Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Maria Cristina Reveron Trujillo v. Venezuela
Doc. Type:	Judgement (Preliminary Objection, Merits, Reparations, and Costs)
Decided by:	President: Cecilia Medina Quiroga; Judges: Sergio Garcia Ramirez; Manuel E. Ventura Robles; Leonardo A. Franco; Margarette May Macaulay; Rhadys Abreu Blondet; Einer Elias Biel Morales
	On May 9, 2008 Judge Diego Garcia Sayan, of Peruvian nationality, asked the President to accept his self-disqualification from participating in the present case because he is a member of a non-governmental entity of which Mr. Ayala Corao, one of the representatives of the alleged victim, is part. He also informed that "[even] though he has never referred to matter or subjects related to this case with Doctor Ayala Corao, and that [his] absolute independence and impartiality to hear the same is not affected at all," this step would be "healthy in order to guarantee that the perception of the parties and third parties regarding the complete independence and impartiality of the Tribunal not be affected." The President considered that it could not be concluded that Judge Garcia Sayan "had participated in any way whatsoever in the present case or that he publicly or privately stated his point of view regarding the litigation in course, its causes, statements, and possible solutions, or with regard to those who act in it as parties." However, in consultation with the other Judges and pursuant with Article 19 of the Statutes and 19 of the Rules of Procedure, it considered it reasonable to accept the position of Judge Garcia Sayan and therefore accepted his excuse. The excuse of Judge Garcia Sayan and the President's decision were notified to the parties on May 12, 2008. On may 9, 2008 the Court issued an Order in which it stated that Mr. Emilio Ramos Gonzalez, appointed as judge ad hoc by the State, was prevented from participating in the present case. In said Order the State was granted a period of time to appoint a new judge ad hoc. On June 30, 2008, after an extension, the State appointed Mr. Einer Elias Biel Morales in that position.
Dated:	30 June 2009
Citation:	Reveron Trujillo v. Venezuela, Judgement (IACtHR, 30 Jun. 2009)
Represented by:	APPLICANTS: Rafael J. Chavero Gazdik and Carlos M. Ayala Corao
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

In the case of Reverón Trujillo,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal"), pursuant with Articles 62(3) and 63(1) of the American Convention of Human Rights (hereinafter "the Convention" or "the American Convention") and with Articles

29, 31, 37(6), 56, and 58 of the Rules of Procedure of the Court [FN2] (hereinafter "the Rules of Procedure"), issues the present Judgment.

[FN2] Pursuant with the stipulations of Article 72(2) of the Rules of Procedure that went into force on March 24, 2009, "[c]ases pending resolution shall be processed according to the provisions of these Rules of Procedure, except for those cases in which a hearing has already been convened upon the entry into force of these Rules of Procedure; such cases shall be governed by the provisions of the previous Rules of Procedure." Thus, the Rules of Procedure of the Court mentioned in the present Judgment correspond to the instrument approved by the Tribunal in its XLIX Regular Session, held from November 16 to 25, 2000, and partially reformed by the Court in its LXI Regular Session, held from November 20 to December 4, 2003.

I. INTRODUCTION OF THE CASE AND OBJECT OF THE CONTROVERSY

1. On November 9, 2007 the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented, pursuant with Articles 51 and 61 of the Convention, an application against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"), based on which the present case was started. The initial petition was filed before the Commission of April 8, 2005. On July 25, 2006 the Commission approved Report No. 60/06, through which it declared the petition admissible. Subsequently, on July 27, 2007, it approved the Report on merits No. 62/07, in the terms of Article 50 of the Convention, which included certain recommendations for the State. This report was notified to the State on August 9, 2007. After considering that Venezuela had not adopted its recommendations, the Commission decided to submit the present case to the jurisdiction of the Court. The Commission appointed Messrs. Paulo Sérgio Pinheiro, Commissioner, and Santiago A. Canton, Executive Secretary as delegates and the attorneys Elizabeth Abi-Meshad, Deputy Executive Secretary, Débora Benchoa, Manuela Cuvi Rodríguez, and Silvia Serrano, specialists of the Executive Secretariat as legal advisors.

2. The application refers to the alleged arbitrary dismissal of María Cristina Reverón Trujillo (hereinafter "Mrs. Reverón Trujillo" or "the alleged victim") from the judicial position occupied by her, which occurred on February 6, 2002. On October 13, 2004 the Political-Administrative Chamber of the Supreme Court of Justice (hereinafter "the SPA") ordered the nullity of the act of dismissal considering that it was not adjusted to the law, but it did not order the reinstatement of the alleged victim to her position, or the payment of the salaries and social benefits she did not perceive. Therefore, the Commission argued that the appeal for annulment did not provide Mrs. Reverón Trujillo with an effective judicial remedy capable of repairing, in a comprehensive manner, the violation of her rights.

3. The Commission asked the Court to declare the State responsible for the violation of the right enshrined in Article 25 (Right to Judicial Protection) of the Convention, in relation to the obligations established in Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the same, in detriment of the alleged victim. Likewise, it requested that it order certain reparation measures.

4. On January 31, 2008 Messrs. Rafael J. Chavero Gazdik and Carlos M. Ayala Corao, representatives of the alleged victim (hereinafter "the representatives"), presented their brief of pleadings, motions, and evidence (hereinafter "brief of pleadings and motions"). Besides that indicated by the Commission, the representatives held, inter alia, that the dismissal of Mrs. Reverón Trujillo and the inability to reinstate her to her position would also constitute a violation to the principle of autonomy and independence of the judge. Likewise, they argued that Mrs. Reverón Trujillo suffered an unequal treatment regarding her right to enter and remain in her public duties, by having limited the "regularization of the entitlement" processes of the provisional judges in the effective exercise of their positions and by having denied her reinstatement. The representatives concluded that, besides the Articles invoked by the Commission, the State would be responsible for the violation of the rights enshrined in Articles 8 (Right to a Fair Trial), 23 (Right to Participate in Government), and 5 (Right to Humane Treatment) of the Convention.

5. On April 4, 2008 the State presented its brief of preliminary objections, its respondent's plea, and observations to the brief of pleadings and motions (hereinafter "respondent's plea"). The preliminary objection filed refers to the alleged lack of exhaustion of domestic remedies. The State argued it offered the alleged victim "a quick and effective judicial recourse to remedy the dismissal she was object of, pursuant with the nature of the position occupied […], since the decision issued by the Administrative [Political] Chamber […] annulled her dismissal, ordered her acceptance in the competitive tender, and accordingly eliminated from her file any mention of her dismissal." The State appointed Mr. Germán Saltrón Negretti as Agent and Mr. Larry Devoe Márquez as Deputy Agent.

6. Pursuant with Article 37(4) of the Rules of Procedure, on May 8 and 14, 2008 the Commission and the representatives, respectively, presented their arguments on the preliminary objection filed by the State (supra para. 5).

II. PROCEEDING BEFORE THE COURT

7. The application was notified to the State and the representatives on December 4, 2007. During the proceedings before this Tribunal, besides the filing of the main briefs forwarded by the parties (supra paras. 1, 4, and 5), the President of the Court (hereinafter "the President") ordered through an Order, [FN3] the receipt, through statements offered before notary public (affidavit), of some of the statements and expert opinions offered by the parties in a timely manner. Similarly, through the mentioned Ruling, modified by the President on October 8, 2008, the parties were summoned to a public hearing in order to receive the statements of the witnesses and the experts proposed, as per the case, by the Commission, the State, and the representatives, as well as the final oral arguments on the preliminary objection and the possible merits, reparations, and costs. Finally, the President gave the parties time until February 20, 2009 to present their corresponding briefs of final arguments.

[FN3] Cf. Case of Reverón Trujillo v. Venezuela. Order of the President of the Court of September 24, 2008.

---

8. The public hearing was held on January 23, 2009 during the LXXXII Regular Session of the Court, held in the city of San José, Costa Rica. [FN4]

[FN4] The following appeared at this hearing: a) for the Inter-American Commission: Santiago Canton, Executive Secretary; Elizabeth Abi-Mershed, Deputy Executive Secretary; Lilly Ching and Silvia Serrano, advisors; b) for the alleged victim: Carlos M. Ayala Corao, Rafael J. Chavero Gazdik, and Marianella Villegas Salazar, and c) for the State: Germán Saltrón Negretti, Agent; Larry Devoe, Deputy Agent; Julián Isaías Rodríguez, former Attorney General of the Republic, and Nelson Pineda, Ambassador of Venezuela in Costa Rica.

---

9. On November 27, 2008 the Tribunal received a brief filed by the Legal Clinic of the Law School of the Torcuato Di Tella University in Argentina, in their quality of amicus curiae. [FN5] Said brief presented, inter alia, an analysis of comparative law regarding the regulation of judicial independence in some of the countries of the region. On March 30, 2009 The Court received a brief from the Human Rights Center and the Law School of the University of Essex [FN6], in its quality of amicus curiae, in which it presented arguments, inter alia, regarding the scope of Article 25 of the American Convention and reparations, especially, namely the concept of injured party. The Spanish version of that brief was received on April 6, 2009.

[FN5] Said brief was presented by Hernán Gulico and Melisa Romero.

[FN6] Said brief was presented by Fernanda Acauan Santana, Gail Aguilar Castanon, Gabriel Alegrett, Brett Dodge, Jess Duggan-Larkin, Evie Franco, Tessa H.W. Hausner, Maria Isabel Henao Trip, Chiara Lyons, Tatiana Olarte Fernandez, Tara Van Ho, all students of the Masters Program in International Human Rights Law, and Clara Sandoval, Professor, Co-Director of the Masters Program on International Human Rights Law and member of the Human Rights Center.

---

10. On February 3, 2009 the President asked the parties to present, along with their briefs of final arguments, and in the quality of evidence to facilitate adjudication of the case support documents with regard to different subjects. [FN7]

[FN7] Those subjects were: a) the investigation carried out by the expert Canova on the alleged systematic denial of appeals filed against the State before the Supreme Court of Justice and the relevance of this for the present case; b) information that leads to establish why Mrs. Reverón Trujillo apparently did not make any request regarding the tenders the State argues it has carried out within the Special Program for the Regularization of the Entitlement; c) judicial decisions and other documentary evidence on the alleged arbitrary removal of provisional judges; d) evidence and arguments regarding evidence referring to psychological and physical disorders that are and have allegedly been suffered by Mrs. Reverón Trujillo, clearly indicating the assessment specialized personnel has made regarding its causes, characteristics, possibilities of

recovery, and diagnosis; e) internal regulations or documentary evidence regarding the possibilities provisional judges removed from participating in the Special Program for the Regularization of the Entitlement; f) legislation or jurisprudence that leads to the establishment of differences and/or similarities between the Special Regularization Program and the Public Competitive Tender; g) documentary evidence on the quality of provisional or titular judge that currently occupies the position that was occupied by Mrs. Reverón Trujillo; h) information that leads to verify if the publications made in the newspapers with national circulation in the years 2005 and 2006, clearly indicate that the judges removed from their position can also participate in the tenders for judges within the Special Program for the Regularization of the Entitlement; i) information on the thirteen cases of removed judges that would have participated in the Special Program for the Regularization of the Entitlement; j) information on public competitive tenders carried out after the issuing of the Constitution of 1999; k) regulations, jurisprudence, or any other type of evidence that leads to determine if the fact that provisional judges are subject to "free removal", implies that prior to the removal from their position they shall be submitted to an administrative, disciplinary, or any other regulated procedure and if besides this procedure, any other type of grounds are required to remove judges from their position, or if to the contrary, the "free removal" implies that the provisional judges can be removed from their position by mere discretion of any state authority without a prior process; l) information that leads to determine the legal regulations that support the decision of the Political-Administrative Chamber, in the sense of establishing that Mrs. Reverón Trujillo should have stated her will to participate in the corresponding "tender"; m) regulations, jurisprudence, or any other type of evidence that allows this Court to verify how Venezuela complies or not with Principle 12 of the Basic Principles regarding the independence of the judiciary in what refers exclusively to provisional or temporary judges; n) information that allows the Court to understand how a "public tender" can be carried out if the summons to the titling programs is supposedly not an open invitation to all people but instead a specific list of people, who were all supposedly active provisional judges; o) information that leads to the determination of when and how the restructuring process of the Judicial Power will conclude, and p) official information on the number and percentage of provisional judges there have been in the last 10 years and on the alleged impact this had or has had regarding the independence of the Judicial Power and in reference to the present case.

---

11. On February 20 and 21, 2009, the State and the representatives forwarded, respectively, their briefs of final arguments. Both the State and the representatives forwarded the evidence to facilitate adjudication of the case requested by the President (supra para. 10). The brief of final arguments of the Commission was filed ten days after the expiration of the term granted, which, in the President's opinion, resulted excessive and she therefore decided to rejected for being time-barred.

12. On March 17, 2009 the State requested that the brief of final arguments of the representatives also be rejected, since it was received with a one-day delay. On March 25, 2009 the representatives asked the Court that "in application of the limits of temporality and reasonability criteria and in compliance of the terms and the superior interest of the obtainment of justice […], it consider as filed for the subsequent analysis [their] briefs of final arguments."

13. On March 27, 2009 the President informed the parties of her decision to admit the brief of the representative since, based on the jurisprudence of the Tribunal, [FN8] a one-day delay in the forwarding of the brief was not considered an excessive term that would justify its rejection.

[FN8] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Preliminary Objections. Judgment of January 25, 1996. Series C No. 23, paras. 37 and 39; Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2006. Series C No. 148, para. 117, and Case of Kimel v. Argentina. Merits, Reparations, and Costs. Judgment of May 2, 2008, Series C No. 177, para. 12.

---

14. On March 23, 2009 the representatives presented their observations to the evidence that accompanied the State's briefs of final arguments. Along with this brief the representatives forwarded a Ruling of March 18, 2009 issued by the Supreme Court of Justice (hereinafter "the TSJ") "because it was part of the context of the violations of the present case."

15. On May 11, 2009 the Presented asked the parties to, based on that stated in Article 45(2) of the Rules of Procedure of the Court, forward evidence that would allow it to verify if, after the year 2004, initial formation programs and knowledge exams for the acceptance into the criminal jurisdiction have been carried out pursuant with Articles 14 through 37 of the "Regulations on the Evaluation and Competitive Tender for the Acceptance and Promotion to a Judicial Career."

16. The parties issued their opinions regarding the requests made (supra para. 15) on May 20, 2009. The State forwarded documents supporting its position. Additionally, the State filed a brief on June 1, 2009, making observations on the information provided by the Commission.

III. PRELIMINARY OBJECTION (Lack of exhaustion of domestic remedies)

17. The State held that the alleged victim omitted filing the appeal for review before the Constitutional Chamber of the TSJ, and that said appeal "would have given her the possibility to annul the decision of the Political-Administrative Chamber" that did not order her reinstatement. According to the State, the Court should reconsider its jurisprudential criterion regarding the tacit waiver to the objection of lack of exhaustion of domestic remedies, since "[t]he principles of the Inter-American System, summarized in the Preamble of the American Convention, cannot be waived expressly or tacitly by the States" and, given that "[w]ithout the full and complete validity of Article 46 of the Convention, the coadjuvant or complementary nature of the Inter-American protection system […] results absolutely unprotected and diminished." The State added that "the requirement of exhaustion of the domestic remedies constitutes an objective condition of admissibility that can be argued and revised, even ex officio, during any stage or instance of the international proceeding." Finally, it stated that the tacit waiver "contradicts the positions adopted by [the] Inter-American Court regarding its power to correct the procedural errors of the parties."

18. The Commission reiterated what it had stated in its admissibility report with regard to the fact that "the Venezuelan state participated in the processing of the case before [it] without filing

at any time the objection of lack of exhaustion of domestic remedies." It added that "[t]he mention of the need that the victim file an appeal for review has been made for the first time by the State before the Inter-American Court, and it is therefore absolutely time-barred." Additionally, it held that the State has not proven that the remedy argued as not exhausted is effective.

19. The representatives coincided with the Commission regarding the fact that the State's objection would be time-barred. Additionally, they stated that the constitutional appeal for revision "cannot be considered […] an adequate and effective measure."

20. The Court verifies that there is no controversy between the parties with regard to the fact that the present preliminary objection was not presented in a timely manner during the proceedings before the Commission. What the State wants is for the Tribunal to modify its constant jurisprudence, which has indicated that if the objection of lack of exhaustion of the domestic remedies is not filed in a timely manner, the possibility to do so is lost. As support for its position, the State offered three arguments: 1) that the tacit waiver is contrary to the American Convention, namely to its Preamble and Article 46; 2) that the exhaustion of the domestic remedies can be revised ex officio during any stage of the proceedings, and 3) that the non-presentation of this objection is a procedural error that can be corrected by the Tribunal.

21. Although it is true that the supervision exercised by the Inter-American Court is complementary, [FN9] the Convention itself states that the rule of exhaustion of domestic remedies shall be interpreted pursuant with the generally acknowledged principles of International Law, among which we find the one that states that the use of this rule is a means of defense available to the State and therefore the procedural moment at which the exception was filed shall be verified. If it is not filed before the Commission in a timely manner, the State has missed its chance to use this measure of defense before this Tribunal. The aforementioned has been acknowledged not only by this Court [FN10] but also by the European Court of Human Rights. [FN11]

[FN9] Cf. Preamble and Article 46 of the American Convention on Human Rights. See also The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 31; Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 61; Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 53, and Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 64.

[FN10] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 88; Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 14, and Case of Bayarri v. Argentina. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 30, 2008. Series C No. 187, para. 16.

[FN11] Cf. ECHR. Case of De Wilde, Ooms and Versyp Cases ("Vagrancy") v. Belgium, Judgment of 18 June 1971, Series A no. 12, para. 55; Case of Foti et al. v. Italy, Judgment of 10

December 1982, Series A no. 56 párr. 44; and ECHR. Case of Bitiyeva and X v. Russia, judgment of 21 June 2007, para. 90 and 91.

---

22. Therefore, the Tribunal concludes that the interpretation it has made of Article 46(1)(a) of the Convention for more than 20 years is pursuant with the International Law.

23. Regarding the second and third arguments of the State (supra para. 20), the Tribunal reasserts that pursuant with its jurisprudence [FN12] and international jurisprudence [FN13] it is not the Court or the Commission's task to identify ex officio which domestic remedies shall be exhausted, but instead it corresponds to the State to point out in a timely manner the domestic remedies that must be exhausted and their effectiveness. Likewise, it does not correspond to the international bodies to correct the lack of precision of the State's arguments. [FN14]

[FN12] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 10, para. 88; Case of Ríos et al. v. Venezuela, supra note 9, para. 37, and Case of Perozo et al. v. Venezuela, supra note 9, para. 42.
[FN13] Cf. ECHR. Case of Deweer v. Belgium, Judgment of 27 February 1980, Series A no. 35, para. 26; ECHR. Case of Foti and Others v. Italy, supra nota 11, para. 48, and ECHR. Case of De Jong, Baljet and van den Brink v. the Netherlands, Judgment of 22 May 1984, Series A no. 77, para. 36.
[FN14] Cf. ECHR. Case of Bozano v. France, Judgment of 18 December 1986, Series A no. 111, para. 46.

---

24. Due to the aforementioned, the Court dismisses the preliminary objection.

IV. COMPETENCE

25. The Inter-American Court is competent to hear the present case, in the terms of Article 62(3) of the American Convention, given that Venezuela is a State Party to the American Convention since August 9, 1977 and it acknowledged the Court's contentious jurisdiction on June 24, 1981.

V. EVIDENCE

26. Based on the stipulations of Article 44 and 45 of its Rules of Procedures, as well as with the jurisprudence of the Tribunal regarding the evidence and its assessment, [FN15] the Court will proceed to examine and assess the documentary evidentiary elements forwarded by the parties on different procedural opportunities, as well as the statements offered through affidavit and those received in public hearing. For this, the Tribunal will obey the rules of competent analysis, within the corresponding legal framework. [FN16]

[FN15] Cf. Case of the "White Van" (Paniagua Morales et al) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 50; Case of Perozo et al. v. Venezuela, supra note 9, para. 91, and Case of Kawas Fernández v. Honduras. Merits, Reparations, and Costs. Judgment of April 3, 2009 Series C No. 196, para. 36.
[FN16] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits. Judgment of March 8, 1998. Series C No. 37, para. 37; Case of Perozo et al. v. Venezuela, supra note 9, para. 112, and Case of Kawas Fernández v. Honduras, supra note 15, para. 36.
---

1. Testimonial and expert evidence

27. The statements offered before a notary public (affidavit) by the following witnesses and experts were received: [FN17]

a) José Luis Irazu Silva. Judge of the Superior Court (Single Chamber) of the Teenage Section of the Criminal Judicial Circuit of the Metropolitan Area of Caracas. Witness proposed by the representatives. He testified, inter alia, on the impact the provisional justice has had in the Judicial Power and in the cases processed before the Venezuelan criminal courts.
b) José Luis Tamayo Rodríguez. Attorney specialized in Criminal Law. Witness proposed by the representatives. He testified, inter alia, on the impact the provisional justice has had in the Judicial Power and in the cases processed before the Venezuelan criminal courts.
c) Aracelys Salas Viso. Retired judge of the Judicial Power. Witness proposed by the representatives. She testified, inter alia, on the impact the provisional justice has had in the Judicial Power and in the cases processed before the Venezuelan criminal courts.
d) Petra Margarita Jiménez Ortega. Provisional Judge dismissed by the Judicial Commission. Witness proposed by the representatives. She testified, inter alia, on how judges are allegedly being dismissed without any type of proceeding and justification and the impact this situation has caused on the Venezuelan Judicial Power.
e) Oswaldo Ramón Hevia Araujo. Deputy Director of the National School of the Magistracy. Witness proposed by the State. He testified, inter alia, on the activities carried out in the progress of the restructuring of the Judicial Power started in 1999.
f) José Leonardo Requena Cabello. Secretary of the Constitutional Chamber of the Supreme Court of Justice. Witness proposed by the State. He testified, inter alia, on the practices of the Constitutional Chamber of the Supreme Court of Justice for the admission and processing of the appeals for constitutional revision.
g) Damián Adolfo Nieto Carrillo. [FN18] Former President of the Commission of Operation and Restructuring of the Judicial System. Witness Proposed by the State. He expanded his statement offered in the case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, regarding the specific facts he has allegedly witnessed and that prove the conditions of autonomy and independence with which the Judicial Power acts with regard to the disciplinary power exercised by the Commission for the Operation and Restructuring of the Judiciary.
h) Alberto Arteaga Sánchez. Attorney specialized in Criminal Law. Expert proposed by the representatives. [FN19] He testified on Venezuela's domestic law with regard to the operation of the Judicial Power, the rules on the appointment and dismissal of judges, the situation of provisional judges, and the effectiveness of the judicial remedies available in cases of arbitrary dismissals of provisional judges.

i) José Zeitune. Attorney with experience in matters regarding the autonomy and independence of the Judicial Power. Expert proposed by the representatives. He testified, inter alia, on the international standards applicable to judges with regard to their acceptance and continuance; the sanctions applicable to the judges, their proceedings and standards for an independent revision; the autonomy and independence of the Judicial Power and its impact on the defense of human rights.

[FN17] On November 17, 2008 the State informed that "due to different reasons that are beyond its responsibility, the expert Andrés Eloy Brito has been prevented from offering his expert opinion before a notary public" and that "in order to facilitate the processing of the present case, the State of Venezuela desists from presenting the mentioned expert opinion."
[FN18] The informative opinion of Mr. Nieto Carrillo, offered in the case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, was transferred to the present case, according to that stated in the President's Order, supra note ¡Error! Marcador no definido..
[FN19] This expert opinion was originally proposed by the Commission; however, on October 31, 2008 it informed it wanted to desist it. The representatives forwarded this affidavit on November 5, 2008.

---

28. Regarding the evidence offered in the public hearing, the Court heard the statements of the following people:

a) María Cristina Reverón Trujillo. Alleged victim. Proposed by the Commission. She testified, inter alia, on the facts that led to her dismissal from the Judicial Power, as well as the alleged damage caused as a consequence of that dismissal.
b) Jesús Eduardo Cabrera Romero. Former Director of the National School of the Magistracy. Witness proposed by the State. He testified, inter alia, on the process and progress in the entitlement of the judges that have led the Supreme Court of Justice and the National School of the Magistracy.
c) Gustavo Valero. Staff Director of the Executive Office of the Magistracy. Witness proposed by the State. He testified, inter alia, on the reparation measures carried out in compliance of the decision of the Political-Administrative Chamber that annulled the dismissal of Mrs. Reverón Trujillo.
d) Antonio Canova González. Attorney specialized in Administrative and Constitutional Law. Expert proposed by the representatives. He testified, inter alia, on the situation of the Venezuelan Judicial Power, its disciplinary regimen; as well as the constitutional and legal powers of the contentious-administrative judges to order the comprehensive reestablishment of the juridical situations violated in the domestic Venezuelan law.

2. Assessment of the evidence

29. In this case, as in others, [FN20] the Tribunal admits the evidentiary value of those documents presented in a timely manner by the parties that were not contested or objected, or whose authenticity was not questioned. With regard to the documents forwarded as evidence to facilitate adjudication of the case (supra paras. 11 and 16), the Court incorporates them into the

body of evidence, in application of that stated in Article 45(2) of the Rules of Procedure. In reference to the Order forwarded by the representatives on March 23, 2009 (supra para. 14), the Tribunal includes it in the body of evidence pursuant with Article 44(3) of the Rules of Procedure based on its supervening nature and because it was not objected or contested by the other parties.

[FN20] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 9, para. 140; Case of Perozo et al. v. Venezuela, supra note 9, para. 94; Case of Kawas Fernández v. Honduras, supra note 15, para. 39.

---

30. Regarding the statements and expert opinions offered by the witnesses and experts in the public hearing and through affidavits, the Court considers them appropriate since they adjust to the object that was defined by the President of the Tribunal in the Ruling in which she ordered they be received (supra para. 7).

31. The representatives stated that the objections to witnesses and experts presented by the State in its brief of final arguments should be rejected because they are time-barred. They held that the procedural opportunity for their presentation expired in the month of December 2008, pursuant with the third operative paragraph of the President's Order of September 24, 2008 (supra para. 7), which stated that the parties could present the observations they considered appropriate to the statements offered through affidavit in a seven-day term as of their transmission.

32. The brief of final arguments is the last opportunity the parties have to present arguments to the Tribunal regarding the facts in controversy and the evidence that would support those facts, as well as the relevant legal arguments. Without detriment to the aforementioned, the President or the Court may grant the parties the possibility to present observations to the statements offered through affidavit, as in fact occurred in the present case. This opportunity the parties have to refer to the evidence provided by the other parties, whose timely procedural moment is determined y the President or the Court, does not prevent observations from being filed in the public hearing or in the brief of final arguments. Now, when one party presents new objections to the evidence of the counterparty in its brief of final arguments, the counterparty shall have the possibility to respond to those objections. This may occur without it being necessary for the Tribunal to expressly request that response. In the present case the representatives had this possibility (supra para. 14), and therefore there is no reason whatsoever to analyze the State's objections.

33. The State expressed that the statements given by the witnesses Jiménez Ortega, Irazu Silva, and Tamayo Rodríguez were drawn up by another witness of the present case: Mrs. Salas Viso, and that the statement of the expert Arteaga Sánchez was drawn up by one of the representatives of the alleged victim: Mrs. Marianella Villegas Salazar.

34. In response, the representatives held that in Venezuela "the statement of any person shall be endorsed by an attorney in order for it to be granted before a Notary Public, which does not

mean that it has been elaborated or prepared by the attorney It is a mere formality required for its authentication before a notary public."

35. The Court verifies that the representatives' statement has grounds, since the witnesses' affidavits offered by the State present the same characteristics as the affidavits forwarded by the representatives, that is, they indicate they were drawn up by a person, different to the deponent, who is an attorney. [FN21] Therefore, the Tribunal dismisses this objection.

[FN21] Cf. statement offered before notary public by José Leonardo Requena Cabello on November 13, 2008, (dossier of merits, Volume III, folio 1039); statement offered before notary public by the witness Damián Adolfo Nieto Carrillo on November 12, 2000 (dossier of merits, Volume III, folio 1055), and statement offered before notary public by the witness Hevia Araujo on November 12, 2008 (dossier of merits, Volume III, folio 1222).

---

36. The State indicated that the witnesses Salas Viso and Jiménez Ortega have a direct interest in the case due to their conditions of retired judge and dismissed judge of the Judicial Power, and that the first one acknowledged her "friendship and personal solidarity" with the alleged victim. Likewise, it mentioned that the statements of the witnesses Salas Viso, Jiménez Ortega, and Tamayo Rodríguez include personal opinions and not facts they are certain of. It also stated that the statement offered by the witness Irazu Silva "shows a clear interest in hiding the truth of the facts, and lacks all grounds."

37. The Court verifies that, in effect, the witness Salas Viso auto-defined herself as an "indirect victim". [FN22] However, the aforementioned is not reason enough to throughout her statement completely. The same is applicable to the witness Jiménez Ortega, since her quality of dismissed provisional judge is also not considered reason enough to dismiss her statement. The statements of both witnesses, however, are by themselves insufficient to consider the facts they state as proven, instead they must be compared with the rest of the evidence in the case file and pursuant with the rules of competent analysis. Likewise, the Court will assess in the merits of the matter the statement of the witness Irazu Silva and will prove with the rest of the body of evidence if his assertions lack or not grounds.

[FN22] Cf. statement offered before notary public by the witness Sala Viso on October 27, 2008 (dossier of merits, Volume III, folio 913).

---

38. In what refers to the personal opinions stated by the mentioned witnesses, the Court reiterates that when a person is called to declare as a witness, that person may refer to the facts and circumstances he is aware of with regard to the object of their statement, avoiding to offer their personal opinions. [FN23] Therefore, the Court will ignore any opinion merely personal expressed by the witnesses in their affidavits.

[FN23] Cf. Case of Reverón Trujillo v. Venezuela, supra note 3, eighteenth considering clause, and Case of González et al. ("Cotton Field") v. Mexico. Order of the President of the Court of March 18, 2009, forty-seventh considering clause.
---

39. Regarding the statement of the expert Zeitune, the State pointed out that he has the condition of Legal Advisor for Latin America of the International Jurists Commission and that "one of the […] judges of [the] Inter-American Court acts as Commissioner of the International Jurists Commission."

40. In this sense, the Tribunal points out that none of its judges is a member of the International Jurists Commission. Therefore, the State's observation is not admissible.

41. Venezuela also stated that the conclusions of the experts Zeitune and Canova González have no legal or objective grounds, and that the expert Arteaga Sánchez made unfounded conjectures.

42. Unlike witnesses, who shall avoid offering personal opinions, experts may offer technical or personal opinions as long as they refer to their special knowledge or experience. Additionally, the experts may refer both to specific matters of the action or any other relevant subject of the litigation, as long as they are limited to the object for which they were convened. [FN24] The experts' conclusions shall be well founded.

[FN24] Cf. Case of González et al. ("Cotton Field") v. Mexico, supra note 23, seventy-fifth considering clause.
---

43. Now, the State's objection shall be analyzed when the Tribunal goes on to study the merits of the matter. In the assumption that the expert's conclusions are unfounded, that means of evidence will not be taken into account; if they are well founded, it will. In other words, it is a matter of evidentiary weight and not of admissibility of the evidence. Therefore, the Tribunal admits the statements of the mentioned experts and it will assess them along with the body of evidence and pursuant with the rules of competent analysis.

44. Regarding the statement of the alleged victim, the State indicated that it did not adjust to the truth in reference to two events: a) the alleged lack of notification to Mrs. Reverón Trujillo of the precautionary measures issued by the Inter-American Commission in favor of a defendant in a case in which Mrs. Reverón Trujillo was acting as judge, and b) the alleged infringement of the alleged victim's right to retirement.

45. The Court indicates that point a) is not an object of the present case, and therefore it will not consider it. Regarding point b), the Tribunal will analyze Mrs. Reverón's statements in the corresponding section of this Judgment, taking into account that the alleged victim's statement cannot be assessed in an isolated manner, since she has a direct interest in the case. [FN25]

[FN25] Cf. Case of Loayza Tamayo v. Peru. Merits. Judgment of September 17, 1997. Series C No. 33, para. 43; Case of Valle Jaramillo et al. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192 para. 54, and Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations, and Costs. Judgment of January 27, 2009, Series C No. 193, para. 24.

---

46. On the other hand, the Tribunal observes that several documents quoted by the representatives were not provided to the Court, [FN26] but instead the direct electronic link to a Web page was sent. In this sense, pursuant with the jurisprudence of this Court, it is the parties' duty to enclose to their corresponding main briefs any documentation they wish to be considered as evidence, so it may be known of by the Tribunal and the other parties immediately. Without detriment of the aforementioned, in the present case, the Court observes that the documents provided in this manner are useful and that the parties had the possibility to locate and contest them, but they did not do it. Therefore, those documents are accepted and included in the case file, since juridical safety or procedural balance was not affected. [FN27]

[FN26] These documents are: Annual report of the Inter-American Commission of the year 2002, OAS/Ser.L/V/II.117, Doc. 1 rev. 1, March 7, 2003; Annual report of the Inter-American Commission of the year 2003, OAS/Ser.L/V/II.118, Doc. 70 rev. 2, December 29, 2003; Annual report of the Inter-American Commission of the year 2004, OAS/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005; Annual Report of the Inter-American Commission of the year 2005, OAS/Ser.L/V/II.124, Doc. 7, February 27, 2006 ,and Annual report of the Inter-American Commission of the year 2006, OAS/Ser.L/V/II.127, Doc. 4 rev. 1, March 3, 2007.
[FN27] Cf. Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 165, para. 26, Case of Tiu Tojín v. Guatemala. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 38, and Case of Perozo et al. v. Venezuela, supra note 9, para. 108.

---

47. In reference to the press documents presented by the parties, they may be assessed only when they refer to public and notorious facts or statements made by State officials or when they verify aspects related to the case. [FN28]

[FN28] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 9, para. 146; Case of Perozo et al. v. Venezuela, supra note 9, para. 101, and Case of Kawas Fernández v. Honduras, supra note 15, para. 43.

---

48. Finally, the Court adds to the body of evidence, pursuant with Article 45(1) of the Rules of Procedure and because it considers them useful in the adjudication of the case, the following domestic regulations: Law on the Statute of Public Service of Venezuela [FN29] and the Organic Code of Criminal Procedures. [FN30]

[FN29] Cf. Law on the Statute of Public Service in Venezuela, issued by the National Assembly of the Bolivarian Republic of Venezuela on July 9, 2002, published in the Official Gazette of the Bolivarian Republic of Venezuela, Nº 37,522 on September 6, 2002.
[FN30] Cf. Organic Code of Criminal Procedures issued by the National Assembly on October 2, 2001, published in the Official Gazette No. 5,558 dated November 14, 2001.

VI. ARTICLE 25 (RIGHT TO JUDICIAL PROTECTION) [FN31] IN RELATION TO ARTICLES 1(1) (OBLIGATION TO RESPECT RIGHTS) [FN32] AND 2 (DOMESTIC LEGAL EFFECTS) [FN33] OF THE AMERICAN CONVENTION

[FN31] Article 25(1) of the Convention states:
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.
[FN32] Article 1(1) of the Convention states:
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.
[FN33] Article 2 of the Convention states:
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.

---

1. The facts of the present case

49. Mrs. Reverón Trujillo entered the Venezuelan Judicial Power in 1982, occupying since then different positions in an uninterrupted manner. [FN34] On July 16, 1999, an Order of the Judiciary Council appointed her as a First Instance Criminal Judge and established that the appointment had a "provisional nature" until "the holding of the corresponding tenders." [FN35] From July 21, 1999 up to February 26, 2002 Mrs. Reverón Trujillo was a First Instance Judge of the Criminal Judicial Circuit of the Judicial District of the Metropolitan Area of Caracas. [FN36] In the year 2002 she acted specifically as the Fourteenth First Instance Trial Judge of said Circuit. [FN37] It is important to point out that the representatives, the State and the alleged victim agree that prior to that position, Mrs. Reverón Trujillo acted as a Judge in control duties at the Fourteenth Court of the Metropolitan Area of Caracas. [FN38]

[FN34] Cf. Certification of the positions held by Mrs. Reverón Trujillo. Executive Office of the Magistracy, General Office of Human Resources, March 28, 2008 (dossier of annexes to the respondent's plea, Volume II, annex 31, folio 1247).
[FN35] Cf. order No. 74 issued by the Administrative Chamber of the Judiciary Council on July 16, 1999, published in the Official Gazette No. 36,753 of July 29, 1999 (dossier of annexes to the application, Volume I, annex B(2), folios 103 through 105).
[FN36] Cf. certification of positions held by Mrs. Reverón Trujillo, supra note 34, folio 1247.
[FN37] Cf. decision to dismiss of the CFRSJ in the disciplinary process followed against Mrs. Reverón Trujillo issued by the CFRSJ on February 6, 2002 (dossier of annexes to the application, Volume I, annex B(4), folio 120).
[FN38] In the brief of final written arguments the representatives explained that within the realm of Venezuelan criminal jurisdiction, pursuant with the stipulations of the Organic Code of Criminal Procedures, "judges who have been appointed to occupy First Instance Courts are 'rotated' on a yearly basis through a 'Rotation Program' approved by the Appeals Court of the corresponding jurisdiction, between the courts that make up that instance: the Control Court, Trial Courts, and Execution Courts," which "means that each First Instance judge will occupy every year any of the Courts that conform it." The Court verifies that Article 536 of the Organic Code of Criminal Procedures states that it corresponds to the Appeals Court to approve, on a yearly basis, the rotation program for the judges of the First Instance Courts and Article 107 states that the control judge, trial judge, or execution judge refer to the first instance judges who exercise control duties, trial duties, and judgment execution duties, respectively. Cf. Organic Code of Criminal Procedures, supra note 30).

---

50. On February 6, 2002 the Commission for the Operation and Restructuring of the Judicial System (hereinafter "the CFRSJ") dismissed Mrs. Reverón Trujillo from her position. [FN39] That body considered that the judge had incurred in disciplinary offenses according to the Organic Law of the Judiciary Council and the Law on the Judicial Career, which included "abuse or excessive use of authority" and the failure to comply with her obligation to "exercise due attention and diligence" in the processing of the case. [FN40]

[FN39] Cf. decision issued by the CFRSJ on February 6, 2002, supra note 37, folios 120 to 165.
[FN40] Cf. decision issued by the CFRSJ on February 6, 2002, supra note 37, folios 158 to 165.

---

51. On March 5, 2002 Mrs. Reverón Trujillo filed an administrative appeal for reconsideration before the CFRSJ. [FN41] On March 20, 2002 the CFRSJ declared that appeal inadmissible. [FN42]

[FN41] Cf. administrative appeal for reconsideration filed before the CFRSJ on March 5, 2002 (dossier of annexes to the respondent's plea, Volume VI, annex 33, piece 4, folios 2441 to 2459).
[FN42] Cf. decision regarding the appeal for reconsideration issued by the CFRSJ on March 20, 2002 (dossier of annexes to the respondent's plea, Volume VI, annex 33, piece 4, folio 2467).

---

52. On March 19, 2002 the alleged victim filed an appeal for annulment before the SPA, through which it also requested a precautionary suspension of the effects of the appealed act. [FN43]

[FN43] Cf. appeal for annulment against the act of dismissal filed by Mrs. Reverón Trujillo on March 19, 2002 (dossier of annexes to the respondent's plea, Volume VII, annex 34, folios 2521 to 2591).

---

53. On May 14, 2003 the SPA dismissed the claimant's demand of suspension of the effects of the act [FN44] and on October 13, 2004 declared the nullity of the punishment of dismissal. It concluded that Mrs. Reverón Trujillo

did not incur in the disciplinary offenses for which the [CFRSJ] dismissed her from [the] position, that is, she did not incur in abuse or excess of authority; carelessness and negligence in her role of director of the process […] and therefore, according to the legal rules in force on the date of the administrative act through which the competent body dismissed her, this Chamber declares that said decision was not lawful. [FN45]

[FN44] Cf. judgment No. 711 issued by the SPA on May 14, 2003 (dossier of annexes to the respondent's plea, Volume VII, annex 34, piece 4, folios 2729 to 2740).
[FN45] Cf. judgment No. 01771 issued by the SPA on October 13, 2004 (dossier of annexes to the application, Volume I, annex B.5, folio 183).

---

54. Additionally, the SPA determined that the CFRSJ "invaded competences corresponding to the jurisdictional realm and in that sense, violated the constitutional guarantee to the autonomy and independence of which the mentioned punished judge was entitled to, when it issued the measure in question." [FN46]

[FN46] Cf. judgment issued by the SPA on October 13, 2004, supra note 45, folio 181.

---

55. The SPA did not order the reinstatement of the judge or payment of the salaries she did not perceive. It justified its decision as follows and ordered the following reparation measures:

In other circumstances this Chamber could, with the elements present in the records in the case file, order the reinstatement of the judge affected with the punishments to the position she occupied; however, it is necessary to point out that there is currently a judicial restructuring process in operation, reason for which we have agreed to submit to Public Competitive Tenders all judicial positions, including those occupied by judges who had a provisional nature.

Therefore, since the appellant is included in the previously expressed situation and due to the impossibility to order the reinstatement to her position or another of the same hierarchy and remuneration, for the reasons previously mentioned, this Chamber, aware of the possible remuneration the present case deserves, ORDERS the Administration:

1) To eliminate from the dossier found in the files of the [CFRSJ] the punishment of dismissal imposed on the citizen María Cristina Reverón Trujillo, through the administrative act of February 6, 2002, issued by that Commission.

In this sense, all information that mentions that the previously mentioned citizen was punished in the previously stated terms shall be deleted from her judicial file, in order to avoid the formation of possible negative effects in future competitive tenders in which the appellant could eventually participate, reason for which we order that a certified copy of the present decision be annexed to the appellant's administrative case file. […]

2) Given the condition of provisional judge maintained by the appellant up to when the present appeal was filed and in order to preserve her right to participate in the public competitive tenders to which she may aspire, as long, naturally, as she fulfills the requirements demanded in each case, we order her evaluation during the complete period during which she exercised her judgeship, as well as her inclusion, if requested by her, in the mentioned competitive tenders.

3) Since the present decision does not order the reinstatement of the judge to the position she had been occupying, this Chamber abstains from ordering the payment of the salaries she stopped receiving as of the date of her dismissal. So ordered. [FN47]

[FN47] Cf. judgment issued by the SPA on October 13, 2004, supra note 45, folios 183 and 184.

---

2. The right to an effective remedy

56. In the opinion of the Commission and the representatives the violation of Article 25(1) of the Convention occurred precisely because the SPA did not order the reinstatement or Mrs. Reverón Trujillo to her position and payment of the salaries she did not perceive. According to the Commission, "the effectiveness of a remedy is not limited only to the formal declaration of a violation, on the contrary, the right to access justice implies that the State adopt all the measures necessary to correct that situation." Likewise, the Commission stated that the SPA's decision "necessarily implied the disposal of all the mechanisms necessary to correct the violation found," specifically "the reinstatement to the position and payment of the salaries and benefits she did not perceive."

57. The representatives argued that the denial of justice in this case "obeys to the non-satisfaction of logics and the main consequence of an ordinary legal remedy, specifically, an appeal for annulment of a dismissal from a public position" and that "the necessary and indispensable effective result of a judicial remedy that would determine the illegality of a dismissal is the consistent reinstatement to the position and the benefits that were not perceived."

58. On its part, the State held that "the fact that the reparation ordered by [the SPA] is different to the one expected by the alleged victim, and by the Inter-American Commission, does not imply that the remedy was not effective, pursuant with the objective conditions of the

specific case." Those "objective conditions" would be, according to Venezuela, the process of judicial restructuring the country is going through and the condition of "provisional judge" of the alleged victim. For the State, the reparation measures agreed on by the SPA were "appropriate for the case of the provisional judges."

59. Article 25(1) of the Convention states, in ample terms, the obligation corresponding to the States to offer, all people submitted to its jurisdiction, an effective judicial remedy against acts that violate their fundamental rights. It also states, that the guarantee enshrined therein applies not only to the rights included in the Convention, but also to those acknowledged by the Constitution or a law. [FN48] The existence of this guarantee "constitutes one of the basic pillars, not only of the American Convention, but of the Rule of Law itself in a democratic society in the sense of the Convention." [FN49]

[FN48] Cf. 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. 23; Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 57, and Case of Bayarri v. Argentina, supra note 10, para. 102.

[FN49] Cf. 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. Case of Castañeda Gutman v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 18, para. 78.

---

60. Article 25 of the Convention is intimately linked to the general obligation of Article 1(1) of the same, which attributes duties of protection of the domestic law of the States Parties, from which it can be concluded that the State has the responsibility to design and through instruments enshrine an effective remedy, as well as guarantee the correct application of that remedy by its judicial authorities. [FN50] 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. [FN51]

[FN50] Cf. 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 Case of the Indigenous Community Yakye Axa v. Paraguay. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, para. 99.

[FN51] Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations, and Costs. Judgment of May 30, 1999. Series C No. 52, para. 207; Case of Salvador Chiriboga v. Ecuador, supra note 48, para. 122 and Case of Castañeda Gutman v. Mexico, supra note 49, para. 79.

---

61. In a similar sense, the Court has understood that for there to be an effective remedy it is not enough for it to be established in the Constitution or the law or for it to be formally admissible, instead it is required that it be fit to establish if there has been a violation to human rights and provide what is necessary to correct that situation. [FN52] Those remedies that, due to the country's general conditions or due to the specific circumstances of a given case, result illusory cannot be considered effective. [FN53]

[FN52] Cf. Judicial Guarantees in States of Emergency (Arts. 27(2), 25, and 8 of the American Convention on Human Rights), supra note 48, para. 24; Case of the "Five Pensioners" v. Peru. Judgment of February 28, 2003. Series C No. 98, para. 136, and Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, supra note 50, para. 113.
[FN53] Cf. Judicial Guarantees in States of Emergency (Arts. 27(2), 25, and 8 of the American Convention on Human Rights), supra note 48, para. 24; 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.

---

62. In the present case, the Court verifies that through the appeal for annulment filed by Mrs. Reverón Trujillo it was declared that her dismissal was not lawful (supra para. 53) but it did not order her reinstatement or payment of the salaries she did not perceive because of that dismissal. Additionally, the judgment of the SPA stated that "the elements present in the records of the case file" of Mrs. Reverón Trujillo would have led to the SPA ordering the reinstatement if it would not have been for the process of judicial restructuring and the position of provisional judge she occupied (supra para. 55). Then, it corresponds to the Tribunal to analyze, first, if in this case, the reinstatement to the position was the reparation necessary to correct Mrs. Reverón Trujillo's situation, which would lead to the consequence that an effective remedy would necessarily imply said reparation (supra para. 61). If a positive conclusion is reached in this sense, the Tribunal shall analyze if the reasons indicated by the SPA (the judicial restructuring process and the alleged victim's condition of provisional judge) constituted adequate restrictions according to the American Convention and therefore freed the State from reinstating Mrs. Reverón Trujillo to her position and paying her the salaries she did not perceive. If it is concluded that those reasons did not excuse the State from proceeding with the reinstatement, the consequence will be that the remedy was not effective to solve the alleged victim's situation. If on the contrary it is concluded that those reasons justified that the State not proceed with the reinstatement, it shall decide if the reparations granted, that is, the elimination of the sanction of dismissal from the dossier in their files and the order that she be evaluated and included in the competitive tenders if she were to require it (supra para. 55), were the adequate ones. If it is concluded that they were not, there will be a violation to Article 25; to the contrary, there will not.

2.1 The effective remedy after the arbitrary dismissal of a judge

63. The Court will proceed now to analyze if the reinstatement to the position is necessary to correct the situation of the judges that are arbitrarily dismissed, as occurred in the present case according to that stated by the SPA (supra para. 53) and, therefore, if an effective remedy in this case implies the reinstatement.

64. The judges that form part of the judicial career have, first of all, the stability offered by the fact of being a career official. The general principle in labor matters for career civil servants is understood as the certainty the employee shall have in the sense that, as long as he observes the conditions set by law with regard to his performance, he will not be removed from his position. The aforementioned is due to the fact that the public employees have accessed those positions through tenders or any other legal method that can determine the merits and abilities of those who aspired and that are part of a permanent career.

65. Thus, for example, the Law on the Statute of Public Service in Venezuela states that "[c]areer civil servants will be those who, having been awarded the public tender, having overcome the trial period and by virtue of the appointment, offer remunerated services with a permanent nature," [FN54] and that "[t]he public civil servants that occupy career positions will enjoy stability in the fulfillment of their positions. Therefore, they may only be removed from the service based on the causes contemplated in the present Law." [FN55]

[FN54] Cf. Article 19 of the Law of the Statutes of Public Service in Venezuela, supra note 29.
[FN55] Cf. Article 30 of the Law of the Statutes of Public Service in Venezuela, supra note 29.

---

66. Specifically, with regard to judges, the Venezuelan Constitution establishes in Article 255 a standard judicial career regime:

The acceptance into the judicial career and the promotion of judges will be done through public competitive tenders that guarantee the suitability and excellence of the participants and they will be selected by the juries of the judicial circuits, in the manner and conditions established by law. […] The judges may only be removed or suspended from their positions through the procedures expressly established in the law. [FN56]

[FN56] Cfr Article 255 of the Constitution of the Bolivarian Republic of Venezuela, published in the Official Gazette No. 5,453 on March 24, 2000 (dossier of annexes to the respondent's plea, Volume I, annex 1, folio 747).

---

67. Now, 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 exercise of the judicial function." [FN57] The Tribunal has said that one of the main objectives of the separation of the public powers is the guarantee of the judges' independence. [FN58] 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. [FN59] 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. [FN60]

[FN57] Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004. Series C No. 107, para. 171, and Case of Palamara Iribarne v. Chile. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 135, para. 145.
[FN58] Cf. Case of the Constitutional Court 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 Objections, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No. 182, para. 55.
[FN59] Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 58, para. 55.
[FN60] Cf. Case of Herrera Ulloa v. Costa Rica, supra note 57, para. 171.

---

68. The principle of judicial independence constitutes one of the basic pillars of the guarantees of the due process, reason for which it shall be respected in all areas of the proceeding and before all the procedural instances in which decisions are made with regard to the person's rights. The Court has considered that the principle of judicial independence results necessary for the protection of fundamental rights, reason for which its scope shall be guaranteed even in special situations, such as the state of emergency. [FN61]

[FN61] Cf. Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1), and 7(6) of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30, and Judicial Guarantees in States of Emergency (Arts. 27(2), 25, and 8 of the American Convention of Human Rights), supra note 48, para. 20.

---

69. The principle of judicial independence was acknowledged by the SPA itself in its judgment in which it declared the nullity of the dismissal of Mrs. Reverón Trujillo. In that decision, the SPA considered that Articles 254 and 256 of the Venezuelan Constitution, regarding the independence and impartiality of the Judicial Power, [FN62] "enshrine a general principle of compelling compliance." [FN63] Additionally, the SPA stated that from the mentioned articles derives "the principle of independence of the bodies of administration of justice in two fundamental aspects, the respect to their autonomy regarding other bodies of the Public Power, and the duty of the judicial officials to maintain their independence." [FN64]

[FN62] Cf. Arts. 254 and 256 of the Constitution, supra note 56, folio 747.
[FN63] Cf. judgment issued by the SPA on October 13, 2004, supra note 45, folio 180.
[FN64] Cf. judgment issued by the SPA on October 13, 2004, supra note 45, folio 180.

---

70. According to the jurisprudence of this Court and the European Court, as well as pursuant with the Basic Principles of the United Nations on the Independence of the Judiciary (hereinafter, "Basic Principles"), the following guarantees are derived from the judicial independence: an adequate appointment process, [FN65] the tenure in the position, [FN66] and the guarantee against external pressures. [FN67]

[FN65] Cf. Case of the Constitutional Court v. Peru, supra note 58, para. 75; Case of Palamara Iribarne v. Chile, supra note 57, para. 156, and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 58, para. 138. See also ECHR, Case of Campbell and Fell v. the United Kingdom, judgment of 28 June 1984, Series A No. 80, para. 78; ECHR, Case of Langborger v. Sweden, Judgment of 22 January 1989, Series A no. 155, para. 32; and Principle 10 of the Basic Principles of the United Nations on the Independence of the Judiciary adopted by the Seventh Congress of the United Nations for the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from August 26th through 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.
[FN66] Cf. Case of the Constitutional Court v. Peru, supra note 58, para. 75; Case of Palamara Iribarne v. Chile, supra note 57, para. 156, and Case of Apitz Barbera et al ("First Court of Administrative Disputes") v. Venezuela, supra note 58, para. 138. See also Principle 12 of the Basic Principles of the United Nations, supra note 65.
[FN67] Cf. Case of the Constitutional Court v. Peru, supra note 58, para. 75, and Case of Palamara Iribarne v. Chile, supra note 57, para. 156. See also ECHR, Case of Campbell and Fell v. the United Kingdom, supra note 65, para. 78, and Case of Langborger Vs. Sweden, supra note 65, para. 32. See also Principles 2, 3, and 4 of the Basic Principles of the United Nations, supra note 65. Judgment of 27 January 1989, Series A no. 155, para. 32; Basic Principle 12.

---

i) adequate appointment process

71. The Basic Principles highlight as preponderant elements in the appointment of judges their integrity, ability with appropriate training or qualifications in law. [FN68] 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. [FN69] This Court has previously pointed out that the different political systems have come up with strict procedures both for the appointment of judges as well as for their dismissal. [FN70]

[FN68] Cf. Principle 10 of the Basic Principles of the United Nations, supra note 65.

[FN69] Cf. Principle I(2)(c) of Recommendation No. R (94) 12 of the Committee of Ministers of the State Members on the Independence, Efficiency, and Duty of the Judges adopted by the Committee of Ministers on October 13, 1994 in the 5i8th meeting of Vice-ministers.
[FN70] Cf. Case of the Constitutional Court v. Peru, supra note 58, para. 73 and Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, supra note 58, para. 44.
---

72. 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. [FN71] 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 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.

[FN71] Cf. United Nations, Human Rights Committee, General Observation No. 32, Article 14: Right to a Fair Trial and Equality Before Tribunals and Courts of Justice, CCPR/C/GC/32, August 23, 2007, para. 19.
---

73. Similarly, the appointment procedures may not involve unreasonable privileges or advantages. The equal opportunities are guaranteed through an open competition, so that any citizen who can prove it complies with the requirements determined in the law may participate in the selection processes without being object to arbitrary unequal treatments. All those who aspire shall compete in equal conditions even regarding those who temporarily occupy the positions, who for having that condition cannot be treated with privileges or advantages, or with disadvantages, with regard to the position occupied by them or the one they aspire to occupy. In synthesis, an open and equal opportunity shall be granted through an ample public announcement, which shall be clear and transparent with regard to the requirements demanded for the fulfillment of the position. Therefore, any restriction that prevents or makes it difficult for anybody who is not part of the administration or any entity, that is, an individual who has not accessed the service, to do so based on their merits is not admissible.

74. Finally, when the States establish procedures for the appointment of their judges, they must take into account that not just any procedure satisfies the conditions demanded by the Convention for the adequate implementation of a truly independent regimen. If basic parameters of objectivity and reasonability are not respected, it would be possible to design a regimen that allows a high level of discretional consideration in the selection of the judicial career officials, by virtue of which the people chosen would not necessarily be the most fit.

ii) tenure

75. The Basic Principles state that "[t]he term of office of judges shall be adequately secured by law" [FN72] and that "[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists." [FN73]

[FN72] Cf. Principle 11 of the Basic Principles of the United Nations, supra note 65.
[FN73] Cf. Principle 12 of the Basic Principles of the United Nations, supra note 65.

---

76. On the other hand, the Universal Principles also state that "[p]romotion of judges, wherever such a system exists, should be based on objective factors, in particular on ability, integrity and experience." [FN74]

[FN74] Cf. Principle 13 of the Basic Principles of the United Nations, supra note 65.

---

77. 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 "[a]ll disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct." [FN75] 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. [FN76] Additionally, the Committee has expressed that "[t]he dismissal of judges by the [E]xecutive [P]ower 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. [FN77]

[FN75] Cf. Principles 18 and 19 of the Basic Principles of the United Nations, supra note 65.
[FN76] Cf. United Nations, Human Rights Committee, General Comment No. 32, Article 14, supra note 71, para. 20.
[FN77] Cf. United Nations, Human Rights Committee, General Comment No. 32, Article 14, supra note 71, para. 20.

---

78. This Tribunal has accepted these principles and has stated that the authority in charge of the process for the dismissal of a judge shall be allowed to act independently and impartially in the proceedings established for that effect and allow the exercise of the right to a defense. [FN78] This is so since the free removal of judges foments an objective doubt in the observer regarding the effective possibility they may have to decide specific controversies without fearing the retaliation. [FN79]

[FN78] Cf. Case of the Constitutional Court v. Peru, supra note 58, para. 74 and Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 58, para. 44.
[FN79] Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, supra note 58, para. 44. See also Principles 2, 3, and 4 of the Basic Principles of the United Nations, supra note 65.
---

79. From all this it can be concluded that tenure is a guarantee of the judicial independence that at the same time is made up by the following guarantees: continuance in the position, an adequate promotions process, and no unjustified dismissals or free removal. This means that if the State does not comply with one of these guarantees, it affects the tenure and, therefore, it is not complying with its obligation to guarantee judicial independence.

iii) guarantee against external pressures

80. The Basic Principles state that the judges will decide the matters brought before them "on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." [FN80] Likewise, said principles state that the judiciary "shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law" [FN81] and that "[t]here shall not be any inappropriate or unwarranted interference with the judicial process." [FN82]

[FN80] Cf. Principle 2 of the Basic Principles of the United Nations, supra note 65.
[FN81] Cf. Principle 3 of the Basic Principles of the United Nations, supra note 65.
[FN82] Cf. Principle 4 of the Basic Principles of the United Nations, supra note 65.

***

81. As can be observed, judges have several guarantees that reinforce their stability in their position in seeking to guarantee their independence and that of the system, as well as the appearance of independence with regard to the parties and society. As has been acknowledged in the past by this Tribunal, the guarantee of tenure shall operate so as to allow the reinstatement to the condition of judge to whoever has been arbitrarily deprived of it. [FN83] This is so, because 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 and then not reinstated even when the dismissal has been arbitrary. 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. Therefore, a remedy that declares the nullity of a dismissal of a judge because it was not lawful must necessarily lead to the reinstatement. In the present case, the appeal for annulment was suitable because it declared the nullity and, as stated by the SPA itself, it could have led to the reinstatement of Mrs. Reverón Trujillo. The question that arises from this is if the reasons set

forth by the SPA for not reinstating her (the process of judicial restructuring and her condition of provisional judge) freed the SPA for reordering that reparation.

[FN83] Cf. Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, supra note 58, para. 246.

2.2 The judicial restructuring process in Venezuela

i) The National Constituent Assembly

82. According to the State, "[b]efore the year 1999, the Venezuelan Judicial Power was submerged in a deep crisis, which put in doubt its independence, autonomy, and impartiality." For this and other reasons, a popular referendum was convened, and on April 25, 1999 it approved the summons of a National Constituent Assembly (hereinafter "the Constituent Assembly") "with a triple purpose: (i) transform the State, (ii) create a new body of law, and (iii) achieve the effective operation of a social and participative democracy."

ii) Decree of Reorganization of the Judicial Power

83. On August 12, 1999 the Constituent Assembly declared the "reorganization of all the bodies of the public power" due to the "serious political, economic, social, moral, and institutional crisis the country was going through. [FN84]

[FN84] Cf. decree that declares the reorganization of all the bodies of the Public Power issued by the Constituent Assembly on August 12, 1999, published in the Official Gazette No. 36,764 of August 13, 1999 (dossier of annexes to the application, Volume I, annex A.1, folio 39).

---

84. On August 19, 1999 the Constituent Assembly, through the Decree of Reorganization of the Judicial Power and the Prison System (hereinafter "the Decree of Reorganization"), created a Judicial Emergency Commission (hereinafter "the Emergency Commission"). [FN85] Among the competences of this Commission was the elaboration of a National Plan for the Evaluation and Selection of Judges, organization of the selection processes of judges through public competitive tenders for all the courts and judicial circuits, and the selection of the corresponding juries. [FN86] That decree left "without effect the stability established by Law to the current judges in exercise[,] who could compete in the public competitive tenders that were to be opened to cover their positions." [FN87]

[FN85] Cf. Article 2 of the Decree on the Reorganization of the Judiciary and the Penitentiary System issued by the Constituent Assembly on August 19, 1999, published in the Official Gazette No. 36,805 of October 11, 1999 (dossier of annexes to the application, Volume I, annex A.2, folios 42 and 43).

[FN86] Cf. Article 3(5)(a) of the Decree on the Reorganization of the Judiciary, supra note 85, folio 43.
[FN87] Cf. Article 12 of the Decree on the Reorganization of the Judiciary, supra note 85, folio 45.

---

85. According to the Decree of Reorganization, the "[d]eclaration of a [j]udicial [e]mergency" by the Constituent Assembly will be in force until the sanction of the new Constitution of Venezuela. [FN88]

[FN88] Cf. Article 32 of the Decree on the Reorganization of the Judiciary, supra note 85, folio 48.

---

iii) Constitution of the Bolivarian Republic of Venezuela

86. The Constitution of the Bolivarian Republic of Venezuela (hereinafter "the Constitution"), proclaimed by the Constituent Assembly on December 20, 1999, [FN89] stated that the entrance to a judicial career would be through public competitive tenders (supra para. 66). Additionally, according to the Constitution, the TSJ would create an Executive Office of the Magistracy for the management, government, and administration of the Judicial Power, and the inspection and supervision of the courts of the Republic and the Ombudsman Offices. [FN90] Likewise, it stated that the judicial disciplinary jurisdiction would correspond to the disciplinary courts determined by law. [FN91] The disciplinary regimen would be organized based on the Code of Ethics for Venezuelan Judges, which would be issued by the National Assembly. [FN92]

[FN89] Cf. Constitution, supra note 56, folios 711 through 758.
[FN90] Cf. Article 267 of the Constitution, supra note 56, folio 748.
[FN91] Cf. Article 267 of the Constitution, supra note 56, folio 748.
[FN92] Cf. Article 267 of the Constitution, supra note 56, folio 748.

---

87. According to one of the transitory stipulations of the Constitution, within the first year as of its installation, the National Assembly would approve, inter alia, the legislation regarding the Judicial System. [FN93]

[FN93] Cf. fourth transitory stipulation, subparagraph 5 of the Constitution, supra note 56, folio 755.

---

88. In the year 2006 the Constitutional Chamber of the TSJ declared the "unconstitutionality by legislative omission of the National Assembly […] based on the legislative proceedings

started in order to sanction the so-called Project for a Code on Ethics and Discipline of Venezuelan Judges, prepared by that legislative instance in the year 2003, which in the end was not enacted." [FN94] The expert Canova González testified that the "disciplinary courts have not been created up to now, nor has the Code of Ethics been issued up to now by the National Assembly, despite the express order established by the Constitution in that sense." [FN95] The State did not present any evidence to the contrary.

[FN94] Cf. judgment No. 1048 of the Constitutional Chamber of the TSJ issued on May 18, 2006 (dossier of annexes to the final arguments of the representatives, Volume I, annex 4, folio 2834).
[FN95] Cf. statement offered by the expert Canova González at the public hearing held before the Inter-American Court on January 23, 2009.

---

iv) Regimen of Transition of the Public Power and the Commission of Operation and Restructuring of the Judicial System (CFRSJ)

89. On December 29, 1999 the Constituent Assembly ordered a Regimen of Transition of the Public Power, which "[would] regulate the restructuring of the Public Power with the objective of allowing the immediate validity of the Constitution." [FN96]

[FN96] Cf. Article 1 of the Decree ordering the Transition Regimen of the Public Power issued by the National Constituent Assembly on December 29, 1999 (dossier of annexes to the application, Volume I, annex A.3, folio 52).

---

90. According to the Decree through which said transition regimen was issued, the stipulations of the regimen developed and complemented the transitory stipulations established in the Constitution [FN97] and they would be valid up to the effective establishment of the organization and operation of the institutions established in the Constitution. [FN98]

[FN97] Cf. Article 2 of the Decree ordering the Transition Regimen of the Public Power, supra note 96, folio 52.
[FN98] Cf. Article 3 of the Decree ordering the Transition Regimen of the Public Power, supra note 96, folio 52.

---

91. Thus, said Decree created the CFRSJ [FN99] and stated that the attributions granted to the Emergency Commission would correspond to the first. [FN100] Additionally, as long as the TSJ did not organize the Executive Office of the Magistracy, the competences of the government and administration, regarding the inspection and supervision of the courts and ombudsman offices, among others, would be exercised by the CFRSJ. [FN101] The judicial disciplinary competence that corresponded to the disciplinary courts would be exercised by the CFRSJ until

the National Assembly approved the legislation that will establish the disciplinary proceedings and courts. [FN102]

[FN99] Cf. Article 27 of the Decree ordering the Transition Regimen of the Public Power, supra note 96, folio 59.
[FN100] Cf. Article 25 of the Decree ordering the Transition Regimen of the Public Power, supra note 96, folio 58.
[FN101] Cf. Article 21 of the Decree ordering the Transition Regimen of the Public Power, supra note 96, folio 57.
[FN102] Cf. Article 23 of the Decree ordering the Transition Regimen of the Public Power, supra note 96, folio 58.

---

92. On September 29, 2000 the CFRSJ issued its Bylaws, according to which, among its attributions was the hearing and ruling on the disciplinary proceedings against judges and issuing the disciplinary bylaws. [FN103]

[FN103] Cf. Article 3 of the Bylaws of the CFRSJ, published in the Official Gazette No. 37,080 on November 17, 2000, (dossier of annexes to the brief of pleadings and motions, Volume I, annex C, folio 551).

---

v) Regulations on the Management, Government, and Administration of the Judicial Power

93. On August 2, 2000 the TSJ issued the Regulations on the Management, Government, and Administration of the Judicial Power, through which it created the Executive Office of the Magistracy as an auxiliary body of the TSJ with the objective that it exercise through delegation the duties of management, government, and administration of the Judicial Power. [FN104] According to these Regulations, the Executive Office of the Magistracy would go into operation on September 1, 2000 and on that date the CFRSJ would cease to perform all the duties that corresponded to the extinct Council of the Judiciary and it would as of then only be in charge of disciplinary functions, while the legislation is issued and the corresponding disciplinary courts are created. [FN105]

[FN104] Cf. Article 1 of the Regulations on the Management, Government, and Administration of the Judicial Power issued by the TSJ on August 2, 2000, published in the Official Gazette No. 37,014 on August 15, 2000 (dossier of annexes to the respondent's plea, Volume I, annex 19, folio 991).
[FN105] Cf. Article 30 of the Regulations on the Management, Government, and Administration of the Judicial Power, supra note 104, folio 996.

---

vi) Organic Law of the TSJ

94. On May 20, 2006 the Organic Law of the TSJ came into force. The National Assembly issued the same on May 18, 2004. [FN106] The Organic Law ordered the reorganization and restructuring of the Executive Office of the Magistracy [FN107] and established that the CFRSJ would only be in charge of disciplinary duties, while the legislation was issued and the corresponding disciplinary courts were created. [FN108]

[FN106] Cf. Organic Law of the TSJ issued by the National Assembly on May 18, 2004 published in the Official Gazette No. 37,942 of May 20, 2004 (dossier of annexes to the brief of pleadings and motions, Volume I, annex E, folios 576 to 598).
[FN107] Cf. transitory and final derogative stipulation (a) of the Organic Law of the TSJ, supra note 106, folio 597.
[FN108] Cf. transitory and final derogative stipulation (e) of the Organic Law of the TSJ, supra note 106, folio 597.

---

vii) Regulations for the Evaluation and Tenders for the Acceptance into and Promotion within a Judicial Career

95. On July 6, 2005 the Full Chamber of the TSJ adopted the "Regulations for the Evaluation and Competitive Tender for the Acceptance into and Promotion within the Judicial Career" (hereinafter "NEC"). [FN109] These regulations "seek to regulate the entrance, promotion, and continuance within the judicial career, through public competitive tenders and performance evaluations," according to that established by Article 255 of the Constitution. The NEC regulates public competitive tenders in order for any attorney that fulfills the requirements established in those regulations to enter the Judicial Power. [FN110] Said tenders consist of two stages: the "Initial Formation Program" (hereinafter "PFI") and the "Knowledge exam" performed on those participants that pass the PFI. [FN111] Additionally, the NEC regulates, among its transitory stipulations, the "Special Program for the Regularization of the Entitlement" (hereinafter "PET"), addressed to "regulate the situation of the non-titular Judges." [FN112]

[FN109] Cf. Regulations on the Evaluation and Public Competitive Tender for the Acceptance and Promotion within the Judicial Career, issued by the Full Chamber of the TSJ on July 6, 2005, published in the Official Gazette No. 38,282 of September 28, 2005 (dossier of annexes to the brief of pleadings and motions, Volume I, annex H, folios 615 through 628).
[FN110] Article 7 of the NEC establishes that in order to enter the Judicial Career, the following requirements shall be met: 1. Venezuelan nationality. 2. Degree from Law School issued by a Venezuelan university or a foreign university, duly revalidated for the exercise of the profession. 3. Be duly accepted in the corresponding Bar Association and in the Institute of Social Precaution for Attorneys, and present the corresponding solvency. 4. Have graduated at least three (3) years ago and have experience in the profession. 5. Be in the free exercise of their civil and political rights. 6. Impeccable behavior and a well-acknowledged morality. 7. Assume the commitment to abstain from performing political, partisan, and union activism and not be affiliated to political parties when assuming the position. 8. Authorize the periodic investigation

of assets. 9. Presentation of the Tax Declaration of the prior tax period. 10. Presentation of the last sworn statement of assets, in the event of having previously occupied a public position. 11. Have abilities in the operation of computer means. 12. Have been declared fit in the medical and psychological evaluation, and 13. Pass the Public Competitive Examination. When formalizing the registration, those aspiring for the position shall enclose the documents that prove compliance with the requirements necessary to enter. Cf. NEC, supra note 109, folios 615 through 628.
[FN111] Cf. NEC, supra note 109, folio 616.
[FN112] Cf. NEC, supra note 109, folios 624 through 626.

---

96. The NEC established that the PET would have a "twelve-month validity" and sought to "regulate the situation of the non-titular Judges", that is, of the provisional, temporary, or accidental judges. [FN113] For the tenders within this program "only […] those non-titular judges, with at least three (3) months in the exercise of judicial tasks on the date on which the Academic Training Program starts" would be summoned. [FN114]

[FN113] Cf. Article 46 of the NEC, supra note 109, folio 624.
[FN114] Cf. Articles 46 and 47 of the NEC, supra note 109, folio 624.

---

97. On the other hand, the objective of the PFI is "to train those who aspire to be judges and other officials of the judicial career in matters related to the administration of justice." [FN115] The possibility to pre-register in the PFI is announced by the National School of the Magistracy through announcements in two newspapers of ample national circulation and on the webpage of the TSJ. [FN116] Those who comply with the requirements established in the NEC shall present an entrance exam, [FN117] and if they pass it, they are submitted to psychological and medical evaluations in order to determine the physical and emotional fitness for the exercise of judicial duties. [FN118] Once these stages have been overcome, the National School of the Magistracy shall publish the list of those who aspired and were admitted to participate in the PFI in two newspapers of ample national circulation and on the website of the TSJ, in the same way in which the pre-registration was announced, with the objective that the community inform within the following 5 working days on observations and objections they may have regarding those people who have been accepted. [FN119] The evaluation of the participants in the PFI consists of a theoretical phase that includes the evaluation of subjects related to the Judicial Power and the administration of justice and other practices, regarding the realization of legal internships under the tutorship of a titular judge. [FN120]

[FN115] Cf. Article 14 of the NEC, supra note 109, folio 618.
[FN116] Cf. Articles 5, 6, and 16 of the NEC, supra note 109, folio 618.
[FN117] Cf. Article 18 of the NEC, supra note 109, folio 618.
[FN118] Cf. Article 19 of the NEC, supra note 109, folio 619.
[FN119] Cf. Article 20 of the NEC, supra note 109, folio 619.
[FN120] Cf. Article 21 of the NEC, supra note 109, folio 619.

---

98. Those who pass the PFI go on to the next stage, consisting of a "Knowledge Exam" that includes written, oral, and practical exams. [FN121] The National School of the Magistracy shall publish in two newspapers of ample national circulation and on the webpage of the TSJ the date, time, and hour at which this exam will be performed. [FN122] Once the final result of the tender is obtained, the jury will prepare a list of merits of the participants. The vacant positions will be filled with the participants that obtained the first places in the tender. [FN123]

[FN121] Cf. Articles 22 and 24 of the NEC, supra note 109, folio 619.
[FN122] Cf. Article 23 of the NEC, supra note 109, folio 619.
[FN123] Cf. Article 27 of the NEC, supra note 109, folio 620.

***

99. From all the information previously stated it could be concluded that the restructuring of the Judicial Power in Venezuela, which can be considered started with the approval of the summons of the Constituent Assembly in April 1999, has lasted more than 10 years. Additionally, at the time at which the present judgment is issued there is no information in the case file before the Court regarding procedures addressed to the adoption of the mentioned Code of Ethics or the laws that would determine the disciplinary courts (supra paras. 86, 87, and 88), despite the fact that the Constitution established that the legislation regarding the Judicial System would be approved within the first year after the installation of the National Assembly (supra para. 87). On the other hand, the disciplinary powers have been exercised by the CFRSJ since the year 2000 (supra paras. 91 and 92). Finally, the regulations approved by the Full Court of the TSJ established a program through which non-titular judges could be entitled without participating in the public tenders established for the general population, which consisted of the PFI and the knowledge exam (supra paras. 96 through 98).

2.3 The provisional judges

100. According to the State, the provisional judges are non-titular judges, which "have been appointed in an exceptional manner, through an act emanating from the Judicial Emergency Commission, of the Judicial Commission of the [TSJ], or the Full Court of the [TSJ], without carrying out the Public Competitive Tender established in Article 255 of the Constitution." Therefore, according to the State, these provisional judges "are not subject to the judicial career and are therefore excluded of the benefits of stability and continuance that derive from it."

101. From the evidence provided it can be concluded that in the domestic jurisdiction there is a jurisprudential line both of the SPA and the Constitutional Chamber of the TSJ, according to the Decree of Reorganization of the Judicial Power (supra para. 84), that states that the provisional judges are of free appointment and removal. In effect, the SPA in the year 2000, upon solving an administrative appeal for annulment, held that "the right to stability […] is reserved to the judges that enter the judicial career through the means enshrined in the

constitution and legally developed, this is, through public competitive tenders [and that] the mentioned right refers to the position occupied by the official, of which he may not be dismissed or suspended for any reason or through any procedure different to those established, that is, prior compliance of the disciplinary regimen applicable to it." [FN124] Additionally, the SPA stated that:

those who occupy a position for which they have not competed, lack the right under analysis and may therefore be removed from the position in question in the same conditions in which it was obtained, that is, without the obligation for the competent Administration to justify that separation in the stipulations that make up the applicable disciplinary regimen –we insist- only to the career judges, this is, to those that occupy a position obtained in a previous competitive tender. [FN125]

[FN124] Cf. judgment No. 02221 of the SPA issued on November 28, 2000 (dossier of annexes to the respondent's plea, Volume II, annex 25, folio 1126).
[FN125] Cf. judgment No. 02221 of the SPA, supra note 124, folio 1127.

---

102. This jurisprudence of the SPA has been reiterated in judgments of 2004 and 2006 [FN126] and reasserted by the Constitutional Chamber, [FN127] which stated:

The provisional judges […] occupy judicial positions, but they do not enjoy the condition of career judges, since they have not entered through a public tender in which they would have been evaluated through different tests (written, practical, oral). Their appointment is made by the Judicial Commission, by a delegation made up by the Full Court of the Supreme Court of Justice, based on the need to fill judicial positions while the mentioned restructuring and reorganization process of the Judicial Power culminates. […] Without doubt, there is a distinction between career judges and provisional judges: The first acquire the title after the approval of the tender; on the contrary, provisional judges are appointed discretionally, prior analysis of their credentials. Career judges enjoy stability and may only be punished or dismissed from their position if it is proven, through an oral and public hearing with guarantees of defense […] that they have committed any of disciplinary offenses established in the Organic Law of the Council of the Judiciary and the Law on the Judicial Career, which is not so for provisional judges, which may be separated from the position in the same way in which they were appointed: discretionally. [FN128]

[FN126] In its judgment No. 1798 of October 19, 2004, the SPA established that "all the disciplinary sanctions contemplated in the Law on Judicial Career, shall necessarily be preceded by the corresponding administrative proceeding, whether an official of career or an official of free appointment and dismissal; while when seeking the dismissal of a judge whose appointment has been made in a provisional manner, the administrative decision that determines their separation from the position, does not have to be subject to any proceeding, since precisely the guarantee of the judge's stability, and therefore, the right to be submitted to the corresponding proceeding, are reached with the competitive examination that is currently enshrined in the

Constitutional Text as a demand sine qua non to access the position of Judge with a titular nature or a career judge" (dossier of annexes to the respondent's plea, Volume II, annex 24, folio 1101), This same analysis was reiterated in its judgment No. 1225 of May 17, 2006, making emphasis o the fact that a judge's stability is achieved with the competitive tender and that this stability is not possessed by the provisional judges (dossier of annexes to the respondent's plea, Volume II, annex 26, folio 1146).
[FN127] In two judgments issued in 2005, No. 5111 and No. 5116, the Constitutional Chamber of the TSJ stated that "[i]n effect, as stated by the Political-Administrative Chamber provisional judges that enter the Judicial Power to fill a vacancy do not enjoy the stability constitutionally enshrined, since these are officials whose entrance was not verified through a tender. Therefore, they may be removed from their position without the need of an administrative proceeding prior to their dismissal" (dossier of annexes to the respondent's plea, Volume II, annexes 28 and 29, folios 1210 and 1231). Additionally, in its judgment No. 1413 of July 10, 2007, the Constitutional Chamber stated that "[that] Constitutional Chamber has held, with regard to the positions exercised with a temporary nature, that these do not confer the officials –whether judicial or administrative- the quality of permanent or titular personnel and, therefore, they do not enjoy the rights inherent to the career such as, for example, stability in the position, reason for which they can be suspended or removed from the position according to the attributions that fall upon the corresponding judicial or administrative authority." (dossier of annexes to the respondent's plea, Volume II, annex 27, folios 1170 and 1171).
[FN128] Cf. judgment No. 2414 of the Constitutional Chamber of the TSJ issued on December 20, 2007 (dossier of annexes to the respondent's plea, Volume II, annex 23, folios 1075 and 1076). See also, statement offered by the witness Cabrera Romero in the hearing celebrated before the Inter-American Court on January 23, 2009.

---

103. The representatives argued that the number of provisional judges reached "really alarming levels, since at some point it reached amounts of more than 80% of the judges." As grounds for this, the representatives referred to an annex to the affidavit of Mr. Hevia Araujo, Deputy Director of the National School of the Magistracy [FN129] and witness proposed by the State. Said annex corresponds to the Report on the Administration of the Judicial Career 2005-2008 and establishes, inter alia, the following: "instructions were received from the Full Chamber of that Tribunal to solve – within the realm of its jurisdiction- the problematic existing on that date, with regard to a provisional nature of 80% of the judges […] at a national level." [FN130] In the affidavit of Mr. Hevia Araujo several graphs were presented in this sense. One of them refers to the regularization of the entitlement and it shows that between the years 2000 and 2005 there were approximately 200 titular judges and between the years 2005 and 2008 this number grew to a little over 700. [FN131] In another graph, regarding the provisional situation of judges in Venezuela between the years 2000 and 2008, indicates that in the year there was around 1,500 provisional judges at a national level and that in the year 2008 this number decreased to around 700 provisional judges. [FN132] It is important to point out that, according to evidence provided by the State, in the year 2008 there was a total of 1,840 judges at a national level. [FN133]

[FN129] The Organic Law of the TSJ (supra para. 94) stated, inter alia, that the National School of the Magistracy "is the center for the formation of judges and the other officials of the Judicial Power, pursuant with the policies issued by the Full Court of the [TSJ]" and that "[t]he policies, organization, and operation of the National School of the Magistracy, as well as its academic orientations, will correspond to the [TSJ]. Cf. Article 17 of the Organic Law of the TSJ, supra note 106, folio 588. Among the attributions of that School are "[p]lanning, coordinating, and executing the induction, formation, professionalization, actions, and constant training of the judges" and other employees or people aspiring to the Judiciary. Cf. Article 4(1) of the Organic Bylaws of the National School of the Magistracy, issued by the TSJ in March 2005 (dossier of annexes to the respondent's plea, Volume I, annex 20, folios 997 and 998).
[FN130] Cf. annex 1 of the statement of the witness Hevia Araujo, supra note 21, folio 1087.
[FN131] Cf. annex 1 of the statement of the witness Hevia Araujo, supra note 21, folio 1105.
[FN132] Cf. annex 1 of the statement of the witness Hevia Araujo, supra note 21, folio 1106.
[FN133] Cf. statement of the witness Hevia Araujo, supra note 21, folio 1104. On the other hand, we can point out that the expert Canova González stated that currently between 15 and 45% of the judges in Venezuela are not permanent. It is the expert's opinion that the lack of transparency and contradictory official data makes the clarity of the information difficult. Cf. statement offered by the expert Canova González, supra note 95. In this sense, the State observed that this expert's data had "little scientific nature" and that the distance between 15 and 45% did not have "any logic whatsoever". Additionally, the State made emphasis on the fact that Mr. Canova González admitted it did not have exact information regarding the number of provisional judges. However, the numbers presented by the witness Hevia Araujo, proposed by the State, indicated that at the end of the year 2008 the percentage of provisional judges would reach 44% (Cf. statement of the witness Hevia Araujo, supra note 21, folio 1104), which coincides with the maximum percentage presented by the expert Canova González.

---

104. The reports of the Inter-American Commission on the human rights situation in Venezuela coincides with the number mentioned by the representatives with regard to the number of provisional judges in a specific time in Venezuela. According to the annual report of the Commission of the year 2002, there would be between 60 and 90% of provisional judges, [FN134] situation that persisted in 2003. [FN135] In 2004 the Commission indicated that "the situation had not varied substantially" since 2003 and that according to information provided by the General Office of Human Resources of the Executive Office of the Magistracy, 81.70% of the judges were in a provisional condition. [FN136] In the same report the Commission indicated that the State had stated that "the fact that more than 80% of the judges in Venezuela are provisional judges, which is, without doubt, one of the most serious problems present in the Judicial Power." [FN137] The Commission in its report of 2005 reiterated this same information. [FN138] In its report of 2006, the Commission highlighted that in said year more than 80% of the justice officials had been made titular judges, and especially in the criminal field the State had informed there was an 80% of titular judges. [FN139]

[FN134] Cf. Annual report of the Inter-American Commission of the year 2002, supra note 26, para. 30.

[FN135] Cf. Annual report of the Inter-American Commission of the year 2003, supra note 26, para. 57.
[FN136] Cf. Annual report of the Inter-American Commission of the year 2004, supra note 26, para. 186.
[FN137] Cf. Annual report of the Inter-American Commission of the year 2004, supra note 26, para. 188.
[FN138] Cf. Annual report of the Inter-American Commission of the year 2005, supra note 26, para. 292.
[FN139] Cf. Annual report of the Inter-American Commission of the year 2006, supra note 26, para. 160. Likewise, it is important to point out that the report from the organization Human Rights Watch for 2004, using as sources information supplied by the Executive Director of the Magistracy in 2004, indicated that only 20% of 1,732 judges of the country enjoyed continuance in their positions. The other 80% was made up by provisional judges (52%), temporary judges (26%), and by those who occupy other positions without any stability (2%). Cf. Human Rights Watch, Manipulating the Rule of Law: The independence of the Judicial Power threatened in Venezuela, June 2004, Vol. 16. No. 3 (B), p. 11 (dossier of annexes to the application, Volume II, annex C.1.H, folio 408).

---

105. On the other hand, in the case file before the Court evidence was provided regarding the summons to the PET, the program established to entitle provisional judges (supra para. 96) organized by the National School of the Magistracy, on October 6th, [FN140] November 10th, [FN141] and November 26, 2005; [FN142] and on April 29th [FN143] and November 10, 2006 [FN144] regarding the categories A, B, and C of judges in the Capital District. [FN145] In the period 2005-2006, that School reports 1,390 non-titular judges summoned at a national level for the corresponding evaluations, of which 151 were declared not fit to participate in the PET. [FN146] Likewise, the School reports that 823 provisional judges changed their condition to titular judges through the PET in the years 2005-2006. [FN147]

[FN140] Cf. Ad published in the newspaper "Últimas Noticias" by the National School of the Magistracy of the TSJ on October 6, 2005 (dossier of annexes to the respondent's plea, Volume II, annex 45, folio 2915).
[FN141] Cf. Ad published in the newspaper "Últimas Noticias" by the National School of the Magistracy of the TSJ on November 10, 2005 (dossier of annexes to the respondent's plea, Volume II, annex 46, folio 2916).
[FN142] Cf. Ad published in the newspaper "Últimas Noticias" by the National School of the Magistracy of the TSJ on November 26, 2005 (dossier of annexes to the respondent's plea, Volume II, annex 47, folio 2917).
[FN143] Cf. Ad published in the newspaper "Últimas Noticias" by the National School of the Magistracy of the TSJ on April 29, 2006 (dossier of annexes to the respondent's plea, Volume II, annex 48, folio 2918).
[FN144] Cf. Ad published in the newspaper "Últimas Noticias" by the National School of the Magistracy of the TSJ on November 10, 2006 (dossier of annexes to the respondent's plea, Volume II, annex 49, folio 2918).

[FN145] Article 9 of the NEC establishes that: "[t]he judicial scale for the promotion of judges includes three categories, starting with the Municipal Tribunals or Courts, called category 'C', the First Instance Tribunals or Courts, referred to as category 'B', and the Superior Courts or Appeals Courts, called category 'A'." Cf. NEC, supra note 109, folio 617.
[FN146] Cf. annex 1 of the statement made by the witness Hevia Araujo, supra note 21, folio 1092.
[FN147] Cf. annex 1 of the statement made by the witness Hevia Araujo, supra note 21, folio 1108. It is important to point out that the State also forwarded information according to which the number of provisional judges that were titled in the same period corresponds to 816. Cf. Report titled "Years 2005-2006. Titular Judges in the Public Tenders" issued by the National School of Magistracy (dossier of annexes to the final written arguments of the State, volume II, annex 16, folios 3710 to 3744).
---

106. From all the aforementioned, the Tribunal concludes that in Venezuela, from August 1999 and up to the present, provisional judges do not have stability in their position, they are appointed discretionally and may be removed without being subject to any previously established proceeding. Likewise, at the time of the facts of the present case, the percentage of provisional judges in the country reached approximately 80%. In the years 2005 and 2006 a program through which the same provisional judges who were appointed discretionally achieved a titular position was carried out. The number of provisional judges was decreased to approximately 44% at the end of the year 2008.

2.4 Analysis of the motives exposed to not reinstate Mrs. Reverón Trujillo to her position or pay her the salaries she did not perceive

107. Once the factual framework the Court has considered as proven regarding the restructuring of the Judicial Power and the condition of "provisional judge" of the alleged victim has been indicated, it shall go on to analyze, pursuant with that stated in paragraph 62 supra, if these reasons freed the State from reinstating her to her position and paying her the salaries she did not perceive.

108. Regarding the restructuring of the Judicial Power, the Commission considered that this fact "is not a justification to not order the reinstatement of Mrs. Reverón Trujillo to her position or the payment of the salaries she did not perceive[.] In that sense, the actions of the Political-Administrative Chamber of the TSJ did not take into account that even within the restructuring process, certain minimum parameters of stability are regulated in benefit of judicial independence and that they should have been taken into account when deciding the reparation for the arbitrary dismissal of Mrs. Reverón Trujillo".

109. Regarding her provisional nature, the Commission stated "that in light of the principle of judicial independence the States must guarantee that all people that exercise a judicial function have reinforced guarantees of stability, understanding that, except for the commission of grave disciplinary offenses, the stability in the position shall be respected for the term or condition established in the appointment, without distinction between the judges called 'career judges' and those that exercise the judicial function in a temporary or provisional manner. That temporary or

provisional nature shall in any case be determined for a specific term or condition of exercise of the judgeship, in order to guarantee that those judges will not be removed from their positions based on the decisions adopted by them."

110. The representatives argued that the restructuring of the Judicial Power was not "a legal or legitimate reason to not have reinstated María Cristina Reverón Trujillo, with all the consequences that implied […]. Even more so, if we take into account that the State has removed and continues constantly removing provisional judges, leaving many vacant positions that are then filled with discretional appointments of the Judicial Commission." Similarly, they indicated that lack of payment of the salaries she did not perceive represents "an arbitrary decision, because the judicial restructuring has nothing to do with the compensations due to the judge, and there is no legitimate limitation whatsoever to deny them."

111. In what refers to the provisional nature, the representatives stated that the "unjustified and unreasonable distinction introduced by the State between provisional judges without any stability and titular judges with stability, is clearly arbitrary and whimsical. It is not reasonable nor legitimate that there be judges that maybe removed discretionally, without any reason or procedure."

112. The State indicated that the restructuring process, which implies calling to tenders in order to obtain the titular nature for all the positions, "results especially complex taking into account the number of courts existing throughout the country, the new special jurisdictions created since the year 2000 and the need that all tenders adjust to constitutional stipulations." It added that the application of the regulations regarding the restructuring caused a series of openings in several courts throughout the country, as a consequence of the dismissal of their occupants. According to the State, aware of its obligations established in the American Convention that order it to adapt the stipulations of its domestic legislation in order to guarantee and make effective the rights established in that instrument, as well as given the constitutional obligation to guarantee the continuity of the administration of justice and the right to access the justice system, proceeded to the temporary and exceptional appointment of non-titular judges to cover the vacancies produced.

113. Additionally, the State indicated that the provisional judges enter the Judicial Power without having approved the Public Competitive Tender, reason for which their conditions and ability to exercise the position have not be proven with the guarantees of transparency imposed by the tenders; instead they are appointed after a revision of their credentials. Secondly, it argued that "[t]he credibility and legitimacy of the justice system requires the guarantee of the ethical, moral, and professional suitability of the judges, which may only be reached through means of objective and impartial mechanisms of selection of the best, as well as through social controls for their appointment." Finally, it concluded that "[g]uaranteeing an alleged stability for the provisional judges, is contrary to the right of the entire population to have judges appointed through public competitive tenders."

114. In this sense, the Court points out that provisional judges in Venezuela exercise exactly the same duties as titular judges specifically administrate justice. [FN148] Thus, the parties have the right, derived from the Venezuelan Constitution itself and the American Convention, to have

judges who upon solving their controversies are and appear to be independent. For this, the State shall offer the guarantees that derive from the principle of judicial independence, of both titular and provisional judges.

[FN148] In this regard, the witness Cabrera Romero, proposed by the State indicated "there is no difference because the provisional judge is actually occupying the position of a full judge for all the cases before it." Cf. statement offered by Cabrera Romero, supra note 128.

---

115. Now, even though the guarantees the titular and provisional judges are the same (supra para. 70) these do not imply the same protection for both types of judges, since the provisional judges are by definition elected differently and they do not have an unlimited continuance in the position. For example, the procedure chosen by Venezuela for the appointment of judges has been through public competitive tenders (supra para. 66). This should supposedly guarantee that the titular judges are upright and fit people, as demanded by international principles. Provisional judges are, by definition, people who have not entered the Judicial Power through these tenders and therefore will not necessarily have the same qualifications as the titular judges. As observed by the State, their conditions and ability to exercise the positions have not been proven with the guarantees of transparency imposed by the tenders. The State may be correct when it points this out. However, the aforementioned does not mean that provisional judges shall not have any procedure for their appointment, since according to the Basic Principles "[a]ny method used for the selection of judicial personnel will guarantee it is not appointed for the wrong reasons."

116. In the same way in which the State is compelled to guarantee an adequate procedure for the appointment of provisional judges, it shall guarantee them certain tenure in their position. This Court has stated that the provisional nature "shall be subject to a dissolving condition, such as compliance of a predetermined term or the celebration and conclusion of a Public Competitive Tender and background for the appointment of the replacement of the provisional judge with a permanent nature." [FN149] This way, the guarantee of tenure is translated, within the realm of provisional judges, in the demand that they be able to enjoy all the benefits characteristic of continuance until the dissolving condition that puts a legal end to their term of office occurs. In this sense, it is important to mention that the former Supreme Court of Justice of Venezuela did acknowledge that provisional judges enjoy stability until a certain condition is met. [FN150]

[FN149] Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, supra note 58, para. 43.

[FN150] According to a ruling of the Political-Administrative Chamber of the extinct Supreme Court of Justice, "provisional judges are not career judges, however, they do enjoy the rights of stability, independence, and tenure guaranteed by the Constitution to the judges of the Republic; therefore, in order to be suspended or removed from that exercise the procedures established by Law shall be followed, that is, it must be done through sanctions resulting from a disciplinary proceeding or because the position was put out to a tender in order to assign its entitlement and the provisional judge who is in charge of the same –if he participates in the tender- is not awarded the position. […] The mentioned regulations [Articles 207 and 208 of the old

Constitution], guarantee judges their independence and autonomy for the administration of justice, and they protect the work stability enjoyed by judges, regardless if they are career judges, provisional judges, or substitute judges; all of these constitutional rights that this Maximum Court of the Republic has guaranteed in its jurisprudence through repeated judgments and that it once again ratifies on this opportunity." Cf. decision of the SPA of the Supreme Court of Justice issued on February 20, 1997 (dossier of annexes to the application, Volume I, annex B.6, folios 207, 208, and 211). In a similar sense, in judgment No. 365 issued on May 26, 1994, the SPA stated that "the Judiciary Council may only leave without effect the appointment of a provisional judge (or substitute) through the summons to a tender, or through the corresponding disciplinary procedure (quoting the judgment of 12-17-91, case: 'Jairo, Nixón Manzano Navarro')." Cf. Judgment No. 365 issued by the SPA on May 26, 1994, dossier of annexes to the final written arguments of the representatives of the alleged victim, Volume I, annex 1, folio 2805.

---

117. The tenure of provisional judges is closely linked to the guarantee against external pressures, because if the provisional judges do not have a guarantee they will remain in the position for a specific period of time, they are susceptible and vulnerable to pressures from different sectors, mainly from those who have the power to decide on dismissals or promotions within the Judicial Power.

118. Now, since a Public Competitive Tender cannot be equaled to a revision of credentials nor can it be stated that the stability that accompanies a permanent position is the same as the one that accompanies a provisional position that has a dissolving condition, this Court has held that provisional appointments shall constitute an exception and not the rule, since the extension of the term of the provisional nature of judges or the fact that a majority of the judges be in that situation, generates important obstacles to their judicial independence. [FN151] On the other hand, in order for the Judicial Power to comply with its duty to guarantee the greatest suitability of its members, the appointments of a provisional nature shall not be extended indefinitely, thus becoming permanent appointments. This is a new reason why the provisional nature is admissible as an exception and not as a general rule and that it shall have a limited duration in time, in order for it to be compatible with the right to access public service in equal conditions.

[FN151] Cf. Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, supra note 58, para. 43.

---

119. In the present case, the Court points out that the transition regimen in Venezuela seeks a legitimate purpose and, in accordance with the Convention, that is, that the best judges make up the Judicial Power. However, the application in the practice of that regimen has been proven ineffective to fulfill the proposed objective. First of all because the regimen has extended over time for almost ten years. Even on March 18, 2009, the TSJ issued a decision in which it ordered the "comprehensive restructuring" of the entire Judicial Power and ordered that all judges submit to a "compelling process of institutional evaluation," granting the Judicial Commission the power to suspend the judges that fail said evaluation. [FN152] This proves that the restructuring process, despite the time that has gone by, is still being implemented in different ways.

[FN152] Cf. Ruling No. 2009-0008 issued by the TSJ on March 18, 2009 (dossier of merits, Volume IV, folios 1544 to 1548).

---

120. Second, in the dossier before the Court there is no evidence on the adoption of the Ethics Code (supra para. 88).

121. Third, the Judicial Power currently has a percentage of provisional judges of approximately 40% according to the numbers provided by the State, percentage that at the time of the facts of the present case reached 80% (supra paras. 103 and 104). This, besides generating obstacles to the judicial independence pursuant with paragraph 118 supra, is especially relevant because of the fact that Venezuela does not offer those judges tenure (supra paras. 101, 102, and 113). As previously established, tenure is one of the basic guarantees of judicial independence the State is compelled to offer both titular and provisional judges (supra paras. 75 through 79 and 114). Additionally, the Court observes that provisional judges are appointed discretionally by the State, that is, without the use of public competitive tenders (supra paras. 101, 102, and 113), and many of them have been made titular judges through the PET (supra para. 105). This means that the corresponding positions have been filled without giving the people that are not part of the Judicial Power the opportunity to compete with the provisional judges to access those positions. Despite the fact that suitability evaluations are set in motion through the PET, this procedure grants work stability to those initially appointed with absolute discretion.

122. On the other hand, an immediate reinstatement of Mrs. Reverón Trujillo after the judicial decision that acknowledged the arbitrary nature of her dismissal, and until the competitive tenders were carried out, would have allowed the protection of both the objective sought by the transition regimen as well as the guarantee of tenure inherent to judicial independence. Even more so if one considers that at the time at which the decision of the SPA was issued the Public Competitive Tender had not been held. Likewise, the infringement of the rights of the provisional judge appointed after the dismissal of the victim did not result excessive, since it is reasonable that the dissolving condition of the appointment of the new provisional judge be interpreted as dependent of the validity of the dismissal of the previous one.

123. Therefore, the Tribunal considers that the transition regimen and the provisional natural of Mrs. Reverón Trujillo, conditions put forward by the SPA when it did not order her reinstatement, cannot be considered acceptable reasons. The Court reiterates (supra para. 81) that a necessary corollary of the guarantee of tenure in the position of provisional judges, as well as that of titular judges, is the reinstatement to their position, as well as the reimbursement of the salaries not perceived, when it has been proven, as in the present case, that the dismissal was arbitrary (supra para. 53). In the case of provisional judges, and based on the aforementioned reasons (supra para. 116 and 117) it is understood that the continuance in the position would have been until the dismissing condition occurred, that is, until the celebration of the public competitive tenders.

124. The Court considers that the reasons that could have been put forward for not having reinstated Mrs. Reverón Trujillo would have had to be appropriate to achieve a purpose conventionally acceptable; necessary, that is that there was no other less damaging or proportional means in a strict sense. Examples of justifications that could have been acceptable in this case are: i) that the court or tribunal for which the service was offered no longer exist; ii) that the court or tribunal to which it offered her service be made up by titular judges appointed pursuant with the law, and iii) that the dismissed judge have lost her physical or mental capacity to exercise the position; neither of which were invoked by the SPA in this case.

125. It is important to point out that the State has indicated and provided evidence stating that the two last positions occupied by Mrs. Reverón Trujillo, that is Judge in Control duties and Judge in Trial duties (supra para. 49), are being occupied by titular judges. [FN153] In this sense, the Court considers that these were not the reasons why the SPA did not order the reinstatement of Mrs. Reverón Trujillo, which would be enough to dismiss the State's arguments. However, the Tribunal points out that the entitlement of the judges mentioned by the State occurred after October 1, 2006 and May 16, 2008, respectively, [FN154] that is, two and almost four years after the SPA denied the reinstatement of the alleged victim.

[FN153] Cf. Details of the Judge Tivisay Sánchez (dossier of annexes to the final written arguments of the State, Volume II, annex 26, folio 3786), and Details of the Judge Marta Isabel Gomis (dossier of annexes to the final written arguments of the State, Volume II, annex 26, folio 3788).

[FN154] Cf. Details of the Judge Tivisay Sánchez, supra note 153, folio 3786 and details of the Judge Isabel Gomis, supra note 153, folio 3788.

---

126. In what refers to the lack of payment of the salaries that were not perceived by Mrs. Reverón Trujillo, the Court considers that neither the restructuring of the Judicial Power or the provisional nature of the position of the alleged victim have any relationship whatsoever with her right to be repaired for the arbitrary dismissal she suffered. According to the Court's jurisprudence, reparations are measures that seek to make the effects of the violations committed disappear. [FN155] The reparation of the damage caused by the violation requires, as long as possible, complete restitution (restitutio in integrum), which consists in the reestablishment of the previous situation. If this is not possible, a series of measures shall be determined in order to, besides guaranteeing the rights infringed, repair the consequences resulting from the infraction, as well as establish the payments of an indemnity as compensation for the damages caused. [FN156] Specifically, the Tribunal has stated that in cases of arbitrary dismissals of judges, "the State shall reimburse those judges for the salaries and benefits they did not perceive." [FN157]

[FN155] Cf. Case of Hilaire, Constantine, and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations, and Costs. Judgment of June 21, 2002. Series C No. 94, para. 205; Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs. Judgment of September 22, 2006. Series C No. 153, para. 143, and Case of La Cantuta v. Peru. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C No. 162, para. 202.

[FN156] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25 and 26; Case of La Cantuta v. Peru, supra note 155, para. 201, and Case of Bayarri v. Argentina supra note 10, para. 120.
[FN157] Cf. Case of the Constitutional Court v. Peru, supra note 58, para. 120.
---

127. Based on all the aforementioned, the Tribunal considers that the State violated Article 25(1) of the American Convention, in relation to Articles 1(1) and 2 of the same, sincefirst of all, that the remedy to which Mrs. Reverón Trujillo had access did not offer the adequate reparations. Second, there was no justified reason to not reinstate Mrs. Reverón Trujillo to the judicial position she occupied and pay the salaries not perceived by her. Therefore, the domestic remedy filed did not result effective. On the other hand, some of the regulations and practices associated to the judicial restructuring process that is being implemented in Venezuela (supra para. 121), due to the specific consequences it had on the specific case, causes a very high infringement on judicial independence.

128. In view of the previous conclusion and that exposed in paragraph 62 supra, the Court considers that it is not necessary to analyze in this chapter if the reparation measures agreed on by the SPA in favor of Mrs. Reverón Trujillo were adequate, especially, the competitive tender, since, it reiterates, the adequate reparations were the reinstatement of the position and payment of the salaries that were not perceived.

***

129. The representatives have also stated that the alleged situation of a generalized provisional nature and the consideration of the judges as officials of a free appointment and removal “has implied hundreds of summary dismissals, many of which obey clear political and economical nuances.”

130. In this sense, the Tribunal points out that the facts of the present case do not prove that Mrs. Reverón Trujillo was dismissed in a summary manner due to political and economic interests. [FN158] Therefore, the Tribunal considers that it is not appropriate to analyze those arguments.

[FN158] In a similar sense the Tribunal has previously stated that “[t]he object of the Court's contentious jurisdiction is not to review national legislations in their abstract conception, but to resolve specific cases where it may be alleged that an act of a State carried out against certain individuals is contrary to the Convention.” (Cf. Case of Genie Lacayo v. Nicaragua. Preliminary Objections. Judgment of January 27, 1995. Series C No. 21, para. 50, highlighted text not from the original).

VII. ARTICLE 23(1)(C) (RIGHT TO PARTICIPATE IN GOVERNMENT) [FN159] IN RELATION TO ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS)

[FN159] Article 23(1) establishes, in what is relevant, that:
Every citizen shall enjoy the following rights and opportunities:
[…]
c) to have access, under general conditions of equality, to the public service of his country.

---

131. The representatives indicated that Mrs. Reverón Trujillo "suffered an unequal treatment with regard to her right to enter and remain in her public duties, since upon being denied the full reinstatement of her juridical situation that was violated, upon dismissing her reinstatement into the position and payment of the benefits she did not perceive, she was prevented from participating in the 'regularization' process that could have granted her the 'entitlement'."

132. The State mentioned that the representatives "altered the content of Article 23(1)(c) of the Convention by including in it an alleged right of continuance in equal conditions, in the public service of a country, which in itself determines the inadmissibility of the alleged violation." It added that Mrs. Reverón Trujillo "was empowered to participate in the competitive tenders summoned within the framework of the [PET] and she did not participate in them because of her own decision not to."

133. To this last argument of the state the representatives responded, inter alia, that the publications made within the framework of the PET did not establish that the judges who had been dismissed or that were part of a group different to those summoned could participate in that process.

134. The Inter-American Commission did not argue the violation of Article 23 in the present case. Additionally, even though in Admissibility Report No. 60/06 that body considered that the case of Mrs. Reverón Trujillo characterized a possible violation of Articles 23(1)(c) of the American Convention, [FN160] in the Report on Merits No. 62/07 the Commission considered that "the facts argued by the petitioner as violations of political rights, were already analyzed in the section regarding the right to judicial protection and, in that sense, it does not consider it necessary to evaluate them in light of Article 23 of the American Convention." [FN161]

[FN160] In Admissibility Report No. 60/06, the Commission considered that "in the event that the arguments of the petitioners are proven in what refers to not having access and the guarantee of continuance in the public service, in general conditions of equality, violations of Articles 23 (1) (C) and 24 of the American Convention could be determined." Admissibility Report No. 60/06, María Cristina Reverón Trujillo, issued by the Inter-American Commission on July 25, 2006 (dossier of annexes to the application, Volume I, annex B, folio 35, para. 32).
[FN161] Cf. Merits Report No. 62/07, Case 12,565, María Cristina Reverón Trujillo, issued by the Inter-American Commission on July 27, 2007 (dossier of annexes to the application, Volume I, annex A, folio 24, para. 99).

---

135. Taking into account that the violation of Article 23(1)(c) was not argued by the Inter-American Commission, the Court reiterates that the alleged victims and their representatives may invoke the violation of other rights different to those included in the application, since they are the bearers of all the rights enshrined in the Convention, as long as they refer to facts already included in the application, [FN162] which constitutes the factual framework of the proceeding. [FN163] The purpose of this possibility is to make effective the procedural power of locus standi in judicio acknowledged to them in the Rules of Procedure of the Tribunal, without this invalidating the conventional limitations to their participation and the exercise of the Court's jurisdiction, or a infringement or violation of the State's right to a defense, since the latter has the procedural opportunities to respond to the arguments of the Commission and the representatives during all the stages of the process. Finally, it corresponds to the Court to decide in each case the admissibility of arguments of that nature in protection of the procedural balance of the parties. [FN164]

[FN162] Cf. Case of "Five Pensioners" v. Peru, supra note 52, para. 155; Case of Perozo et al. v. Venezuela, supra note 9, para. 32, and Case of Kawas Fernández v. Honduras, supra note 15, para. 127.
[FN163] Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 134, para. 59; Case of Bayarri v. Argentina, supra note 10, para. 30, and Case of Perozo et al. v. Venezuela, supra note 9, para. 32.
[FN164] Cf. Case of the "Mapiripán Massacre" v. Colombia, supra note 163, para. 58; Case of Heliodoro Portugal v. Panama, supra note 10, para. 228, and Case of Perozo et al. v. Venezuela, supra note 9, para. 32.

---

136. On the other hand, just as the timely procedural moment for the accused State to accept or object the central object of the case is the defendant's response, the moment during which the alleged victims or their representatives fully exercise that right of locus standi in judicio is the brief of pleadings, motions, and evidence. [FN165]

[FN165] Cf. Case of Yvon Neptune v. Haiti. Merits, Reparations, and Costs. Judgment of May 6, 2008. Series C No. 180, para. 18 and Case of Perozo et al. v. Venezuela, supra note 9, para. 33.

---

137. In the present case, the arguments of the representatives regarding the alleged violation of Article 23(1)(c) of the Convention were filed before the Tribunal in their brief of pleadings and motions and they are based on facts contemplated in the Commission's application. Therefore, the Court will analyze those arguments. The fact that the Commission did not consider it necessary to evaluate the facts as a violation of political rights in its Report on Merits does not prevent the Court from issuing a ruling, since "the Court is not bound by what has previously been decided by the Commission; on the contrary, it is empowered to issue judgments freely, according to its own assessment." [FN166]

[FN166] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 10, para. 29 and Case of the 19 Tradesmen v. Colombia. Preliminary Objection. Judgment of June 12, 2002. Series C No. 93, para. 27.

---

138. According to the State's arguments, Article 23(1)(c) of the American Convention does not include the protection of the right to remain in the exercise of public service. In this sense, the Court points out that in the case of Apitz Barbera et al., this Tribunal stated that Article 23(1)(c) does not establish the right to access a public position, but to do so in "general conditions of equality." This means that the respect and guarantee of this right are fulfilled when "the criteria and procedures for the appointment, promotion, suspension and dismissal [are] reasonable and objective" and when "the people are not object of discrimination" in the exercise of this right. [FN167] Likewise, the Human Rights Committee has interpreted that the guarantee of protection covers both the access and the continuance in equal conditions and non-discrimination with regard to the suspension and dismissal procedures. [FN168] As observed, the access in equal conditions would constitute an insufficient guarantee if it were not accompanied by the effective protection of the continuance in what is accessed.

[FN167] Cf. Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, supra note 58, para. 206. See also United Nations, Human Rights Committee, General Observation No. 25: The participation in Public Matters and the Right to Vote, CCPR/C/21/Rev. 1/Add. 7, July 12, 1996, para. 23.

[FN168] Cf. Pastukhov v. Belarus (814/1998), ICCPR, A/58/40 vol. II (5 August 2003) 69 (CCPR/C/78/D/814/1998) at paras. 7(3) and 9; Adrien Mundyo Buyso, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. Democratic Republic of the Congo (933/2000), ICCPR, A/58/40 vol. II (31 July 2003) 224 (CCPR/C/78/D/933/2000) at para 5(2).

---

139. The Court has established that the right to have access to public service in general conditions of equality protects the access to a direct form of participation in the design, implementation, development, and execution of the state's political guidelines through public service. Therefore, it is necessary that the State generate the optimal conditions and mechanisms in order for those political rights to be exercised effectively, respecting the principle of equality and non-discrimination. [FN169]

[FN169] Cf. Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs. Judgment of June 23, 2005. Series C No. 127, para. 195.

---

140. In the present case, the SPA stated that "[t]he administrative act through which the competent body […] dismissed [Mrs. Reverón Trujillo] was not lawful" (supra para. 53). However, the SPA's decision stated that [i]n other circumstances [that] Chamber could, with the elements present in the records of the case file, order the reinstatement of the judge" (supra para. 55). From the judgment of the SPA it can be inferred that among those "other circumstances" we

can mention bearing the condition of titular judge. Likewise, both the jurisprudence of the SPA as well as that of the Constitutional Chamber consider that provisional judges are of free appointment and removal and that "the right to stability" is reserved for career judges (supra para. 101 and 102). In synthesis, the Court observes that a titular judge, under circumstances of an annulled dismissal similar to that of Mrs. Reverón Trujillo could have been reinstated. On the contrary, in the present case, since it is a provisional judge, under the same factual assumptions, the reinstatement was not ordered.

141. This difference in the treatment of between titular judges that enjoy a full guarantee of tenure and provisional ones who do not have any protection by that guarantee within the context of continuance that corresponds to them, does not respond to a reasonable criterion (supra para. 138) pursuant to the Convention (supra paras. 114 through 117 and 121). Therefore, the Tribunal concludes that Mrs. Reverón Trujillo suffered an arbitrary unequal treatment regarding the right to remain, under equal conditions, in the exercise of public service, which constitutes a violation of Article 23(1)(c) of the American Convention in connection to the obligations of respect and guarantee established in Article 1(1) of the same.

***

142. With regard to the State's arguments and the evidence presented by the State regarding Mrs. Reverón Trujillo's alleged possibility to access the Judicial Power through her registration before the PET, and to the representative's response regarding the unfeasibility of that access, the Tribunal considers that their analysis is not appropriate since, as indicated in paragraphs 81 and 127 supra, the only correct response before the victim's arbitrary dismissal was the reinstatement to her position, without demanding for this any other additional requirement. The victim's participation in any other program seeking to define the entitlement of the position would only have been relevant after her reinstatement as a provisional judge.

VIII. ARTICLE 8(1) (RIGHT TO A FAIR TRIAL) [FN170] OF THE AMERICAN CONVENTION

[FN170] Article 8(1) states, in what is relevant, that:
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.

---

143. The representatives indicate that "in the present case, upon violating the right to an effective judicial protection of María Cristina Reverón Trujillo, her right to independence as a judge, acknowledged in Article 8 of the Convention was also consequently violated." The Commission did not argue the violation to this article.

144. The State indicated that the representatives "distort as per their interest the sense and scope of the right to a fair trial, established in Article 8 of the American Convention, in order to

attribute to themselves a right to judicial autonomy and independence. [… I]t is enough to state that [said] conventional regulation […] enshrines a guarantee for the subject submitted to a judicial process, and not an individual guarantee of protection for the judge."

145. Taking into account the jurisprudence of this Court indicated in paragraphs 135 and 136 supra, the Court goes on to analyze the alleged violation of Article 8(1) of the Convention since it refers to the facts included in the application and it was presented in a timely manner in the brief of pleadings and motions.

146. Article 8(1) acknowledges that "[e]very person has the right to a hearing[…] by a […]independent[…] tribunal." The terms in which this article is written indicate that the subject of the law are the parties, the person sitting before the judge that will decide the case submitted to it. Two obligations arise from this right. The first corresponding to the judge and the second to the State. The judge has the duty to be independent, duty fulfilled only when he rules pursuant with –and moved by- the Law. On its part, the State has the duty to respect and guarantee, pursuant with Article 1(1) of the Convention, the right to be tried by an independent judge. The duty of respect consists in the negative obligation of public authorities to abstain from illegally interfering in the Judicial Power or with its members, that is, with regard to the specific judge. The duty of guarantee consists in preventing those interferences and investigating and punishing those that commit them. Additionally, the duty of prevention consists in the adoption, pursuant with Article 2 of the Convention, of an appropriate normative framework that ensures an adequate process for the appointment and tenure of the judges, as well as all the other conditions previously analyzed in Chapter VI of the present Judgment.

147. Now, the mentioned obligations of the State result, at the same time, in rights for the judges or for all other citizens. For example, the guarantee of an adequate process for the appointment of judges necessarily involves the right of citizens to access public service in equal conditions; the guarantee that they will not be subject to a discretional removal implies that the disciplinary and punishing processes of judges must necessarily respect the guarantees of the due process and shall offer those affected an effective remedy; the guarantee of tenure shall be translated into an adequate work regimen for judges in which the transfers, promotions, and other conditions are sufficiently well-controlled and respected, among others.

148. Based on the aforementioned, the Tribunal concludes that the right enshrined in Article 8(1) of the Convention assists the parties before the courts and judges; therefore in this case it is inadmissible to declare the violation of that article.

IX. ARTICLE 5(1) (RIGHT TO HUMANE TREATMENT) [FN171] OF THE AMERICAN CONVENTION

[FN171] Article 5(1) of the Convention states that:
Every person has the right to have his physical, mental, and moral integrity respected.

---

149. The representatives argued that the State "failed in its obligation to protect the psychological and moral integrity of [Mrs.] Reverón Trujillo, violating that fundamental right, both when she was illegally dismissed […], which caused humiliation and dishonor among the juridical community, as well as when the [TSJ] abstained from fully reestablishing the juridical situation violated, failing to comply with the obligation to reinstate her to her position and therefore give her back the reputation and honor she had in the Judicial Power as a result of her impeccable behavior as a Criminal Judge." According to the representatives, "[i]t is evident that the illegitimate dismissal of a public server entails, per se, grave consequences, such as, among others, the affectation to their honor and reputation and therefore of their dignity as a human being." Specifically, the representatives stated that "[t]he effect on the honor and reputation of judge Reverón Trujillo was of a magnitude such that her dismissal was made of public knowledge since several articles, which referred to her as incurring in serious disciplinary offenses, were published in the national press." They also argued that not only was her moral integrity affected but "also her psychic integrity […], since the life of judge Reverón Trujillo suddenly changed for the worst when she without justification saw her professional life and only means of support destroyed." According to the representatives, "[t]his, evidently caused her important anguish, concern, and anxiety, resulting in stress and depression; which affected her state of mind" and that [t]hese psychological disorders she suffered and is still suffering […], were evaluated and medically treated from the year 2002 and up to the present."

150. The Commission did not argue the violation of this right.

151. The State mentioned that the Court "throughout its jurisprudence, has held that the facts that may be the object of the debate before the Inter-American Tribunal, are those established in the application presented by the Commission […], with the exception of the supervening facts and those that help clarify the ones presented in the application" and that violations of rights different to those included in the application "shall refer only to the facts established by the Commission in its application." Based on this the State argued that the representatives want to "ignore the Inter-American jurisprudence, and include in the present proceedings facts not contemplated in the Commission's application […], and that in no case may be considered supervening." Specifically, the State indicated that the alleged "dishonor and humiliation" and other damages of a moral nature are new facts not included in the application. Therefore, the State requested that the mentioned facts, as well as the right invoked in them, "be excluded and omitted in the issuing of the judgment." Additionally, the State indicated that the representatives "have limited themselves to presenting a series of statements without offering any evidentiary support whatsoever" and that the SPA's judgment "adopted the measures necessary to avoid" that Mrs. Reverón Trujillo's right to humane treatment be violated.

152. The Court points out that the facts regarding the publication of the dismissal of Mrs. Reverón Trujillo were not presented in the Commission's application, nor are they limited to explaining or clarifying the facts mentioned in it, and that they therefore constitute new facts and, thus, are not part of the factual framework of the present case. Additionally, these facts do not constitute supervening facts. Thus, based on the reasons exposed in paragraphs 135 and 136 supra these facts will not be analyzed by the Tribunal

153. On the other part, the representatives' arguments on the violation of Article 5 will be analyzed in chapter X infra on reparations, since those arguments refer to consequences of the violations already declared in the present Judgment.

154. Therefore, this Tribunal considers that the right to humane treatment guaranteed by Article 5(1) of the Convention.

X. REPARATIONS

155. It is a principle of international law that any violation of an international obligation that has caused damage entails the obligation to repair it adequately. [FN172] The Court has based its decisions in this sense on Article 63(1) of the American Convention. [FN173]

[FN172] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 156, para. 25; Case of Perozo et al. v. Venezuela, supra note 9, para. 404, and Case of Kawas Fernández v. Honduras, supra note 15, para. 156.

[FN173] Article 63(1) of the Convention states that:

If the Court finds that there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

---

156. According to the considerations exposed regarding the merits and the violations to the Convention declared in the previous chapters, as well as in light of the criteria set in the Court's jurisprudence with regard to the nature and scope of the obligation to repair, [FN174] the Court will proceed to analyze the claims presented by the Commission and the representatives, as well as the State's position, with the objective of ordering the measures tending to repair the damages.

[FN174] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 156, paras. 25 through 27; Case of Perozo et al. v. Venezuela, supra note 9, para. 406, and Case of Kawas Fernández v. Honduras, supra note 15, para. 157.

---

1. Injured party

157. The Court considers Mrs. Reverón Trujillo as the "injured party" in her condition of victim of the violations declared in her detriment, reason for which she shall be the beneficiary of the reparation measures set, in its case, by the Tribunal for the pecuniary and non-pecuniary damages.

158. Regarding the victim's brothers and sisters, Julián José Reverón Trujillo, José Rubén Reverón Trujillo, María Isabel Reverón Trujillo, and Maria Eugenia Reverón Trujillo, as well as

with regard to her mother, María del Rosario Trujillo de Reverón, the Court observes that the Commission did not declare them as victims of any violation whatsoever in its Report on Merits and that in the application it identified Mrs. Reverón Trujillo as the only beneficiary of the reparations (supra para. 2). Therefore, the Tribunal, pursuant with its jurisprudence, [FN175] will not consider the next of kin of the victim as an injured party.

[FN175] Cf. Case of the Ituango Massacres v. Colombia, supra note 8, para. 98; Case of Bayarri v. Argentina, supra note 10, para. 126, and Case of Tiu Tojín v. Guatemala. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 58.

---

2. Reinstatement of the victim to her position and payment of the salaries not perceived

159. The Commission requested that the State be ordered to "reinstate" the victim "to the position of Fourteenth First Instance Criminal Judge in Trial Duties of the Criminal Circuit of the Metropolitan Area of Caracas, or, in its defect, to a position with an equal hierarchy within the Judicial Power." Likewise, it requested "the State be ordered to pay Mrs. Reverón Trujillo the salaries and economic benefits not perceived from her dismissal up until her effective reinstatement."

160. The representatives indicated that "the comprehensive reparation for the arbitrary dismissal shall be the reinstatement to the same position or another of similar characteristics," as well as the "order that [the victim] not be removed in a discretional manner without the due process." Likewise, they requested the State be ordered "to estimate and effectively pay all the back pay and other work benefits not perceived, taking into consideration all the increases, bonuses, and other benefits perceived by First Instance Criminal judges, from the moment in which she was arbitrarily dismissed (February 6, 2002) and up to her effective reinstatement, including both delayed-payment interests as well as the monetary correction (indexation)."

161. The State argued that "the reinstatement of the citizen […] Reverón Trujillo to the position occupied by her in the Judicial Power in the present case, given her condition of provisional judge and her entrance to the justice system without the corresponding public competitive tender was not admissible." For the State "a measure of reparation that would result appropriate and that would offer the citizen María Cristina Reverón Trujillo the possibility to reenter the exercise of judicial duties, would consist in her registration in the next competitive examination that would be convened, as long as the mentioned citizen states her will to participate in the tender and complies with the corresponding requirements."

162. The Court observes that, according to the State, the reinstatement as a reparation is not possible because Mrs. Reverón Trujillo was acting as a provisional judge. That is, the State reiterates the argument made by the SPA when it did not order the reinstatement of the victim despite her arbitrary dismissal. In the previous chapters this Court determined that there was no justified reason that would have freed the State from reinstating Mrs. Reverón Trujillo to the judicial position occupied by her and to pay back the salaries she did not perceive, and that upon not doing so Venezuela violated the rights enshrined in Articles 25(1) and 23(1)(c) of the

Convention. Thus, it would be wrong for the Tribunal to accept that restitution is not possible base on an argument that has already been declared unacceptable pursuant with the Convention.

163. Therefore, the Court declares that in this case the State must reinstate Mrs. Reverón Trujillo to a position similar to the one she previously occupied, with the same remuneration, social benefits, and rank equal to those that corresponded up to this date if she would have been reinstated. For this, the State has a six-term period as of the notification of this judgment.

164. The Court clarifies that the reinstatement shall be in the same provisional nature Mrs. Reverón Trujillo had when dismissed. This provisional nature, however, shall be understood in the sense the Court has set forth in this judgment. That is, it shall be subject to a cancellation clause, which would not be different to the appointment, according to the law, of the titular judge for the position or the dismissal, after a due process, for having committed a disciplinary offense. Once in her position, Judge Reverón Trujillo may not be subject to free removal, since this is not compatible with the principle of judicial independence.

165. If, based on well-founded reasons, different to the victim's will, the State could not reinstate her to the Judicial Power in a six-month period as of the notification of the present Judgment, it shall pay her a compensation set by this Court in equity at US$ 60,000.00 (sixty thousand dollars of the United States of America) or its equivalent in the national currency, within a maximum period of eighteen months computed as of the notification of the present Judgment.

166. Regarding the salaries not perceived, the State asked the Court to take into consideration that on February 22, 2006 the Executive Office of the Magistracy proceeded to pay the victim US$ 13,385.08 in the concept of indemnification for her years of service as a provisional criminal judge, and that Mrs. Reverón Trujillo has "assets that guaranteed her an income and means of survival during the period referred to in the request for compensation," by virtue of her participation as shareholder in several national and foreign corporations.

167. Mrs. Reverón stated in the public hearing that the indemnification for her years of service had been paid "very partially" since she had been paid off "without acknowledging her 12-year seniority in the Judicial Power, and it was only after 4 long years that she was completely paid off." [FN176]

[FN176] Cf. statement offered by Mrs. Reverón Trujillo at the public hearing held before the Inter-American Court on January 23, 2009.

---

168. The State indicated that "the alleged victim, in her statement offered in the public hearing of the present case, tried to ignore the payment of the indemnification for her years of service, arguing an alleged non-conformity with the amount paid in a timely manner," but that "[t]here is no element whatsoever that serves as grounds for the alleged non-conformity of the alleged victim with the amount of the indemnification paid for her years of service."

169. In the case file before the Court there is an "Indemnification for years of service" of February 22, 2006, which has not been objected nor has its authenticity been questioned; the same indicated that Mrs. Reverón Trujillo was paid off for a work period from July 21, 1999 to February 26, 2002 with an amount of Bs. 28,777,936.74 (twenty-eight million seven hundred and seventy seven thousand nine hundred and thirty-six with 74/100 bolivars). That amount includes the interests for delayed payment covering the period from February 27, 2002 to February 15, 2005. In this settlement it can be verified that Mrs. Reverón Trujillo signed under the following wording:

With the signing of the present form, I spread upon the record my conformity with the amounts and concepts received from the Executive Office of the Magistracy by virtue of the settlement of the work relationship I maintained with this body, reason for which there is nothing to demand, either for the concepts paid on this opportunity or for any other concept derived from the work relationship. [FN177]

[FN177] Cf. settlement of indemnification for years of service issued by the Executive Office of the Magistracy on February 22, 2006 (dossier of annexes to the respondent's plea, Volume II, annex 55, folio 2941).

---

170. Likewise, as stated by the witness Valero Rodríguez, there is no evidence that the victim made any complaint or stated her non-conformity with the amount received.

171. Therefore, the Tribunal concludes that Mrs. Reverón Trujillo was in fact paid off by the State for the services offered between the years 1999 and 2002.

172. In what refers to the income perceived by Mrs. Reverón Trujillo for her shares in different Venezuelan and foreign corporations, the State forwarded a "sworn statement of assets", which in effect proves the victim's property of several shares in different corporations. [FN178]

[FN178] Cf. sworn statement of assets offered by Mrs. Reverón Trujillo on September 9, 1999 (dossier of annexes to the respondent's plea, Volume II, annex 56, folios 2953 through 2963).

---

173. Now, the Court considers that the settlement for the indemnification for the years of service refers only, to the years of service as a provisional judge and does not include the salaries and social benefits not received as of the moment of her dismissal. On the other hand, Mrs. Reverón Trujillo's condition as shareholder refers to the income she received privately and not as a public employee, and therefore irrelevant to this case. In this sense, through the payment of said settlement and the patrimonial means available to Mrs. Reverón, the wages and work benefits not received are not satisfied.

174. Consequently, the Tribunal, taking into account the evidence on the salary and the indemnification for the years served perceived by the victim, [FN179] and considering that it is reasonable that in the more than seven years that have gone by since her dismissal, Mrs. Reverón Trujillo would have taken measures to reduce the damage caused, sets in equity the amount of US$150,000.00 (one hundred and fifty thousand dollars of the United States of America) that the State shall pay within a one-year term computed as of the notification of this Judgment.

[FN179] Cf. evidence of the withholding of income taxes issued by the Administrative Office of the Judiciary Council and the Executive Office of the Magistracy between the years 1999 and 2002 (annexes to the Final Written Arguments of the Representatives, Volume III, folios 3530, 3535, 3537, and 3542) and documents regarding the salary, indemnification for years of service, and interests issued by the Executive Office of the Magistracy between the years 1999 and 2002 and interests on delayed payments from the year 2002 through 2005, issued by the Executive Office of the Magistracy (annexes to the respondent's plea, Volume II, annex 55, folios 2943 through 2949).

---

3. Non-pecuniary damage

175. Below, the Court will determine the reparations for non-pecuniary damage, as it has understood it in its jurisprudence. [FN180]

[FN180] "[N]on-pecuniary damages may include both the suffering and affliction caused to the direct victim and their next of kin, the detriment to very significant personal values, as well as non-pecuniary alterations in the conditions of existence of the victim or their next of kin. Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, it can only be the object of compensation, […], through payment of an amount of money or the delivery of goods or services that may be valued in monetary terms, which the Tribunal will establish […] in terms of equity, as well as through the realization of acts or works that are public in their scope or effects, which result in the acknowledgment of the victim's dignity and avoid the repetition of violations to human rights," Cf. Case of Neira Alegría v. Peru. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 57; Case of Perozo et al. v. Venezuela, supra note 9, para. 405, and Case of Kawas Fernández v. Honduras, supra note 15, para. 179.

---

176. First, the Court points out that the Commission did not request that the victim be compensated for non-pecuniary damages. Second, even when it decided that the arguments presented by the representatives did not lead to the conclusion that the State violated Article 5 of the Convention, it did decree the violation of the rights enshrined in Articles 25(1) and 23(1)(c) of the same, which entail a non-pecuniary damage. In this sense, the Court has held that non-pecuniary damage results evident, since it is part of human nature itself that any person who suffers a violation of their human rights experiments suffering. Now, that suffering does not necessarily have to be repaired with money. Depending on the specific case an adequate reparation may simply be the issuing of the conviction of the State by this Court. [FN181]

[FN181] Cf. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126, para. 130; Case of Raxcacó Reyes v. Guatemala. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 133, para. 131, and Case of Boyce et al. v. Barbados. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 169, para. 126.

---

177. In the present case, the Court shall assess if it is appropriate to order economic reparation in favor of Mrs. Reverón Trujillo, which the representatives estimate at US$ 100,000.00 (one hundred thousand dollars of the United States of America). To this effect, the Tribunal shall assess the evidence provided, which would basically be the victim's statement at the public hearing and a medical certificate. The analysis of this evidence is independent of the considerations offered in Chapter IX supra, since in the present chapter only the consequences of the violations declared are examined and not any facts that would constitute a new violation.

178. At the public hearing the victim stated that the removal for her position "changed [her] life," she went from being a "well-respected" judge "in the Judicial Power to being a sore spot for the Judicial Power," she "isolat[ed] herself from the outside world", she was not able to sleep and she left the country "to try to recover [her] emotional health." [FN182]

[FN182] Cf. statement offered by Mrs. Reverón Trujillo, supra note 176.

---

179. Regarding the medical certificate, the professional who issued it mentions he looked over Mrs. Reverón Trujillo from the year 2002 to 2009, and that the victim presented a "severe depressive distressing medical profile accompanied of [i]nsomnia, [p]aranoid ideas, voluntary reclusion […] with only the obsessive idea of her dismissal." He also indicates that the victim suffered "memory disorders" and "anxiety symptoms." [FN183]

[FN183] Cf. certificate issued by Doctor Germán Balda C., undated (dossier of annexes to the final written arguments of the representatives, Volume III, annex 26, folio 3529).

---

180. The State indicated that this certificate "lacks the elements of form and merits to evidence her mental state." According to the State the professional who issued it was not authorized "to evaluate the condition of her mental and emotional health, since he is [a] Geriatrician internal medicine specialist" and that "the clinical profiles described and the psychotherapeutic strategies recommended are not sufficiently well-founded or clear, in a manner such that would prove her mental health." It added that "the conclusions on the causes of psychological symptoms […] do not adjust to current practices, since they do not derive from an evaluation on her mental health (carried out through a clinical interview, tests performed, the application of tests) but from observations derived, possibly from the clinical practice corresponding to his specialty."

Additionally, it held that another circumstance that makes the report less credible and unbiased is the fact that "there are objective elements that lead to the presumption of the existence of a friendship between the doctor that prepared the alleged Report and the citizen María Cristina Reverón Trujillo," specifically, the evidence of the doctor's name on the note of mourning published in the newspaper "El Universal" after the passing away of Mrs. Reverón Trujillo's mother. [FN184]

[FN184] Cf. note of mourning published in the newspaper "El Universal" on September 23, 2007 (dossier of annexes to the final written arguments of the State, Volume II, annex 23, folio 3770).

---

181. In this sense, the Tribunal verified that the State is correct when it indicates that the professional, who issued the certificate, is a specialist in Internal Medicine and Geriatrics. The representatives did not forward a copy to the Tribunal of the curriculum of this doctor or any other evidence that would have allowed the Tribunal to know of the experience and knowledge the doctor had in the field of mental health. In what refers to the alleged lack of impartiality of the doctor, the Court points out that this professional is not acting as an expert, instead he only prepared a "certificate". Therefore, it is a piece of documentary evidence, not from an expert, which shall be assessed with the rest of the body of evidence. In that sense, the Tribunal considers that the doctor's statements shall be interpreted the same as those from a person who knows Mrs. Reverón Trujillo and who states that the facts of the present case had a certain emotional impact on her.

182. From the aforementioned (the victim's statement and the medical certificate), the Court can only conclude that Mrs. Reverón Trujillo suffered due to the violations committed against her. The Tribunal cannot confirm the degree of this suffering and the physical and mental consequences it reached.

183. Based on all the above, the Tribunal decides to order, in equity, that the State pay the amount of US$ 30,000.00 (thirty thousand dollars of the United States of America) or its equivalent in the national currency, in the concept of compensation for non-pecuniary damage. The State shall pay this amount directly to Mrs. Reverón Trujillo within a one-year term computed as of the notification of the present Judgment.

4. Elimination of the punishment of dismissal from the file

184. The judgment of October 13, 2004 of the SPA ordered, inter alia, that "any information mentioning that the previously named citizen was punished shall be eliminated from [Mrs. Reverón Trujillo's] judicial file." (supra para. 55)

185. The representatives state that a reference to the dismissal of Mrs. Reverón Trujillo can still be found in her personal file.

186. The State, based on the statement of the witness Valero Rodríguez, [FN185] indicated that the Executive Office of the Magistracy fully complied with the judgment of the SPA and

eliminated from the victim's personal file all reference to her dismissal. The State clarified that the representatives were referring to a "settlement form", which is not found in the victim's personal file, but in the "settlement files of the General Human Resources Office of the Executive Office of the Magistracy."

[FN185] Cf. statement offered by the witness Valero Rodríguez at the public hearing held before the Inter-American Court on January 23, 2009.

---

187. The Tribunal observes that on the back of the "settlement form" the State indicated was not in the victim's personal file there is a certification from the General Coordinator of the Executive Office of the Magistracy stating that the copy of the mentioned document "is an accurate and exact copy of the original found in the Personal File of the citizen María Cristina Reverón Trujillo." [FN186]

[FN186] Cf. certification of the General Coordinator of the Executive Office of the Magistracy issued on March 27, 2008 (dossier of annexes to the respondent's plea, Volume II, annex 55, folio 2942, highlight not from the original).

---

188. Thus, the Court orders the State to immediately remove from Mrs. Reverón Trujillo's personal file the mentioned "settlement form".

5. Adjustment of the domestic legislation

189. The representatives asked the Court to order the State to "approve the Code of Ethics of Venezuelan Judges referred to in Article 267 of the Constitution, which shall establish the ethical and moral principles of Venezuelan judges, along with the causes for warnings, suspension, and dismissal of judicial employees."

190. In this sense, the Tribunal in the case of Apitz Barbera et al. v. Venezuela ordered the State the following:

[…]in 2006 the Chamber for Constitutional Matters of the STJ declared the 'unconstitutional legislative inaction on the part of the National Assembly […] in connection with the legislative procedure instituted to enact the so-called bill for the Code of Ethics and Discipline of Venezuelan Judges, drafted by the Assembly in 2003, which in the end was not promulgated.' Taking into account that the Venezuelan Judicial Power itself has considered it imperative that the Code of Ethics be enacted and that the transitional regime has extended over nine years, and in view of the declared violations of Article 2 of the Convention, this Court determines that the State must adopt such measures as may be required to pass the Code of Ethics within the term of one year as from notice of this Judgment. These regulations shall ensure both the impartiality of the disciplinary organ, permitting, inter alia, that its members be challenged, and its

independence, providing for an appropriate selection and appointment process and secured tenure of office. [FN187]

[FN187] Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 58, para. 253.

---

191. Since on the date on which the present Judgment is issued no official information on the adoption of said Ethics Code has been forwarded to the case file, the Tribunal decides to reiterate in the present case the order given in the mentioned case.

***

192. On the other hand, the Tribunal declared that in this case Venezuela did not adequately guarantee judicial independence, since its domestic regulations and practices (especially its jurisprudential line) consider that provisional judges do not enjoy the guarantee of tenure (supra paras. 121 and 127).

193. Therefore, the Court considers that as a guarantee of non-repetition, the State shall, within a reasonable period of time, adjust its domestic legislation of the American Convention through the modification of the rules and practices that consider provisional judges as freely removable.

6. Publishing of the Judgment

194. The representatives requested that the state of Venezuela publicly acknowledge its international responsibility through the publication of the main paragraphs of the judgment on merits issued in the present case, in a newspaper with national circulation.

195. As has been stated by the Court in other cases, [FN188] as a measure of satisfaction, the State shall publish, once, and in the Official Newspaper and in another of wide-spread national circulation, paragraphs 63 to 128, 138 to 141, and 190 to 193 of the present Judgment and its operative paragraphs, without the corresponding footnotes. The state has a six-month term as of the notification of the present Judgment to comply with the aforementioned.

[FN188] Cf. Case of Barrios Altos v. Peru. Reparations and Costs. Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5 d); Case of Perozo et al. v. Venezuela, supra note 9, para. 415, and Case of Kawas Fernández v. Honduras, supra note 15, para. 199.

---

7. Costs and expenses

196. The Inter-American Commission asked the Court to "order the State to pay the costs and expenses duly proven by the victim, in which the latter has incurred as a consequence of the proceedings carried out both at a national and Inter-American level."

197. The representatives requested that the Court "acknowledge in equity the expenses caused as a result of costs and expenses in the litigation (domestic and international)." For the concept of professional fees in the domestic and international realm they requested the amount of US$ 45,521.00 (forty five thousand five hundred and twenty one dollars of the United States of America) and for procedural expenses within the domestic and international realm they requested US$ 14,531.00 (fourteen thousand five hundred and thirty one dollars of the United States of America).

198. The State in its response to the application requested that the Court take into consideration that the representatives "[did] not provide any evidence whatsoever to prove the alleged expenses incurred in to cover what they classify as 'procedural expenses' within the domestic legislation and in [the] Inter-American system." Once the representatives forwarded evidence along with their final written arguments, the State did not present observations.

199. The Tribunal points out, first of all, that the representatives, when forwarding their brief of pleadings and motions, did not present the corresponding receipts for he costs and expenses in which the victim had allegedly incurred. They only forwarded two communications addressed by the representatives to Mrs. Reverón Trujillo with "estimates of professional fees." [FN189] They did not forward the receipts that proved that those estimates were in fact paid.

[FN189] Cf. communication addressed to Mrs. Reverón Trujillo from Mr. Chavero Gazdik on January 9, 2002 (dossier of annexes to the brief of pleadings and motions, Volume I, annex O, folio 690), and communication addressed to Mrs. Reverón Trujillo from Mr. Chavero Gazdik in February 2005 (dossier of annexes to the brief of pleadings and motions, Volume I, annex P, folios 692 and 693).

---

200. In this sense, the Tribunal has pointed out that the claims made by the victims or their representatives in matters of costs and expenses, and the evidence on which they are based, shall be presented to the Court on the first procedural opportunity granted to them, that is, in the brief of motions and pleadings, without detriment to the fact that they may later be updated pursuant with the new costs and expenses incurred in during the proceedings before this Court. [FN190]

[FN190] Cf. Case of Molina Theissen v. Guatemala. Reparations and Costs. Judgment of July 3, 2004. Series C No. 108, para. 22; Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, para. 275, and Case of Tristán Donoso v. Panama, supra note 25, para. 215.

---

201. Second, even though the representatives forwarded evidence along with their final arguments supporting the expenses incurred in during the proceedings before this Court, they did not offer clear details of each of the concepts that caused those expenses or the amount corresponding to each concept. They merely limited themselves to forwarding the receipts and setting the total amount. In this sense, the Court has pointed out that "the forwarding of evidentiary documents is not enough, it is required that the parties present arguments relating the evidence with the fact they consider represented, and that, upon dealing with alleged economic outlays, the items and their justification be clearly established." [FN191]

[FN191] Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra note 190, para. 277.

---

202. Taking into account the previously mentioned considerations, the Court determines that the State shall deliver the amount of US$ 30,000.00 (thirty thousand dollars of the United States of America) to the victim, for the concept of costs and expenses. That amount shall be paid within a one-year term computed as of the notification of the present Judgment. This amount includes future expenses in which the victim may incur during the monitoring of compliance with this Judgment. Mrs. Reverón Trujillo will hand over, at the same time, the amount considered adequate to those who acted as her representatives within the domestic realm and the proceedings before the Inter-American system.

8. Modality of compliance

203. The payment of the compensation and the reimbursement of costs and expenses established in favor of Mrs. Reverón Trujillo will be made directly to her. If she were to pass away before the delivery of the corresponding amounts, they shall be delivered to her successors, pursuant with the applicable domestic law.

204. The State shall fulfill its obligations by tendering United States dollars or an equivalent amount in Venezuelan currency, at the New York, USA, exchange rate for both currencies, as quoted on the day prior to the day payment is made.

205. If, for reasons attributable to Mrs. Reverón Trujillo it is not possible for her to receive the amounts within the indicated period, the State shall deposit the amount in favor of the victim in an account or a deposit certificate in a solvent Venezuelan financial institution and in the most favorable financial conditions permitted by law and banking practice. If, after ten years, the compensation has not been claimed, it shall revert to the State with the accrued interest.

206. The amounts assigned in the present Judgment as compensations and reimbursement of costs and expenses shall be delivered in whole to the victim, pursuant with the stipulations of this Judgment, without deductions derived from possible taxes.

207. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Venezuela.

208. In keeping with its consistent practice, the Court reserves the right inherent in its attributes and derived from Article 65 of the American Convention to monitor compliance with all the terms of this judgment. The case will be closed when the State has fully complied with that stated in the present judgment. Within a six-month term as of notification of this judgment, the State shall provide the Court with a report on the measures adopted to comply with it.

XI. OPERATIVE PARAGRAPHS

Therefore,

THE COURT

DECIDES,

by six votes to one,

1. To dismiss the preliminary objection filed by the State, in the terms of paragraphs 20 through 24 of the present Judgment.

DECLARES,

by six votes to one, that

2. The State violated Article 25(1) in relation with Articles 1(1) and 2 of the American Convention, in detriment of Mrs. Reverón Trujillo, in the terms of paragraphs 107 through 128 of the present Judgment.
3. The State violated Article 23(1)(c), in relation with Article 1(1) of the American Convention, in detriment of Mrs. Reverón Trujillo, in the terms of paragraphs 135 through 141 of the present Judgment.
4. The State did not violate Article 8(1) of the Convention, in the terms stated in paragraphs 145 through 148 of the present Judgment.
5. The State did not violate Article 5(1) of the Convention, pursuant with paragraphs 152 through 154 of this Judgment.

AND ORDERS,

by six votes against one, that

6. This Judgment constitutes per se a form of reparation.
7. The State shall reinstate Mrs. Reverón Trujillo, within a maximum six-month term computed as of the notification of this Judgment, to a similar position to the one previously occupied by her, with the same remuneration, social benefits, and a rank similar to those that would correspond to her today if she would have been reinstated when required, pursuant with paragraphs 163 and 164 of the present Judgment. On the contrary, it shall pay the amount established pursuant with paragraph 165 of the present Judgment.

8. The State shall immediately eliminate from Mrs. Reverón Trujillo's personal file the settlement form that states the victim was dismissed.
9. The State shall adopt, as soon as possible, the measures necessary for the approval of the Ethics Code, if it has not been done, in the terms of paragraphs 190 and 191 of the present Judgment.
10. The State shall adjust, within a reasonable period of time, its domestic legislation to the American Convention through the modification of the rules and practices that consider provisional judges as freely removable pursuant with that stated in paragraphs 192 and 193 of this Judgment.
11. The State shall make the publications indicated in paragraph 195 of the present Judgment within a six-month term as of its notification.
12. The State shall pay the amounts established in paragraphs 174, 183, and 202 supra, for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses within a one-year term computed as of the notification of the present Judgment, in the terms of paragraphs 203 through 207 of the same.
13. The Court will monitor full compliance of this Judgment, in exercise of its powers and in compliance of its duties pursuant with the American Convention, and will consider the present case concluded when the State has fully complied with that stated therein. The State shall, within a six-month term computed as of the notification of this Judgment, present the Court with a report on the measures adopted to comply with it.

Judge Einer Elías Biel Morales presented his Dissenting Opinion, enclosed with the present Judgment.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on June 30, 2009.

Cecilia Medina Quiroga
President

Sergio García Ramírez
Manuel E. Ventura Robles
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Einer Elías Biel Morales
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

DISSENTING OPINION OF THE JUDGE AD HOC EINER ELIAS BIEL MORALES IN THE CASE OF REVERÓN TRUJILLO V. VENEZUELA

1. In the judgment issued in the present case, the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal") dismissed the preliminary objection filed by the State regarding lack of exhaustion of domestic remedies. I differ from the majority's decision and, therefore, with due respect for the opinion of my colleagues, I allow myself to present the legal reasons for my dissent. This difference with the majority prevents me from backing the Judgment in its totality. However, I point out that, in the event that the jurisdiction of the Tribunal to hear and issue a decision on the merits of the case is accepted, in general terms, I accept the arguments offered upon deciding the merits of the matter, taking into account that the Inter-American Court upon issuing its decision offers justice to that stated by the victim.

The preliminary objection of non-exhaustion of domestic remedies

2. The Preamble of the American Convention states that: "the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states" (highlight is not from the original). From the aforementioned it can be clearly concluded that the protection offered by the Inter-American System is exclusively complementary to the domestic systems and in no way is it substitutive or the main system. In this sense, it is important to point out that under the terms of the Convention the States Parties 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." [FN1] Therefore, the responsibility and obligation to comply with the duties contracted through the Convention falls upon national authorities, which reaffirms the Court's essentially supplementary nature. This means that only in those cases in which a State has been allowed to repair by itself a violation according to the Convention, and it has not done so, may the Inter-American System have jurisdiction to hear those violations.

[FN1] Article 1(1) of the American Convention on Human Rights.

---

3. This undeniable supplementary nature of the Inter-American System is materialized mainly in the requirement to exhaust domestic remedies. Specifically, from the start of its duties the Inter-American Court has established that: "[t]he rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter "reinforces or complements" the domestic jurisdiction (American Convention, Preamble)." [FN2]

[FN2] I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 61; I/A Court H.R., Case of Godínez Cruz v. Honduras. Merits. Judgment of January 20, 1989, Series C No. 5, para. 64, and I/A Court H.R., Case of Fairén Garbi and Solís Corrales v. Honduras. Merits. Judgment of March 15, 1989. Series C No. 6, para. 85.

---

4. Additionally, this nature has been acknowledged not only by the Inter-American System but by other regional systems as well, for example the European Human Rights Protection System. In this regard, the European Human Rights Court has expressed that the protection established in the European Human Rights Convention is subsidiary to the national protection system. [FN3] The European Convention allows each State Party, first, the task of guaranteeing the rights and freedoms enshrined. The institution created by it, makes its own contribution to that task, but is involved only through adversarial proceedings and when all domestic remedies have been exhausted (Art. 26)" [FN4]. From the aforementioned, it can be concluded that the European Court acknowledges in a clear and precise manner the importance of offering the State the possibility to repair the violations of human rights through the exhaustion of all its domestic remedies, intimately relating this with the objective itself of the international systems, namely offering protection to those rights when the States have not done so.

[FN3] ECHR, Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium, Judgment of 23 July 1968, para. 10; ECHR, Case of Aksoy v. Turkey, Judgment of 18 December 1996, para. 51, and ECHR, Case of Sisojeva and others v. Latvia, Judgement of 15 January 2007.
[FN4] ECHR, Handyside v. United Kingdom. Judgment (Merits) of 7 December 1976, para. 48.

---

5. Anyway, I start my opinion with these reflections, both well known and accepted, regarding the complementary nature of the Court, because it is precisely this principle what motivates me to conclude that the preliminary objection filed by the State of Venezuela should have been accepted in the present case.

6. The State of Venezuela filed a preliminary objection, stating that Mrs. Reverón Trujillo "did not file the Appeal for Revision before the Constitutional Chamber of the Supreme Court of Justice." However, the majority has decided that, since "the […] preliminary objection was not filed in a timely manner […] the State [missed] its chance to use this means of defense before this Tribunal." (paras. 20 and 21 of the Judgment) This implies that no progress is made on the revision regarding the effectiveness of the remedy to confront the problems that would derive from the decision adopted by the Political-Administrative Chamber. In this regard, it is important to point out that in the case file there are copies of several judgments of the Constitutional Chamber of the Supreme Court of Justice in which the latter accepted the appeal for revision, as evidence of the possibility to turn to this remedy and obtain favorable results.

7. The present decision is respectful of the reiterated jurisprudence of the Court, which has established, first of all, that the objection of lack of exhaustion of domestic remedies is a rule in which the possibility to invoke it can be waived expressly or tacitly by the State that has the right to do so and, second, that the way to waive this right corresponding to the State is by not filing the objection in a "timely" manner. [FN5]

[FN5] Cfr. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgmentof June 26, 1987. Series C No. 1, para. 88.

---

8. However, I disagree with this jurisprudence of the Court and, therefore, with the decision made in the present case. First of all, as previously stated, the subsidiary nature of the Court is one of the grounds for its jurisdiction. The exhaustion of domestic remedies is established in the American Convention as a requirement of admissibility, reason for which it is not clear why the Inter-American Court has turned it into a "means of defense" for the State, which the latter can waive. It is understood that it is the State's duty to indicate if there are domestic remedies to be exhausted, but this does not mean that if it did not do so at a specific moment, the Court or the Commission can abstain from examining the admissibility requirements.

9. Second, the rule invoked has been created by the jurisprudence of the Court and it is not enshrined in the American Convention or in any other treaty that is binding for the States. In this sense, as made clear in a recent dissenting opinion, [FN6] "if the objective was to create a preclusive opportunity for the arguing of this objection, it should have been established explicitly in the text of the American Convention." Likewise, it is not enough to file against the States the rules adopted by the Commission and Court in their Rules of Procedure, since the latter do not constitute treaties to which the States have consented.

[FN6] Dissenting opinions issued by the judge ad hoc Pier Paolo Pasceri Scaramuzza with regard to two judgments of the Inter-American Court: I/A Court H.R. Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194 and I/A Court H.R. Case of Perozo et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195.

---

10. The aforementioned responds to general principles of legal certainty. In effect, the States have had to face the application of a standard that seems to contradict what has been established in the convention. The jurisprudential rule does not seem to have been created based on the principle of consent of the States Parties to the Convention, which may generate difficulties for a consensus regarding the legitimacy of the decisions adopted by the Tribunal in what corresponds specifically to this preliminary objection. Rules that the States were not aware of upon ratifying the corresponding treaty are being applied to them.

11. In fact, the jurisprudence of the Court in this matter seems to have developed, on occasions, criteria not necessarily compatible among each other or even modified in different

ways, as occurs since the case of Perozo et al. v. Venezuela, when instead of referring to the tacit waiver it indicates that the State did not file the preliminary objection in a timely manner. This standard weakens even more the requirements of legal certainty regarding the procedural behavior States must follow in the litigation before the Court, since the change or variation made in the Judgment regarding the tacit waiver, which is now substituted with "loss of the possibility", in my opinion is not a manner of mere semantics, but a variation that would generate much more confusion, since it seems to be associated to the idea of preclusion, which is not enshrined in the Convention either.

12. Likewise, it is important to point out the frequency or recurrence with which these matters are presented by the States before the Court, which –regardless of the Commission's opinion and the Court's jurisprudence of more than 20 years- is a sign of the importance of solving this matter in a definitive matter accepting the possibility of debating the preliminary objections of this nature before the Tribunal.

13. Finally, I consider that the fact that the Court is the only jurisdictional body of the Inter-American System implies that it must maintain complete jurisdiction to revise and decide matters of admissibility. As has been established by the Tribunal's jurisprudence, the latter "does not act, with regard to the Commission in a procedure of revision, appeal, or similar. Its full jurisdiction to consider and review in toto the previous actions and decision of the Commission, results from its nature of single jurisdictional body in this matter. In this sense, while ensuring a more complete judicial protection of the human rights acknowledged by the Convention, the State Parties that have accepted the jurisdiction of the Court are guaranteed the strict respect of its regulations." [FN7] In that same line, it has been established that "if the Commission decided the matter of admissibility, it should be analyzed again before this Court given the jurisdictional nature of this body in contrast to the first. This form of action is in perfect tune with the Court's power of full jurisdiction regarding the decisions made by the Commission." [FN8] I share this opinion and point out that just as this Tribunal has the jurisdiction necessary to decide if there has been a violation of human rights, it also has jurisdiction to decide procedural matters stated as grounds for its possibility to hear the case. [FN9] Therefore, there is no reason for the Tribunal not to revise the procedural rules imposed by the Commission regarding an alleged "timely" moment to present the preliminary objections.

[FN7] I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 29.
[FN8] Dissenting opinion of judge ad hoc Pier Paolo Pasceri, supra note 6.
[FN9] I/A Court H.R., Case of 19 Tradesmen v. Colombia. Preliminary Objection. Judgment of June 12, 2002. Series C No. 93 para. 27; I/A Court of H.R., Case of Constantine et al. v. Trinidad and Tobago. Preliminary Objections. Judgment of September 1, 2001. Series C No. 82, para. 71.

---

14. Based on the aforementioned, the Court should have analyzed the effectiveness of the appeal for revision indicated by the State, in order to conclude if in effect the domestic remedies were or not exhausted in the terms of the Convention. Despite the fact that I agree with the reasons that serve as grounds for the decisions on merits adopted by the majority, I consider it

necessary and convenient to assume that the requirement of lack of exhaustion of domestic remedies cannot be a defense the State may waive tacitly, since it constitutes a rule on which the subsidiary principle of the Inter-American System is based.

Thus, I present the reasons for my dissenting opinion in the present case. Date ut-supra

Einer Elías Biel Morales
Judge ad hoc

Pablo Saavedra Alessandri
Secretary