejected outright and ruled inadmissible by the judges, since to do otherwise would to be admit proceedings against express law, which would lead to the corresponding judicial actions.[24]

55. The Supreme Court's resolution of June 27, 2001, referred to by the Constitutional Court in its decision of December 2, 2004, was a ruling to clarify the guidelines applicable in

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[22] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV (annex to petitioners' brief of May 15, 2007). Congress of the Republic, Certification by the Secretary General of December 2, 2004. Ref. Official Note No. 371-HAHV-CN-2004 (annex to the petitioners' initial petition).

[23] **Annex 15.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to Wednesday, December 1, 2004 (Minutes 24-326), p. 9 (annex to the additional observations made by the petitioners on May 15, 2007).

[24] **Annex 16.** Decision of the Constitutional Court, dated December 2, 2004. (Annex to the initial petition).

matters of constitutional *amparo*. The Constitutional Court's December 2, 2004 decision cites Article 2.a of the aforesaid resolution from the Supreme Court of Justice, which reads:

> In particular, *amparo* action is not admissible and shall be rejected outright when brought with respect to:
>
> (a) Regulatory provisions issued by a public authority, such as organic and ordinary laws, decree laws, decrees, ordinances, statutes, regulations, and generally binding (*erga omnes*) resolutions, since in order to suspend their effects because of a violation of the Constitution, in substance or in form, an unconstitutionality suit lodged with the Constitutional Court must be brought.[25]

E. Amparo remedies lodged by five terminated members of the Constitutional Court

56. On December 7, 2004, the Tenth Civil Court of Pichincha ruled in the *amparo* suit filed by Luís Vicente Rojas Bajaña, one of the members of the Constitutional Court who had been terminated. This decision "denied the processing of this constitutional remedy" pursuant to the Constitutional Court's resolution of December 2, 2004, "leaving an unconstitutionality suit before the Constitutional Court open for the case."[26]

57. Similarly, on December 13, 2004, the First Civil Court of Pichincha handed down a decision in the *amparo* suit filed by Miguel Ángel Camba Campos, one of the members of the Constitutional Court who were terminated, against National Congress Resolution No. R-25-160. That resolution states that "it is public knowledge that the National Congress, on Wednesday, December 8 of the current year, proceeded with the impeachment of the members of the Constitutional Court (...) by a majority of its members, in an action that is eminently legal and legitimate in that it is provided for by the Constitution and thus enjoys full legal effect, including the censure caused by immediate dismissal of the official."[27] It also cites the Constitutional Court's resolution of December 2, 2004, and concludes that "based on the content of the above 'whereas' clauses, the *amparo* action is inadmissible and must be rejected outright, without examining the merits of the matter."[28]

58. Similarly, on December 14, 2004, the Tenth Civil Court of Pichincha ruled inadmissible the constitutional *amparo* suit lodged by Mauro Leonidas Terán Cevallos, one of the terminated members of the Constitutional Court.[29]

59. Likewise, on December 15, 2004, the Tenth Civil Court of Pichincha ruled inadmissible the constitutional *amparo* suit lodged by Simón Bolívar Zabala Guzmán, one of the terminated members of the Constitutional Court.[30] On that same date, the Eighth Civil Court of Pichincha ruled on the *amparo* suit brought by Mr. Freddy Oswaldo Cevallos Bueno, a terminated member of the Constitutional Court. Based on Article 2.a of the Supreme Court's resolution of June 27, 2001, and on the Constitutional Court's resolution of December 2, 2004, it ruled the *amparo* action inadmissible.[31]

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[25] **Annex 17.** Resolution of the Supreme Court of Justice, dated June 27, 2001. (Annex to the initial petition).

[26] **Annex 18.** Decision of the Tenth Civil Court of Pichincha, dated December 7, 2004. (Annex to the initial petition).

[27] **Annex 12.** Decision of the First Civil Court of Pichincha, dated December 13, 2004. (Annex to the initial petition received on December 30, 2004.)

[28] **Annex 19.** Decision of the First Civil Court of Pichincha, dated December 13, 2004. (Annex to the initial petition received)

[29] **Annex 20.** Decision of the Tenth Civil Court of Pichincha, dated December 14, 2004. (Annex to the initial petition).

[30] **Annex 21.** Decision of the Tenth Civil Court of Pichincha, dated December 15, 2004. (Annex to the initial petition)

[31] **Annex 22.** Decision of the Eighth Civil Court of Pichincha, dated December 15, 2004. (Annex to the initial petition)

60. In four of these cases, legislator Luis Fernando Almeida Morán came forth spontaneously requesting "the immediate revocation of the order accepting the processing of the *amparo* action … and disqualify itself from continuing to hear the action proposed, forwarding the record to the Constitutional Court, lest its conduct be found to be immersed in criminal offense Title III, Chapter VI. On Prevarication. Articles 277 ff. of the Criminal Code."[32] In particular, in the case brought by Oswaldo Cevallos Bueno, legislator Almeida indicated in his presentation: "Your Honor, I warn you that if you continue to process and hear the constitutional *amparo* action brought by Mr. Oswaldo Cevallos Bueno, former judge of the Constitutional Court, and do not heed my request, I will bring the criminal actions to which I am entitled since I am an affected party, and I will ask that the respective criminal proceeding be initiated, and that an order for prevention detention be issued against you."[33]

F. Call to special sessions and new vote with respect to the impeachment of the former judges of the Constitutional Court. Resolution of termination of the Judges of the Supreme Court of Justice.

61. On December 5, 2004, President of the Republic Lucio Gutiérrez Borbúa called for Congress to meet in a special session. Citing Articles 133[34] and 171.8[35] of the Constitution and Article 6[36] of the Organic Law of the Legislative Branch, the call was made in the following terms:

> Sole Article. The Honorable National Congress is called to meet in a special session on Wednesday, December 8, 2004, at 11:00 a.m., to hear and resolve the following matters: (1) Voting in the impeachment of the former members of the Constitutional Court. (2) Analysis of a resolution on the constitutional and legal situation of the judicial branch; and (3) Voting on the amendment to the Organic Elections Law dealing with the right of proportional representation of minorities in multi-candidate elections.[37]

62. In the session of December 8, 2004, some legislators indicated that the call to special sessions by the President of the Republic was unconstitutional given that the impeachment proceeding had already been conducted[38] and the censure and removal of the judges had been denied[39] and that, therefore, the call to special sessions constituted meddling in the oversight task

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[32] **Annex 18.** Decision of the Tenth Civil Court of Pichincha of December 7, 2004 (annex to the petitioners' initial petition). **Annex 19.** Decision of the First Civil Court of Pichincha of December 13, 2004 (annex to the petitioners' initial petition). **Annex 21.** Decision of the Tenth Civil Court of Pichincha of December 15, 2004 (annex to the petitioners' initial petition).

[33] **Annex 22.** Decision of the Eighth Civil Court of Pichincha of December 15, 2004 (annex to the petitioners' initial petition).

[34] The article reads as follows: "During recess periods, the President of Congress or the President of the Republic may convene special sessions of the National Congress, to address exclusively the specific matters indicated in the convocation. The President of the National Congress may also convene such special sessions at the request of two-thirds of its members."

[35] The article reads as follows: "The following shall be the powers and duties of the President of the Republic: (…) 8. Convene the National Congress for special periods of sessions. The convocation shall indicate the specific matters to be examined during those sessions."

[36] The article reads as follows: "The President of the National Congress, the President of the Republic, or two-thirds of the members of Congress may call for special periods of sessions. Such convocations shall be made by means of publication in the largest selling newspapers in the country, with at least twenty-four hours notice. When Congress is convened for a special session, it shall abide by the same rules established for its regular periods and it shall not elect new officers."

[37] **Annex 23.** El Universo, December 5, 2005 (annex to the petitioners' initial petition). **Annex 14.** Transcription of the recording of the regular permanent morning session of the National Congress of December 8, 2004. Minutes 24-001-IV (annex to petitioners' submission, received on May 15, 2007.)

[38] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 16 (annex to the petitioners' brief of May 15, 2007).

[39] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 17 (annex to the petitioners' brief of May 15, 2007).

assigned exclusively to the National Congress.[40] In particular, it was argued that the impeachment proceeding is a permanent session that concludes with the legislators' vote, that the mechanism for reviewing the decision adopted on December 1 was reconsideration (*reconsideración*) and that as it did not happen in timely fashion, a new vote of impeachment would constitute a violation of the principle of *res judicata*.[41]

63. For their part, some legislators who voted for the censure of some of the judges terminated in the December 1 session understood that considering the failure to adopt a resolution with respect to the impeachment by Resolution No. 0004-2003-TC "it is totally relevant to take a vote once again"[42] and that with respect to the second motion of censure by Resolution No. 025-2003-TC it was not appropriate to have brought together the motions for voting, accordingly there was no identity of the persons accused, insofar as the accusation by legislator Antonio Posso did not include Oswaldo Cevallos.[43] In this way, as a preliminary motion and by simple majority, a vote was called on "whether one will or will not vote again for the censure motions against the judges of the Constitutional Court"[44], with a majority voting in the affirmative. Subsequently, the motion of censure presented by legislator Segundo Serrano on May 31, 2004 was read, and there was a call to vote on it, "the debate having culminated, and that being the mandate expressed by the Plenary."[45] The vote culminated with 57 votes in favor of censure of the "former judges of the Constitutional Court."[46] Then the motion of censure on the same matter, drawn up by legislator Antonio Posso was read out. The vote culminated with 56 votes in favor of the censure motion.[47]

64. During that same session, the National Congress issued Resolution No. R-25-181, terminating the entire Supreme Court of Justice in the following terms:

> **TO TERMINATE** the functions of the justices of the Supreme Court of Justice, and their respective deputy judges, who failed to resign from office in January 2003, as provided for in Transitory Provision 25 of the Constitution in force; and **TO APPOINT**, in their stead, the jurists identified below, who will take oath before the Second Vice President of the National Congress, will not be subject to fixed terms for the duration of their office, and shall be subject to termination on the grounds prescribed by the Constitution and by law:
>
> (…)
>
> Within a period not exceeding fifteen days, the National Council of the Judicature shall be restructured and it shall submit, to the National Congress, shortlists of three names for electing the Minister Prosecutor General of the Nation, the Superior Courts of Justice, and the provincial prosecutors.

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[40] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 23 (annex to petitioners' brief of May 15, 2007).

[41] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8 2004. Minutes 24-001-IV (annex to the petitioners' brief of May 15, 2007).

[42] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 27 (annex to petitioners' brief of May 15, 2007).

[43] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 28 (annex to petitioners' brief of May 15, 2007).

[44] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 58 (annex to petitioners' brief of May 15, 2007).

[45] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 61 (annex to petitioners' brief of May 15, 2007).

[46] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 70 (annex to petitioners' brief of May 15, 2007).

[47] **Annex 14.** Transcript of the recorded version of the regular permanent morning session of the National Congress corresponding to December 8, 2004. Minutes 24-001-IV, p. 79 (annex to petitioners' brief of May 15, 2007).

> This resolution shall enter into effect immediately, irrespective of its publication in the Official Register.[48]

G. Events following the terminations at the Ecuadorian high courts

65. The terminations at the Supreme Electoral Tribunal, the Constitutional Court, and the Supreme Court of Justice triggered a political and social crisis marked by institutional instability.[49]

66. In its preliminary report of March 29, 2005, on the mission to Ecuador, the United Nations Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, referred to the termination of the Supreme Electoral Tribunal, the Constitutional Court, and the Supreme Court of Justice.[50] As regards the Constitutional Court, the Rapporteur found that

> various irregularities have been recorded, both in the dismissal of the former judges and in the appointment of their successors.... The Special Rapporteur is all the more concerned since the Constitutional Court is competent to make final judgements on matters relating to human rights and fundamental guarantees set out in the Constitution and in international agreements which Ecuador has signed.[51]

67. In addition, said Rapporteur indicated: "It is vital and urgently necessary to secure the full restoration of the rule of law." More specifically, he noted that "the country should immediately arrive at a formula to govern the appointment of a Supreme Court which will include," among other elements, the independence of justice and a system of selection that ensures aptitude and probity. Moreover, he was of the view that: "Once an independent, efficient and transparent Supreme Court has been established in this way, it will be necessary – in addition to settling the issues raised concerning the Constitutional Court and the Supreme Electoral Court" – to introduce major reforms to the legislative framework that applies to the judicial function and the judicial career service.[52]

68. Subsequently, in his report, commenting on the Constitutional Court, the Rapporteur:

> observes that the National Congress has adopted a decision similar to the one taken regarding the Supreme Court, which was illegally dismissed in late 2004: it reversed the decision of 25 November 2004 whereby it had appointed a new Constitutional Court, but did not order the reinstatement of the members who had been removed under that decision. The Special Rapporteur is concerned to note that, in the absence of a Supreme Court, which is responsible for proposing a shortlist of candidates, it is impossible to appoint the members of the Constitutional Court. As a result, the country is bereft of its highest authority for ruling on matters relating to human rights and constitutional guarantees, raising constitutional

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[48] **Annex 9.** Resolution No. R-25-181 of the National Congress, dated December 8, 2004. Included in Official Register No. 485, dated December 20, 2004. (Annex to the initial petition)

[49] **Annex 24.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, E/CN.4/2005/60/Add.4, Preliminary Report on the Mission to Ecuador, March 29, 2005. (Annex to the petitioners' submission, presented at the hearing held before the IACHR on March 13, 2006.) See also: Statement of Hugo Quintana Coello, given on May 14, 2007, to the 23rd Notary of the canton of Quito. (Annex to petitioners' submission, received on May 24, 2007.)

[50] **Annex 25.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. A/60/321. Civil and political rights, including the questions of independence of the judiciary, administration of justice, impunity. August 31, 2005 (annex to the petitioners' brief submitted during the hearing held before the IACHR on March 13, 2006).

[51] **Annex 24.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. E/CN.4/2005/60/Add.4. Preliminary report on the mission to Ecuador. March 29, 2005, para. 3(b) (annex to the petitioners' brief submitted during the hearing held before the IACHR on March 13, 2006).

[52] **Annex 24.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. E/CN.4/2005/60/Add.4. Preliminary report on the mission to Ecuador. March 29, 2005, paras. 5, 6 (annex to the petitioners' brief submitted during the hearing held before the IACHR on March 13, 2006).

> challenges and issuing legal opinions in relation to the adoption of international agreements. Given the importance of the Constitutional Court, the Special Rapporteur hopes that the country will rectify the lack of this institution in a manner that adheres strictly to the parameters and requirements established in the Constitution and the Law on the Organization of the Judiciary, in a context of complete transparency.[53]

V. ANALYSIS OF LAW

A. Preliminary matters

69. Before embarking on its analysis of the parties' claims under the provisions of the American Convention, the Commission reiterates that in Admissibility Report 5/07 of February 27, 2007, dealing with this case, it concluded that the facts set out did not tend to establish a possible violation of the rights enshrined in Articles 23 and 24 of the American Convention. Although at the merits stage both parties continued to submit claims regarding those rights, the Commission finds no reason to deviate from its admissibility ruling and, consequently, the analysis of the merits will address the rights enshrined in Articles 8, 9, and 25 of the American Convention, in light of the obligations set out in Articles 1.1 and 2 thereof.

70. The Commission observes that one of the disputes this case raises is whether the termination of the judges of the Constitutional Court by means of a resolution of the National Congress on November 25, 2004, was in keeping with the provisions of the American Convention. Mindful of the judicial nature of the position mentioned, the Commission is of the view that it is necessary to make some preliminary considerations on the principle of judicial independence, for that principle informs all the subsequent analysis on the scope of the guarantees to which the alleged victims were entitled. In addition, the Commission notes that the other fundamental issue of the case is the compatibility of the impeachment proceedings against the judges of the Constitutional Court and the American Convention. The Commission will then determine whether the international responsibility of the State of Ecuador was triggered with respect to the rights established in Articles 8, 9, and 25 of the American Convention.

B. The principle of judicial independence and its effects on the analysis of the case

71. This principle is set out in Article 8.1 of the American Convention and represents one of the basic pillars of a democratic system. On this point, the Inter-American Court has stated that one of the principal purposes of the separation of public powers is to guarantee the independence of judges. [54] Although the principle of judicial independence is regulated by the American Convention as a right enjoyed by persons facing prosecution or appearing before the courts to resolve their disputes, the duty of respecting and ensuring that right has implications that are directly related to the procedures whereby judges are appointed and removed – issues regarding which consolidated international standards exist, as will be indicated below

72. In this regard, the Inter-American Court has ruled that:

> Judges, unlike other public officials, have reinforced guarantees due to the necessary independence of the Judicial Power, which the Court has understood as "essential for the

[53] **Annex 25.** Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. A/60/321. Civil and political rights, including the questions of independence of the judiciary, administration of justice, impunity. August 31, 2005 (Annex to the petitioners' brief submitted during the hearing held before the IACHR on March 13, 2006).

[54] I/A Court H.R., Case of the Constitutional Tribunal v. Peru, Merits, Reparations and Costs, Judgment of January 31, 2001, Series C No. 71, para. 73; and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55. IACHR, Report No. 28/94 Case 10,026, Panama, September 30, 1994.

> exercise of the judicial function."[…] Said autonomous exercise shall be guaranteed by the State both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal.[…] Additionally, the State has the duty to guarantee an appearance of independence of the Magistracy that inspires legitimacy and enough confidence not only to the parties, but to all citizens in a democratic society. [55]

73. The Inter-American Commission and Court, in line with the constant jurisprudence of the European Court, have repeatedly held that the principle of judicial independence gives rise to a series of guarantees: appropriate appointment procedures[56], fixed terms in office[57], and guarantees against external pressure. [58]

74. In the case of *Reverón Trujillo v. Venezuela*, the Inter-American Court specified the content of these guarantees and their implications for state decisions on the organization of public power. Specifically, regarding the existence of appropriate appointment procedures, the Court listed several applicable international rulings:

> The Basic Principles highlight as preponderant elements in the appointment of judges their integrity, ability with appropriate training or qualifications in law. Likewise, the Recommendations of the Council of Europe evoke a framework criterion of usefulness in this analysis when it states that all the decisions regarding the professional career of the judges shall be based on objective criteria, namely the judge's personal merits, his qualifications, integrity, ability, and efficiency, all of which are the preponderant elements to be considered.
>
> (…)
>
> The Human Rights Committee has stated that if the access to the public administration is based on merits and equal opportunities, and the stability in the position can be ensured, the liberty from all political interference or pressure is guaranteed. In a similar sense, the Court points out that all appointment processes shall serve the purpose not only of appointment according to merits and qualifications of those who aspire, but to assurance of equal

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[55] I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2009, Series C No. 197, para. 67. Citing Case of Herrera Ulloa v. Costa Rica, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, para. 171.

[56] IACHR. Application to the Inter-American Court of Human Rights, Case 12,565, Reverón Trujillo v. Venezuela, November 9, 2007, Para. 75; IACHR, Application to the Inter-American Court of Human Rights, Case 12,556, Chocrón Chocrón v. Venezuela, para. 69; I/A Court H.R., Case of the Constitutional Tribunal v. Peru, Merits, Reparations and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75; Case of Palamara Iribarne v. Chile, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, para. 156; Eur. Court H.R., Langborger case, decision of 27 January 1989, Series A no. 155, para. 32, Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 78; Principle 10 of the United Nations Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from August 26 to September 6, 1985, and confirmed by the General Assembly in its resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985, hereinafter "Basic Principles on the Independence of the Judiciary."

[57] IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24 1997, Ch. III. IACHR, Second Report on the Situation of Human Rights in Peru, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Ch. II; I/A Court H.R., Case of Constitutional Tribunal v. Peru, Merits, Reparations and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75; and Case of Palamara Iribarne v. Chile, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, para. 156; Eur. Court H.R., Langborger case, decision of 27 January 1989, Series A No. 155, para. 32, Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 78; and Le Compte, Van Leuven and De Meyere judgment of 23 June 198I, Series A no. 43, para. 55. Principle 12 of the Basic Principles on the Independence of the Judiciary.

[58] IACHR. Application to the Inter-American Court of Human Rights, Case 12,556. Chocrón Chocrón v. Venezuela, para. 69; I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2009. Series C No. 197, para. 70; Eur. Court H.R., Langborger case, decision of 27 January 1989, Series A no. 155, para. 32; Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 78; and Piersack judgment of I October 1982, Series A no. 53, para. 27. Principles 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

> opportunities in the access to the Judicial Power. Therefore, the judges must be selected exclusively based on their personal merits and professional qualifications, through objective selection and continuance mechanisms that take into account the peculiarity and specific nature of the duties to be fulfilled. [59]

75. Regarding fixed terms in office, the Court noted Nos. 11, 12, 13, 18, and 19 of the Basic Principles on the Independence of the Judiciary and referred to the rulings of the Human Rights Committee in the following terms:

> The Basic Principles state that "the term of office of judges shall be adequately secured by law" and that "judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."
>
> On the other hand, the Universal Principles also state that "promotion of judges, wherever such a system exists, should be based on objective factors, in particular on ability, integrity and experience."
>
> Finally, the Basic Principles state that the judges "shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties" and that "all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct." Similarly, the Human Rights Committee has pointed out that the judges may only be removed for grave disciplinary offenses or incapacity and according to fair procedures that guarantee objectivity and impartiality according to the constitution or law. Additionally, the Committee has expressed that "the dismissal of judges by the Executive Power before the expiration of the term of office for which they were appointed, without giving them a specific reason and without having an effective judicial protection to appeal the dismissal, is not compatible with judicial independence."[60]

76. In particular, the Commission has said that in light of the need to guarantee judicial impartiality and independence in decision-making, brevity of the terms of judges has been identified within the judiciary as a source of concern.[61]

77. Regarding this requirement, the European Court has ruled that the guaranteed permanence of judges for as long their mandate lasts has to be seen as a corollary to the judicial independence enshrined in Article 6.1 of the European Convention on Human Rights and Fundamental Freedoms[62].

78. In line with those principles, the Court has said that the authority in charge of the process for the dismissal of a judge must act independently and impartially in the proceedings

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[59] I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2009, Series C No. 197, paras. 71 and 72. Citing: Principle I(2)(c) of Recommendation No. R (94) 12 of the Committee of Ministers to the Members States of the Council of Europe on the Independence, Efficiency and Role of Judges adopted by the Committee of Ministers on October 13, 1994, in meeting No. 518 of the Vice Ministers; and United Nations, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 19. Principle 10 of Basic Principles on the Independence of the Judiciary.

[60] I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 1999, Series C No. 197, para. 77. Citing: Principles 11, 12, 13, 18 and 19 of the Basic Principles on the Independence of the Judiciary; and United Nations, Human Rights Committee, General Comment No. 32, Article 14, para. 20.

[61] IACHR, Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, Doc. 10 rev. 1, April 24, 1997, ch. III.

[62] Eur. Court H.R., Campbell and Fell judgment of 28 June 1984, Series A no. 80, para. 80; Eur. Court HR., Engel and Others judgment, Series A no. 22, pp. 27-28, para. 68.

established for that purpose and allow the exercise of the right of defense.[63] As the Court has stated, the free removal of judges fosters an objective doubt in the observer regarding the effective possibility they may have to decide specific controversies without fearing retaliation.[64]

79. It is worth mentioning that within the context of the Inter-American System, the institution of *impeachment* (juicio político) has been recognized as a legitimate mechanism of control. In the case of the *Constitutional Tribunal v. Peru,* the Inter-American Court stated that:

> Under the rule of law, the impeachment proceeding is a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature. However, this control does not mean that the organ being controlled – in this case the Constitutional Court – is subordinate to the controlling organ – in this case the Legislature; but rather that the intention of the latter is that an organ that represents the people may examine and take decisions on the actions of senior officials.[65]

80. In that case, the Court considered that the institution of *impeachment* must observe due process in order to ensure the principle of judicial independence with respect to the high ranking judges subjected to that procedure.[66]

81. From the above, it is clear that the various international human rights agencies and courts agree that heightened stability in the tenure of judges, and the resultant ban on their free removal, is an essential part of the principle of judicial independence. As the Inter-American Court has said, if a State fails to abide by those guarantees, it would be failing in its obligation of upholding judicial independence.[67] Similarly, the Inter-American Commission has stated that the guarantee of stability in the positions of judges must be reinforced – a requirement that arises from the need to establish mechanisms to ensure their independence from the other branches of government.[68] The Commission highlights the Inter-American Court's comments on prohibiting the free removal of judges:

> To the contrary the States could remove the judges and therefore intervene in the Judicial Power without greater costs or control. Additionally, this could generate a fear in the other judges, who observe that their colleagues are dismissed (...). Said fear could also affect judicial independence, since it would promote that the judges follow instructions or abstain from contesting both the nominating and punishing entity.[69]

82. To summarize, the principle of judicial independence – together with the associated state obligations of upholding and guaranteeing it – requires that judges have appropriate appointment and promotion procedures, that they are guaranteed stability in their positions during

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[63] I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 1999, Series C No. 197, para. 78. Citing Case of Constitutional Tribunal v. Peru, Merits, Reparations and Costs, Judgment of January 31, 2001. Series C No. 71, para. 74.

[64] I/A Court H.R., Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 1999, Series C No. 197, para. 78. See also Principles 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

[65] I/A Court H. R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para, 63.

[66] I/A Court H. R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para, 84.

[67] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 79. See also: Nos. 2, 3, and 4 of the Basic Principles on the Independence of the Judiciary.

[68] IACHR, Application to the Inter-American Court of Human Rights, Case 12.556, *Chocrón Chocrón v. Venezuela*, para. 72.

[69] I/A Court H. R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, para. 81.

the mandates for which they are appointed, and that they can be removed from office solely for the commission of disciplinary offenses that are previously and clearly set out in the Constitution or domestic law, and in strict compliance with the guarantees of due process. On the basis of those standards, the Commission will first address the regulatory framework applicable to the Supreme Court justices at the time of the facts and will then examine the alleged victims' removal from their positions in light of Articles 8, 9, and 25 of the American Convention.

C. Legal framework related to the judges of the Constitutional Court

83. According to the information available in the record, the Commission has considered it proven that on March 19, 2003 the National Congress designated the judges of the Constitutional Court. In addition, the Constitution of Ecuador of 1998, at Article 275, establishes that the position of judge of the Constitutional Court has a term of four years, and one may be re-elected.

84. From the foregoing it appears that the judges of the Constitutional Court were to end their terms in 2007. In addition, according to the Constitution, the only way to remove the judges from office during the established term is by an impeachment proceeding.[70] In particular, Article 275 of the Constitution expressly establishes that the judges of the Constitutional Court shall not be held liable for their votes or for the opinions they may formulate in discharging their duties.

85. The impeachment of the judges of the Constitutional Court is a power of the National Congress and is regulated by Article 130(9) of the 1998 Constitution.

> The National Congress shall have the following duties and powers:
>
> 9. To proceed to an impeachment, at the request of at least one-fourth the members of the National Congress, the President and Vice-President of the Republic, the cabinet ministers, the Comptroller General, and the Solicitor General, the Human Rights Ombudsman (Defensor del Pueblo), the Attorney General (Ministro Fiscal General), the superintendants, the judges of the Constitutional Court and the Supreme Electoral Tribunal, during their term and until one year after it has concluded.
>
> The President and Vice-President of the Republic may only be impeached for committing crimes against state security or for crimes of misappropriation, bribery, embezzlement, and illicit enrichment, and their censure and removal may only be resolved by a vote of two-thirds of the members of Congress. A criminal prosecution shall not be necessary to initiate this process.
>
> All other public servants referred to in this subsection may be impeached for constitutional or statutory infractions committed in the performance of their duties. The Congress may censure them in the event they are found guilty, by a majority of its members.
>
> Censure shall produce the immediate removal of the public servant, except in the case of cabinet ministers; the decision as to whether a cabinet member shall remain in his or her post shall be made by the President of the Republic.
>
> If the censure were to give rise to indicia of criminal liability of the public servant, it shall be ordered that the matter go before the competent judge who asks for it on a well-grounded basis.

[70] Organic Law on Constitutional Review, Article 8.

86. In addition, the impeachment proceeding is expressly established in the 1992 Organic Law of the Legislative Function.[71] According to this statute:

> Section Three
> On the Accusation
> Art. 86.- The legislators shall exercise their right to accuse any of the public servants indicated in Article 59(f) of the Constitution of the Republic, as well as the President and Vice-President of the National Congress in keeping with that provision and this statute.
>
> Art. 87.- The accusation is concretized before the President of the National Congress by means of a written bill of accusation of the public servant for acts or omissions attributed to him or her in the performance of his or her duties, and characterized as infractions by the legislator or legislators asking the questions, who cannot be more than one per bloc of political parties represented in the National Congress.
> The legislator or legislators may attach to the accusation all the evidence they consider relevant, without prejudice to requesting or producing other evidence during the accusation process.
>
> Art. 88.- The President of the National Congress or whoever subrogates him must as a matter of obligation, after the indictment is received, without further processing, and within a period not greater than three days, shall forward the accusation, with the evidence attached, to the Committee on Oversight and Political Review, and with that shall notify the accused official.
>
> Art. 89.- The Committee on Inspection and Political Control, within five days, except for the case provided for in the following article, shall forward the accusation and the evidence produced to the plenary of the National Congress so that it can take cognizance thereof.
>
> Art. 90.- During the term indicated in the previous article, the accused public servant may exercise his or her defense before the Committee on Inspection and Political Control, orally or in writing, and the accusing legislator or legislators shall act with the same right.
> The Committee on Inspection and Political Control, at the petition of a party, may grant an additional term of five days for the purposes of producing all the evidence. Once it has passed, within five days, with no extension, it would forward all the proceedings to the President of the National Congress.
>
> Art. 91.- In the five days subsequent to the lapsing of the last term indicated in the previous article, the accusing legislator or legislators may propose the motion of censure to the National Congress through the Presidency.
> Once the term provided for in the previous subsection has lapsed, the accusing legislator or legislators shall lose the right to propose a censure motion, and the impeachment proceeding shall be deemed to have concluded.
>
> Section Four
> On the Censure Motion
>
> Art. 92.- Once the censure motion has been made, the President of the National Congress or whoever is subrogating him shall indicate the date and time of the session in which the debate that will conclude with the respective vote is to begin. The time period for that date may not be less than five days or greater than 10 days from the date on which the censure motion was made, and if the National Congress is not in regular session, he or she shall convene a special session within a period not to exceed 30 days.
>
> Art. 93.- The date for calling a special session for acting on the censure motions may be extended for up to 60 additional days by the President of the National Congress, upon written request by 10 legislators.

[71] Law 139, Official Gazette, Supplement 862 of January 28, 1992. Available at: http://www.oas.org/juridico/spanish/mesicic2_ecu_Annex32.pdf.

> Art. 94.- The public servant impeached shall exercise the right to his or her defense personally on the date and time indicated, arguing before the National Congress in respect of the infractions of which he or she is accused, and for no more than eight hours.
> Subsequently, the accusing legislators who have presented the respective censure motion shall state the bases for their accusations for two hours each, in the order of the dates on which they proposed the censure motion.
> Then, the impeached public servant shall offer a rebuttal for no more than four hours.
> Upon the conclusion of the public servant's presentation, he or she may leave the hall, and the President of the National Congress shall declare that the debate has begun, in which all the legislators may register and state their reasoning for 20 minutes.
> Upon the conclusion of the debate, whoever is chairing the session shall order that a nominal vote be taken in favor of or against the censure.
>
> Art. 95.- The censure motion shall be considered approved by the absolute majority of all members of the National Congress.[72]

87. According to this law, it is not possible to clearly grasp how the resolution to terminate the judges of the Constitutional Court of November 25, 2004, could have had as its objective to cure the illegality in the judges' appointment, based on application of the straight-party voting mechanism, considering the time elapsed and the lack of other actions aimed at questioning or determining the application of this voting system.

88. In effect, the information available indicates that the straight-party voting mechanism is not expressly provided for in Ecuador's domestic legislation, but has been used from time to time by the Congress. Without prejudice to the Congress's authority to decide on its own voting mechanisms, there is no knowledge of legislative, administrative, or judicial actions that have been attempted to call into question or regulate the scope and admissibility of the straight-party voting mechanism after the designation of the judges of the Constitutional Court on March 19, 2003.

89. Based on the foregoing, the Commission concludes that at the time of the facts of the instant case, the Constitution established the duration of the term for judges of the Constitutional Court to be one uninterrupted term of four years, and the mechanism for removing the judges from their positions, impeachment. Scrutiny of the above-mentioned laws indicates that without prejudice to the Constitution expressly establishing that the judges could not be tried or held liable for the content of the judgments they issue or their opinions, the domestic legal order did not expressly establish the grounds for which they could be impeached.

D. Right to a fair trial and to freedom from ex post facto laws (Articles 8 and 9 of the American Convention), in relation to the obligations to respect the rights and adopt provisions of domestic law (Articles 1(1) and 2 of the American Convention)

90. The relevant part of Article 8 of the American Convention provides:

> 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:

[72] Article amended by Law No. 129, published in Official Gazette. Supplement 995 of July 24, 1996. Available at: http://www.oas.org/juridico/spanish/mesicic2_ecu_Annex32.pdf.

(b) prior notification in detail to the accused of the charges against him;
(c) adequate time and means for the preparation of his defense;

(…)

(h) the right to appeal the judgment to a higher court.

91. Article 9 of the American Convention establishes:

> 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.

92. Article 1.1 of the American Convention stipulates:

> 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.

93. Article 2 of the American Convention establishes:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

94. The Commission recalls the Court's repeated rulings that the freedom from *ex post facto* laws enshrined in Article 9 of the American Convention is one of the principles that govern the actions of all bodies of the State in their respective fields, particularly when the exercise of its punitive power is at issue.[73] In terms of its scope, the Court has ruled that the freedom from *ex post facto* laws applies not only to criminal matters, but also to administrative sanctions.[74]

95. Similarly, the Court has stated that "although Article 8 of the American Convention is entitled 'Judicial Guarantees' [in the Spanish version – 'Right to a Fair Trial' in the English version], its application is not strictly limited to judicial remedies, but rather the procedural requirements that should be observed […] so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights."[75]

96. In addition, the Court has said that although that article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal, or any other nature, the full range of minimum guarantees stipulated in its second paragraph are

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[73] I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 176. Citing: I/A Court H. R., *Case of Baena Ricardo et al. v. Panama*, Preliminary Objections, Judgment of November 18, 1999, Series C No. 61, para. 107.

[74] I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 177. Citing: I/A Court H. R., *Case of Baena Ricardo et al. v. Panama*, Preliminary Objections, Judgment of November 18, 1999, Series C No. 61, para. 106.

[75] I/A Court H. R., *Case of the Constitutional Court v. Peru.* Judgment of January 31, 2001, Series C No. 71. para. 69. Citing: *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, para. 27.

also applicable in those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal proceedings.[76]

97. The alleged victims argued that their termination was carried out by an incompetent authority, without guarantees of independence or impartiality, without a prior procedure established by law, without the possibility of being heard, of hearing the charges made against them, or of defending themselves. In addition, they argued that the second vote of impeachment was done without respecting due process guarantees. For its part, the State argued that neither due process guarantees nor the principle of legality applies, for they were not sanctioned for any infraction; rather, all that was done was to apply "termination" ("*cesación*") to them.

98. The IACHR will analyze the arguments of the parties as follows: i) Analysis whether the rights enshrined in Articles 8 and 9 of the Convention are applicable to the alleged victims; ii) Analysis whether the State incurred in a violation of the rights established in Article 9 of the Convention; and iii) Analysis whether the State incurred in a violation of the rights established in Article 8 of the Convention

1. Analysis whether the rights enshrined in Articles 8 and 9 of the Convention are applicable to the alleged victims

99. The Commission believes it must first of all address the Ecuadorian State's argument that the victims were not entitled to the guarantees of freedom from *ex post facto* laws and due process, in that their functions were terminated but they were not removed or dismissed from their positions under a disciplinary sanction.

100. First, given that the Constitution of Ecuador and the Organic Law on the Legislative Function expressly establish impeachment proceedings as the mechanism for removal of judges, it is not possible to understand the nature of the resolution issued by the National Congress on November 25, 2004. In addition, this type of resolution is not provided for in the normative framework, nor does it clearly state its intent or aim, although in this case, a sort of implicit sanction appears to be imposed on judicial officers in retaliation for the way they have performed the judicial function.

101. The transcript of the legislative debate of November 25, 2004, contains a series of assessments of the action of the members of the Constitutional Court, and what was described as its politicization.[77] Moreover, in the course of the hearing on the merits held during the 131st period of sessions of the IACHR, the State indicated that at the time of the events, it was publicly known that the Supreme Court of Justice and the Constitutional Court depended on a political power and a political party that dominated among the government authorities[78] and that termination "obviously requires the verification of an infraction, committing a regulatory or statutory infraction that would lay the foundation for … the prosecution, trial of the person involved, and his or her subsequent removal."[79] In view of the foregoing, the Commission concludes that the action of the Congress was not exclusively aimed at reviewing the procedural mechanism applied to appoint the judges and that was in the nature of a sanction.

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[76] I/A Court H. R., *Case of the Constitutional Court v. Peru.* Judgment of January 31, 2001, Series C No. 71. para. 70.

[77] **Annex 27.** News clippings produced as an annex to the petitioners' initial petition.

[78] **Annex 28.** IACHR. Public hearing held March 10, 2008, during the 131st regular period of sessions, Case 12,597. Miguel Camba Campos et al. (Judges of the Constitutional Court). Audio available at: http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES.

[79] **Annex 28.** IACHR. Public hearing held March 10, 2008, during the 131st regular period of sessions. Case 12,597. Miguel Camba Campos et al. (Judges of the Constitutional Court). Audio available at: http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES.

102. Second, the Commission reiterates that under international standards on judicial independence, removal of judges is acceptable only when they complete their term or condition of appointment, or when they commit disciplinary breaches. International law and state obligations in the area of judicial independence accordingly require the States to ensure the guarantees of due process in all procedures that may result in the removal of a judge from his or her position. These standards come from international law and are aimed at protecting the judicial function. Therefore, they apply independent of the name given to each separation or termination under domestic law, be it *cese*, *destitución*, or *remoción*. What is relevant is that the free removal of judges is prohibited, and therefore they are the beneficiaries of the guarantees of freedom from ex post facto laws and due process provided for in Articles 8(1), 8(2), and 9 of the American Convention.[80]

2. Analysis whether the State incurred in a violation of the rights established in Article 9 of the Convention

103. For the purposes of an adequate analysis, the Commission considers it pertinent to distinguish between the termination resolution of November 25 and the impeachment conducted on December 1, the vote on which was repeated on December 8. First, as regards the removal of the judges of the Constitutional Court on November 25, 2004, the Commission already concluded that as of the date of their appointment (March 2003) and termination (November 25, 2004), the Constitution and the legislation expressly established that their term would be for four years, and the only means provided for in the Constitution to remove them was by impeachment. Nonetheless, in a heated political context of tension among the different branches of government, the Congress created an *ad hoc* mechanism not provided for in the Constitution or in statute to proceed to terminate all the judges of the Constitutional Court under the argument that they had been elected illegally in 2003 and that it was necessary to correct that illegality.

104. The Commission has already held that if the judge must be removed, said removal must be carried out in strict conformity with the procedures established in the Constitution as a safeguard of the democratic system of government and the rule of law. The principle is based on the special nature of the function of the courts and guarantees the independence of judges vis-à-vis all other branches of government and in the face of political-electoral changes.[81] In particular, regarding the processes of correcting situations of corruption and inefficiency, the Commission has said that they should be conducted with full respect for basic due process standards and full independence of the different branches of government.[82]

105. As regards the impeachment conducted on December 1 and whose vote was repeated on December 8, 2004, the domestic law expressly prohibits the impeachment of the judges who sit on the Constitutional Court based on their judgments and the opinions they express, and establishes that they may be impeached for committing "constitutional or statutory infractions" (Article 130(9)(3) of the National Constitution) or "acts or omissions in discharging their duties and characterized as infractions" (Article 87 of the Organic Law on the Legislative Function).

106. The Commission considers that this formulation of the grounds for removal does not offer sufficient standards of determination, and that with a view to safeguarding the principle of judicial independence these grounds must be described with the greatest possible clarity. In this

[80] See I/A Court H.R., Case of the Constitutional Tribunal v. Peru, Judgment of January 31, 2001, Series C No. 71, para. 74; and I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 44: "… [T]he authority in charge of the procedure to remove a judge must behave impartially and allow the judge to exercise the right of defense."

[81] IACHR, Report No. 30/97, Case 10,087, Merits, Gustavo Carranza, Argentina, September 30, 1997, paras. 41, 58. IACHR, Report No. 48/00, Case 11,166, Merits, Walter Humberto Vásquez Vejarano, Peru, April 13, 2000, para. 76.

[82] IACHR, Report on the Situation of Human Rights in Peru, 1993, OEA/Ser.L/V/II.83, Doc. 31, March 12, 1993, paras. 61 and 62.

respect, the lack of certainty with regard to the grounds for removal of the judges, in addition to raising doubts as to the independence of the judiciary, may give rise to arbitrary actions of abuse of authority with direct repercussions on the rights to due process and to freedom from ex post facto laws.

107. In particular, based on the facts that the Commission has considered proven in this report, the impeachment proceedings that began in 2003 then went forward in 2004, after the time allowed by regulation. This circumstance allows one to consider that the decision to impeach the judges, almost a year-and-a-half after the first censure motion and in the context of the debate on the termination resolution, was politically motivated, beyond the task of oversight of the breaches or infractions allegedly committed by the judges.

108. With respect to the new vote of impeachment on December 8, the Commission considers that the law of Ecuador stipulates that the vote in the impeachment proceeding concludes the day of the hearing with the censure or absolution of the accused, so it is difficult to understand the nature of the second vote. In this regard, from the transcript of the legislative debate it appears that the sole objective of having the second vote was to modify a final vote previously adopted based on the argument first, that in one case a vote in that regard had not been obtained, and second, that the vote had not been conducted properly.

109. In summary, due to the creation of an ad hoc mechanism not provided for by law to determine the termination of the judges of the Constitutional Court, the lack of definition or certainty with respect to the grounds of their removal, and the double vote in the impeachment proceeding, the Commission concludes that the State of Ecuador did violate the right enshrined in Article 9 of the American Convention, in conjunction with Article 2 thereof, with respect to Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán, and Manuel Jaramillo Córdova.

3. Analysis of whether the State incurred in a violation of the rights established in Article 8 of the Convention

110. Furthermore, as regards the right to be judged by a competent authority, the Court has established that people have "the right to be heard by regular courts, following procedures previously established[83] (…) to prevent persons from being judged by special tribunals set up for the case, or *ad hoc.*"[84] Throughout this report, the IACHR has concluded that at the time the victims were appointed, the only legal mechanism for their removal prior to the end of their term was an impeachment proceeding, in keeping with Article 130 of the National Constitution and the relevant articles of the Organic Law on the Legislative Function.

111. In this report the IACHR has indicated that the use of the institution of impeachment by the National Congress is a legitimate means of exercising checks and balances in a State under the rule of law. The State argued that it was not a removal (*destitución*), but rather was done to cure an illegality committed by Congress at the time of designating these judges. Nonetheless, the Commission considers that independent of the motive alleged, the resolution by the National Congress implied the removal of the judges from their positions through an ad hoc mechanism created for that purpose, beyond the oversight powers of the National Congress.

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[83] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 50; Citing: *Case of Castillo Petruzzi v. Peru*, Merits, Reparations, and Costs, Judgment of May 30, 1999, Series C No. 52, para. 129; and No. 5 of the Basic Principles on the Independence of the Judiciary.

[84] I/A Court H. R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 50.

112. Regarding the guarantees of independence and impartiality, the Court has ruled that although they are related, it is also true that they each have a legal content of their own.[85] As the Court has said:

> One of the principal purposes of the separation of public powers is to guarantee the independence of judges.[…] Said autonomous exercise shall be guaranteed by the State both in its institutional aspect, that is, with regard to the Judicial Power as a system, as well as in connection with its individual aspect, that is, with regard to the specific judge as an individual. The objective of the protection lies in avoiding that the justice system in general and its members specifically be submitted to possible improper restrictions in the exercise of their duties by bodies foreign to the Judicial Power or even by those judges that exercise duties of revision or appeal.[…]
>
> On the other hand, impartiality demands that the judge acting in a specific dispute approach the facts of the case subjectively free of all prejudice and also offer sufficient objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.[…] The European Court of Human Rights has explained that personal or subjective impartiality is to be presumed unless there is evidence to the contrary.[…] Thus, the objective test entails determining whether the judge in question provided convincing elements to eliminate legitimate or grounded fears regarding his or her impartiality.[…] That is so since the judge must appear as to act without being subject to any influence, inducement, pressure, threat, or interference, be it direct or indirect,[…] and only and exclusively in accordance with – and on the basis of – the law.[86]

113. While the oversight powers of the National Congress, through the mechanism of an impeachment proceeding, are not *per se* incompatible with the American Convention, such powers must be exercised in such a manner that ensures the observance of due process guarantees, especially in the case of the removal of judges.

114. As regards the guarantee of impartiality, the Commission considers that in the instant case, both in relation to the termination resolution and in relation to the impeachment proceeding, a series of elements come together that affected the impartiality of the National Congress. In this regard, the Commission notes that according to transcripts of the legislative debates, the termination of the judges, in addition to constituting an ad hoc mechanism for the removal of judges, was not motivated by an assessment of the conduct, suitability, or performance of the judges, or an analysis of the alleged breaches committed by the judges in the performance of their functions, but responded to the different political majorities attained at different moments in the Congress. In addition, a reading of the legislative debates reveals the scant importance accorded to respecting the formal procedures for the removal of judges, as well as the partiality and political purpose motivating the legislators' action.

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[85] I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55, quoting the following: "For example, the Committee against Torture noted: 'The Committee is concerned at the judiciary's de facto dependence on the executive, which poses a major obstacle to the immediate institution of an impartial inquiry when there are substantial grounds for believing that an act of torture has been committed in any territory under its jurisdiction.'" United Nations, Committee against Torture, Conclusions and Recommendations: United Nations, Committee against Torture, Conclusions and Recommendations: Burundi, CAT/C/BDI/CO/1, para. 12.

[86] I/A Court H.R., Case of the Constitutional Tribunal v. Peru, Judgment of January 31, 2001, Series C No. 71, para. 73; I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paras. 55 and 56, citing Eur. Court HR. Pullar v. the United Kingdom, judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III, § 30, and Fey v. Austria, judgment of 24 February 1993, Series A no. 255-A p. 8, § 28, citing Eur. Court HR. Daktaras v. Lithuania, no. 42095/98 (Sect. 3) (bil.), ECHR 2000-X – (10.10.00), § 30, citing Eur. Court HR. Piersack v. Belgium, judgment of 1 October 1982, Series A no. 53, and De Cubber v. Belgium, judgment of 26 October 1984, Series A no. 86. Principle 2 of the Basic Principles on the Independence of the Judiciary.

115. In addition, the requests for impeachment were made on June 13 and 16, 2003, and May 31 and July 7, 2004. Nonetheless, the Congress, in a heated context of tension between the high courts of Ecuador and the Executive and Legislative branches, decided to terminate the judges of the Constitutional Court on November 25, 2004, and call them to face an impeachment proceeding on December 1. Not having obtained sufficient votes to censure the judges on that occasion, and in the context of a special session convened by the President of the Republic of that purpose, the Congress resolved to vote once again on the impeachment proceedings that concluded on December 1. On December 8, in the second vote, Congress obtained the majority needed to obtain a motion of censure. This sequence of events indicates that in this case, the action of the National Congress was not objective, did not respect the legal procedures, and failed to offer adequate due process guarantees.

116. Consequently, the IACHR concludes that the State did violate the right to be judged by a competent, independent, and impartial authority, enshrined in Article 8.1 of the American Convention in relation to the obligations established in articles 1.1 and 2 of the American Convention, with respect to Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán, and Manuel Jaramillo Córdova.

117. Finally, as for the guarantees provided for in Article 8(2) of the American Convention, it has been established that the termination of the judges of the Constitutional Court was ordered by a resolution of the National Congress, adopted summarily on November 25, 2004, without any information whatsoever that the victims had been afforded any opportunity to defend themselves. To the contrary, the State of Ecuador itself recognized that it was not appropriate to notify the judges of the Constitutional Court of the procedure or to afford them the right of defense. The IACHR already made it clear that pursuant to applicable international standards, in all procedures for removing judges from their positions due process guarantees must be in place, independent of what the procedure may be called in the domestic legislation.

118. As regards the impeachment proceeding against Miguel Camba Campos, Oswaldo Cevallos Bueno, Jaime Nogales Izurieta, Luis Rojas Bajaña, Simón Zabala Guzmán, and Manuel Jaramillo Córdova, in which a hearing was held on December 1, the Commission does not have information regarding these proceedings prior to the termination of November 25, 2004. Nonetheless, the Commission notes that the call to an impeachment proceeding was made beyond the time period provided for by regulation, and in the context of the debate over the removal of the judges of the Constitutional Court. In addition, as regards the second vote of impeachment of December 8, 2004, the Commission considers that according to the information available, it was not a new impeachment, but a repetition of the vote already adopted. In effect, in light of the pressure brought to bear by the President of the Republic by the call to special sessions, the National Congress repeated the vote of impeachment and modified the decision previously adopted on December 1. The information available allows one to conclude that the Congress once again adopted a resolution on a matter already decided without there being a mechanism provided for such purposes, and that the victims did not have the opportunity to participate in this proceeding or to exercise their right to defense.

119. In that connection, and given the express recognition of the State as to the absence of procedural guarantees or of any opportunity to defend themselves in relation to the termination and lack of procedural guarantees in the second vote of impeachment of December 8, 2004, the Commission concludes that the State of Ecuador did also violate the guarantees set out in Article 8.2 of the American Convention, in conjunction with the obligations set out in Articles 1.1 and 2 thereof, with respect to Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán, and Manuel Jaramillo Córdova.

D. The right to judicial protection (Article 25 of the American Convention)

120. Article 25 of the American Convention establishes:

> 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.

121. Article 1.1 of the American Convention stipulates:

> 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.

122. Article 2 of the American Convention provides:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

123. The Court has repeatedly said that Article 25.1 of the Convention requires States to offer, to all people under their jurisdiction, effective judicial recourse against actions that violate their basic rights. The existence of that guarantee "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society, as defined by the Convention."[87]

124. Regarding the scope of the right to judicial protection, both the Commission and the Inter-American Court have repeatedly stated that it applies not only with respect to the rights set out in the Convention, but also to those recognized by the Constitution or in law.[88] The Court has also said that "for such a remedy to exist, it is not sufficient that it be provided for by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress."[89] As held by the Court's constant jurisprudence, a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.[90]

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[87] I/A Court H.R. *Case of Castillo Páez v. Peru*, *Merits*, Judgment of November 3, 1997, Series C No. 34, para. 82; *Case of Claude Reyes et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 19, 2006, Series C No. 151, para. 131; and *Case of Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 6, 2008, Series C No. 183, para. 78.

[88] I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, para. 122; *Case of Claude Reyes et al.*. Judgment of September 19, 2006, Series C No. 151, para. 128; and *Yatama Case*, Judgment of June 23, 2005, Series C No. 127, para. 167. See also: IACHR, Application to the Inter-American Court of Human Rights, *Case of the Union of Employees, Professionals, and Technicians of the Lima Water and Sewerage Service Company v. Peru*, January 16, 2010, para. 57.

[89] I/A Court H.R. *C.f. Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)*, para. 24; *Case of the Five Pensioners v. Peru*, Judgment of February 28, 2003, Series C No. 98, para. 136.

[90] I/A Court H.R. *Case of Baldeón García v. Peru*, Merits, Reparations, and Costs, Judgment of April 6, 2006, Series C No. 147, para. 145, and *Case of Almonacid Arellano et al. v. Chile*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 111.

125. In connection with the relationship between the right enshrined in Article 25 of the Convention and the obligations set out in Articles 1.1 and 2 thereof, the Court has ruled that:

> Article 25 is closely linked to the general obligation in Article 1.1 of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation, from which it is clear that the State has the obligation to design and embody in legislation an effective recourse, and also to ensure the due application of the said recourse by its judicial authorities.[91] At the same time, the State's general duty to adapt its domestic law to the stipulations of said Convention in order to guarantee the rights enshrined in it, established in Article 2, includes the enactment of regulations and the development of practices that seek to achieve an effective observation of the rights and liberties enshrined in it, as well as the adoption of measures to suppress the regulations and practices of any nature that imply a violation to the guarantees established in the Convention.[92]

126. Regarding judicial protection in cases of removal of judges, the Human Rights Committee held that the removal of judges before the expiry of the term for which they were appointed without giving any concrete reason whatsoever and without affording them any effective judicial protection to challenge the removal is incompatible with judicial independence.[93] In addition, the Commission has considered that the impossibility of having an effective remedy against alleged acts in violation of the right to stability as a judge constituted a violation of Article 25 of the American Convention.[94]

127. According to what is set forth in the preceding paragraphs, international law establishes that judges should have a judicial body before which they can question the legality of their removal. In addition, that review body should be previously established and include adequate guarantees of impartiality and independence, and an institutional design in keeping with the nature of the remedy. In this case, the information available indicates that in Ecuador there was no specific remedy or mechanism by which to question either the removal of the judges by resolution of the National Congress or the removal by impeachment. In these circumstances, the only jurisdiction the judges of the Constitutional Court could turn to were the regular actions provided for in domestic law.

128. The Commission observes that five of the victims filed *amparo* actions against the resolution of the National Congress that terminated them. Based on the facts proven in this report, these *amparo* actions were systematically rejected by the civil judges who heard them. In particular, from the information available one can note that the results of those actions in which the resolution questioned was initially annulled and the parties were called to a hearing were subsequently revoked based on the resolution of the Constitutional Court elected November 25, 2004. In addition, the victims did not file motions of appeal against the rejection of the judges of first instance, given that

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[91] I/A Court H.R., *Reverón-Trujillo v. Venezuela Case.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 60. Citing: *c.f. Case of the Street Children (Villagrán Morales ''et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C No. 63, para. 237; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment of August 31, 2001, Series C No. 79, para. 135; and *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17 2005, Series C No. 125, para. 99.

[92] I/A Court H.R., *Reverón-Trujillo v. Venezuela Case.* Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 30, 2009. Series C No. 197. Para. 60. Citing: *c.f. Case of Castillo Petruzzi v. Peru*, Merits, Reparations, and Costs, Judgment of May 30, 1999, Series C No. 52, para. 207.

[93] United Nations, Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 20.

[94] IACHR, Report No. 30/97, Case 10,087, Merits, Gustavo Carranza , Argentina, September 30, 1997, para. 72.

they would be resolved by the Constitutional Court appointed as of the removal of the petitioners, and which moreover had already indicated a view on the matter."[95]

129. The State argued that it is not admissible to allege a violation of the right enshrined in Article 25 of the American Convention, for in the instant case adequate domestic remedies were not pursued, namely, the constitutional motion or remedies available in the contentious-administrative jurisdiction.

130. The Commission recalls that in the admissibility stage, particularly in the analysis of the requirement to exhaust domestic remedies, it ruled on the procedural effects of the failure to pursue the remedies noted by the State. In the merits stage it is up to the IACHR to rule on the petitioners' arguments regarding the impossibility of presenting or taking *amparo* actions in the particular context in which they found themselves, and whether this situation affected their right to judicial protection.

131. In this respect, the Commission has considered it proven that on December 2, 2004 the Constitutional Court issued a decision by which it established that in order to suspend the effects of a legislative resolution for alleged violation of the Constitution the only action possible was the constitutional motion, which is to be filed before the Constitutional Court. Accordingly, it established that all the judges in the country should reject and not admit any amparo action filled in this vein. In addition, it was added that if he fails to do so, the respective judge could face judicial actions.[96] Several aspects of this decision should be highlighted.

132. First of all, the decision was adopted at the express request of the President of the Republic "to prevent trial judges from admitting for processing constitutional *amparo* actions against Parliamentary Resolution 25-160, adopted by the National Congress on November 25, 2004." This resolution of the Constitutional Court constituted an express impediment to the victims being able to question the resolution that ordered their termination, and as such it implied eliminating the possibility of obtaining a pronouncement on the merits of the issue raised."[97]

133. In second place, the Commission notes that the Constitutional Court's December 2, 2004 decision was based on an earlier resolution issued by the Supreme Court of Justice on June 27, 2001, in which it clarified a series of criteria relating to constitutional *amparo*. A reading of that resolution reveals that it cannot be use as grounds for the inadmissibility of *amparo* remedies for challenging Congress's termination resolution. Thus, what the Supreme Court of Justice established on June 27, 2001, was that *amparo* was inadmissible against regulatory provisions and resolutions of a general nature, since unconstitutionality suits were admissible with respect to them.

134. The Commission holds that the resolution whereby the National Congress terminated the justices of the Supreme Court can in no way be considered a resolution of general nature, in that it disposed of the victims' rights and interests, affecting them in a particular way that could not be challenged by means of an unconstitutionality suit which, by nature, is general and abstract. In addition, by their nature, the formal requirements for going forward with an unconstitutionality suit do not meet the characteristics of swift and effective judicial action established by the Convention. The Commission therefore believes that the Constitutional Court's decision of December 2, 2004, was grounded on a contradictory interpretation of the text of the Supreme Court's resolution of June 27, 2001, which it claimed to use as its basis.

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[95] **Annex 29.** El Comercio, *La reorganización fue legal y constitucional: Sicouret*, December 12, 2004 (annex to the petitioners' initial petition).

[96] **Annex 16.** Decision of the Constitutional Court of December 2, 2004 (annex to the petitioners' initial petition).

[97] IACHR, Report No. 48/00, Case 11,166, Merits, Walter Humberto Vásquez Vejarano, Peru, April 13, 2000, para. 91.

135. Third, even if an unconstitutionality suit could be considered a suitable and effective remedy for challenging the victims' termination, it would have fallen to the Constitutional Court to rule on any such filing. In such circumstances, neither did any guarantees in the resolution of a possible unconstitutionality suit exist.

136. Based on the foregoing considerations, the Commission believes that: (i) the victims were arbitrarily and unreasonably prevented from filing *amparo* remedies against the National Congress's termination resolution; (ii) the Constitutional Court's indicated remedy – an unconstitutionality suit – was not suitable for challenging the particular effects of that resolution; and (iii) the victims did not have access to an effective remedy to argue due process violations during the impeachment proceedings, such as the right to a hearing and the right of defense.

137. Consequently, the Commission concludes that the State of Ecuador failed to provide a simple, prompt, and effective judicial remedy and therefore did violate the right to judicial protection enshrined in Article 25.1 of the American Convention, in conjunction with the guarantees of independence and impartiality established in Article 8.1 and the obligations set out in Articles 1.1 and 2 thereof, with respect to Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán, and Manuel Jaramillo Córdova.

VI. CONCLUSIONS

138. From all the foregoing, the Commission concludes that the State of Ecuador is responsible for violating the rights to a fair trial, to freedom from *ex post facto* laws, and to judicial protection, enshrined in Articles 8, 9, and 25 of the American Convention, in conjunction with the obligations set out in Articles 1(1) and 2 thereof, with respect to Miguel Camba Campos, Oswaldo Cevallos Bueno, Enrique Herrería Bonnet, Jaime Nogales Izurieta, Luis Rojas Bajaña, Mauro Terán Cevallos, Simón Zabala Guzmán, and Manuel Jaramillo Córdova.

VII. RECOMMENDATIONS

139. In consideration of the foregoing conclusions,

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

1. (a)Reinstate the victims in the judiciary, in positions similar to those that they held, with the same remuneration, social benefits, and rank comparable to that they would hold today if their functions had not been terminated, for the period of time that was remaining in their terms, or

(b) If, for grounded reasons, reinstatement is not possible, the State shall reasonably indemnify the victims, or if applicable to their successors, taking into account moral damages.

2. Pay the victims the professional wages, pensions and/or social benefits they failed to receive from the time of their termination up to the moment on which their terms would have ended.

3. Publicly recognize, granting adequate publicity, the violations declared in the present case, in particular, the infringement on the independence of the Judiciary.

4. Adopt measures of non-repetition, that assure the independence of the Judiciary, including the measures necessary so that domestic law and applicable practice obey clear criteria and ensure guarantees in the appointment, tenure, and removal of judges, in particular, a long enough term in judicial office to ensure their independence and the determination of the grounds for impeachment, in accordance with the standards established in the American Convention.

Done and signed in the city of Washington, D.C., on the 22 day of the month of July, 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero and María Silvia Guillén, Commissioners.