INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF CHOCRÓN CHOCRÓN *v.* VENEZUELA

JUDGMENT OF JULY 1, 2011
(Preliminary objection, merits, reparations and costs)

In the *Case of Chocrón Chocrón*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:[1]

Diego García-Sayán, President
Leonardo A. Franco, Vice President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra Alessandri, Secretary;[2]

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 30, 32, 38, 56, 57, 58 and 61 of the Rules of Procedure of the Court[3] (hereinafter "the Rules of Procedure"), delivers this judgment, structured as follows:

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[1] Judge Alberto Pérez Pérez advised the Court that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this judgment.

[2] Deputy Secretary Emilia Segares Rodríguez advised the Court that, for reasons beyond her control, she would be unable to attend the deliberation of this judgment.

[3] Under the provisions of Article 79(1) of the Rules of Procedure of the Inter-American Court that entered into force on January 1, 2010, "[c]ontentious cases that have been submitted to the consideration of the Court before January 1, 2010, will continue to be processed until the delivery of a judgment in accordance with the previous Rules of Procedure." Thus, the Court's Rules of Procedure applied in this case correspond to the instrument approved by the Court at its forty-ninth regular session held from November 16 to 25, 2000, partially reformed during the eighty-second regular session held from January 19 to 31, 2009, and in force from March 24, 2009, to January 1, 2010.

I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. On November 25, 2009, pursuant to Articles 51 and 61 of the Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela") with regard to case No. 12,556, *Mercedes Chocrón Chocrón,* originating from a petition received by the Commission on May 15, 2005, and registered as No. 549-05. On March 15, 2006, the Commission issued Report on Admissibility No. 38/06.[4] On March 17, 2009, the Commission adopted Report on Merits No. 9/09 and forwarded it to the State, granting it two months to report on the measures taken to comply with the Commission's recommendations.[5] After finding that Venezuela had not adopted the recommendations included in the said report, the Commission decided to submit this case to the jurisdiction of the Court. The Commission appointed Paulo Sérgio Pinheiro, Commissioner, and Santiago A. Cantón, Executive Secretary, as Delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Specialist of the Executive Secretariat, as legal advisors.

2. The application argues an alleged "arbitrary removal of the [alleged] victim from her post as Judge of First Instance for Criminal Matters of the Metropolitan Caracas Judicial Circuit, [allegedly] without affording her any minimum guarantees of due process and without adequate justification, without giving her the possibility to be heard and to exercise her right of defense, and without allowing her any effective judicial remedy against [the alleged] violations, all as a consequence of the [alleged] absence of guarantees in the transition process of the Judiciary."

3. The Commission asked the Court to declare that the Venezuelan State had violated the rights established in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention to the detriment of Mercedes Chocrón Chocrón (hereinafter Mrs. Chocrón Chocrón). In addition, the Commission asked the Court to order the State to adopt measures of reparation, and to reimburse costs and expenses.

4. On March 8, 2010, the representatives of the alleged victim, Carlos M. Ayala Corao, Rafael J. Chavero Gazdik and Marianella Villegas Salazar (hereinafter "the

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[4] In Report on Admissibility No. 38/06, the Commission declared the case admissible, insofar as it referred to alleged violations of the "right to a fair trial (Article 8); the right to participate in government (Article 23); the right to equal protection (Article 24), and the right to judicial protection (Article 25) of the American Convention, in accordance with the general obligations established in Articles 1(1) and 2 thereof." Report on Admissibility No. 38/06 (file of attachments to the application, attachment 2, volume I, folio 50).

[5] In Report on Merits No. 9/09, the Commission concluded that the State had failed to comply with the obligations imposed by the right to a fair trial and the right to an effective judicial remedy embodied in Articles 8(1) and 25(1) of the American Convention in relation to the general obligations established in Articles 1(1) and 2 thereof. In addition, the Commission considered that insufficient evidence had been presented to establish violations of the right to equal protection of the law and the right to have access, under general conditions of equality, to public service, as indicated in Articles 24 and 23(1)(c) of the American Convention *Cf.* Report on Merits No. 9/09 (file of appendices to the application, attachment 1, volume I, folio 37).

representatives"), filed their brief with pleadings, motions, and evidence (hereinafter, "pleadings and motions brief") before the Court under the terms of Article 37 of the Rules of Procedure. In addition to the violations argued by the Commission, the representatives asked the Court to declare that the State was responsible for violating the right recognized in Article 23(1)(c) (Right to Participate in Government) of the American Convention, and defined their request for reparations, and costs and expenses.

5. On May 18, 2010, the State submitted its brief filing a preliminary objection, answering the application and with observations on the pleadings and motions brief (hereinafter "answer to the application") in the terms of Article 39 of the Rules of Procedure. In this brief, the State filed the following preliminary objections: (i) "partiality in the functions performed by some of the Judges of the Court,"[6] and (ii) "need to exhaust the remedies provided by the Venezuelan legal system." In addition, the State denied its international responsibility with regard to the violation of the rights alleged by the other parties. The State appointed Germán Saltrón Negretti as its Agent in this case.

6. Pursuant to Article 38(4) of the Rules of Procedure, on October 1, 2010, the Commission and the representatives presented their arguments with regard to the preliminary objection filed by the State (*supra* para. 5), in which they asked the Court to dismiss the objection and proceed to examine the merits of the case.

II
PROCEEDINGS BEFORE THE COURT

7. The State and the representatives were notified of the application on December 23 and 28, 2009, respectively.

8. In an Order of December 16, 2010,[7] the President of the Court (hereinafter "the President") ordered that the testimony of two expert witnesses proposed by the Commission be received by affidavit. In addition, he ordered that a copy of the affidavits made by Jesús María Casal Hernández, Param Cumaraswamy and Román Duque Corredor, expert witnesses proposed by the Commission in the *case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, be sent to the representatives and the State so that they could submit any observations they deemed pertinent. He also ordered that a copy of the affidavits made by José Zeitune and Alberto Arteaga Sánchez, expert witnesses proposed by the representatives in the *case of Reverón Trujillo v. Venezuela*, be forwarded to the Inter-American Commission and the State so that they could submit any observations they deemed pertinent. Finally, the President convened the parties to a public hearing to hear the testimony of the alleged victim, proposed by the Commission, and of a witness proposed by the representatives,

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6 *Cf.* The acting President of the Inter-American Court of Human Rights, Judge Alberto Pérez Pérez, issued the Order of September 3, 2010, concerning this preliminary objection submitted in the answer to the application. In the Order, he declared "that the alleged lack of impartiality in the functions performed by some of the Judges who make up the Court, submitted by the State as a preliminary objection, was inexistent." In addition, he determined that it was for the Court, in plenary session, to continue hearing the entire case up until its conclusion. *Case of Chocrón Chocrón v. Venezuela*. Order of the acting President of the Inter-American Court of Human Rights of September 3, 2010. Available at: http://www.corteidh.or.cr/docs/asuntos/chocron.pdf

7 Order of the President of the Inter-American Court of Human Rights of December 16, 2010.

as well as the final oral arguments on the preliminary objection and possible merits, reparations and costs in this case.

9. On January 12, 2011, the Inter-American Commission indicated that it had no observations to make on the expert opinions forwarded with the Order of December 16, 2010 (*supra* para. 8). The representatives and the State did not submit observations on the said expert opinions.

10. On January 20, 2011, the Inter-American Commission "submit[ted] the sworn statement of expert witness Antonio Canova González" and "requested an extension" of the time frame for sending the sworn statement of expert witness Leandro Despouy, "because [he had ...] advise[d] that he was unable to complete his expert opinion." In this regard, the Court noted that it had previously granted an extension for the presentation of the sworn statements of the proposed expert witnesses, and that this new request would be a second extension to the deadline for receiving them. Thus, on the instructions of the President, the request was denied. The representatives and the State did not submit observations with regard to Mr. Canova's expert opinion.

11. The public hearing took place on February 24, 2011, during the ninetieth regular session of the Court[8] held at its seat in San José, Costa Rica.

12. The Court received an *amicus curiae* brief from the Association of the Bar of the City of New York[9] on the scope of judicial guarantees and effective judicial protection in this case.

13. In a note dated March 4, 2011, the Secretariat of the Court asked the parties to submit with their final arguments the documentary and other evidence related to supervening facts that were mentioned in the oral arguments presented during the public hearing. In addition, on the instructions of the Court in plenary, the parties were asked to answer certain questions on different issues concerning this case.[10]

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[8] The hearing was attended by the following: (a) for the Inter-American Commission: Paulo Sérgio Pinheiro, Commissioner, and Silvia Serrano Guzmán, advisor; (b) for the representatives: Carlos Ayala Corao; Rafael Chavero Gazdik and María Daniela Rivero, and (c) for the State: Germán Saltrón Negretti, Agent for the State for Human Rights; Enrique Sánchez, Lawyer of the Supreme Court of Justice, and Luisangela Andarcia, State lawyer.

[9] The brief was submitted on February 28, 2011, by Stephen L. Kass, of the Association of the Bar of the City of New York, International Human Rights Committee (merits file, volume II, folios 744 to 768).

[10] The Court in plenary posed one question to the Inter-American Commission: (1) Does the Commission assume as a fact of the application any reference to the possible connection between Mrs. Chocrón's removal and the decision adopted with regard to General Martínez? The representatives of the alleged victims were asked the following: (1) The Court's case law has established some differences in the scope of the right to be heard in relation to the scope of the right of defense. In this case, why was the right to be heard violated? What is the difference between the argument submitted on the right of defense and the argument on the right to be heard? (2) How long did Mrs. Chocrón serve in the post to which she was appointed in 1982 as Judge Rapporteur of the First Instance Criminal Court of the Judicial Circuit of the Federal District and Miranda State? It was requested that pertinent documentary evidence be submitted, and (3) Was it argued in any of the administrative actions filed to defend Mrs. Chocrón in the domestic sphere that her removal was related to the judicial procedure ordered in relation to General Martínez? The State was asked the following questions: (1) If the "comments" made before the Judicial Commission can serve as grounds for annulling the appointment of a provisional or temporary judge, why does the State argue that they do not have a disciplinary connotation? (2) At the time of the facts in this

14. On March 24, 2011, the representatives, the Inter-American Commission, and the State submitted their final written arguments. On April 13, 2011, the representatives forwarded the corresponding attachments to their final arguments. On April 29 and May 2, 2011, the representatives and the Inter-American Commission, respectively, presented their observations on the arguments and evidence forwarded with the final arguments regarding the updated costs and expenses, and their answers to the questions posed by the judges of the Court during the public hearing. The State did not submit observations on the arguments and evidence submitted by the other parties in their final arguments.

III
PRELIMINARY OBJECTION OF "FAILURE TO EXHAUST DOMESTIC REMEDIES"

1. Arguments of the parties

15. The State indicated that the Commission "has tried to establish jurisdictional exclusivity for the analysis of the exhaustion of domestic remedies, as well as preclusion in its arguments before the inter-American system." It affirmed that "to that end, it has attempted to ignore the intrinsic nature of the requirement of exhaustion of domestic remedies, equating it to a 'State measure of defense' that can be waived, even *ex officio*." However, the State indicated that "the requirement of exhaustion of domestic remedies constitutes an objective condition of admissibility that can be argued and examined, even *ex officio*, at any stage or in any instance of the international proceedings"; consequently, the Court must analyze compliance with this requirement. According to the State, "in this case, the alleged victim did not […] file or exhaust the remedies provided for under domestic law," considering that Mrs. Chocrón Chocrón "failed to file an appeal for review before the Constitutional Chamber of the Supreme Court of Justice," which "would have opened up the possibility of the annulment of the decision of the Administrative and Political Chamber" issued against her.

16. On this point, Venezuela indicated that, since "the case law of the Inter-American Court has established that the State that alleges failure to comply with the requirement of exhaustion of domestic remedies must indicate the remedies that should have been exhausted and demonstrate their effectiveness," it noted that the appeal for review "allows the interested party to obtain an examination by the Constitutional Chamber of the judgments handed down by any other domestic court, including the other Chambers of the Supreme Court of Justice. [E]ven though, under the case law of the Constitutional Chamber, the constitutional review of judgments is restricted, discretionary and of a special nature, this does not mean that this remedy should not be filed and exhausted before resorting to the inter-American system." According to the

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case; in other words, in 2002 and 2003, what were the Judicial Commission's procedures for appointing provisional and temporary judges? How are provisional and temporary judges appointed currently? (3) What law authorizes the Judicial Commission to annul the appointment of provisional and temporary judges? (4) Have public competitive examinations for posts been held since Mrs. Chocrón's appointment was annulled? and (5) At what stage is the process of implementing the Ethics Code for Venezuela Judges? Have the disciplinary tribunals been established? If not, is there a timetable for their establishment?

State, "[t]he restricted and special nature of the appeal for review […] does not mean that it would not be effective to safeguard the rights of the alleged victim. There is sufficient evidence of [its] effectiveness in Venezuela." Accordingly, the State submitted two lists of judgments of the Constitutional Chamber of the Supreme Court of Justice[11] declaring "the appeals for review admissible, during two specific periods of time: (a) [t]he period during which the judgment of the Administrative and Political Chamber was handed down in the case of the alleged victim, and (b) the period during which the application against the Venezuelan State was brought before the Inter-American Court."

17. For its part, the Commission "consider[ed] that the preliminary objection filed by the State [was] time-barred [because], as revealed by Report on Admissibility No. 38/06, approved on March 15, 2006, the State of Venezuela did not file the objection on failure to exhaust domestic remedies before the Inter-American Commission." In this regard, the Commission "ask[ed] the Inter-American Court to reiterate its consistent case law, to declare the preliminary objection [inadmissible …] and to continue with the analysis of the merits of the case."

18. The representatives asked that the preliminary objection be declared inadmissible because the State "did not […] raise the objection" to the alleged failure to exhaust remedies "at the appropriate time" during the proceedings before the Inter-American Commission. They also indicated that Mrs. Chocrón Chocrón "exercised and exhausted all the ordinary domestic mechanisms and proceedings" by filing an appeal for reconsideration before the Judicial Commission and an administrative appeal for annulment before the Political and Administrative Chamber of the Supreme Court of Justice. They argued that "the inappropriately-named 'special appeal for review' referred to by the Venezuelan State is not an ordinary remedy (and not even a special remedy), but rather a discretionary power of the Constitutional Chamber intended to standardize criteria for constitutional interpretation." Thus, the remedy is "not an instrument that establishes a new ordinary instance where the individual has the right to air his or her personal interests; in other words, it is not an ordinary means of appeal." In this regard, they indicated that, "[t]he case law of the Constitutional Chamber has always denied that this revisionary power can be used for appeals."

19. Additionally, the representatives indicated that "the power to review final judgments, established in paragraph 10 of Article 336 of the Constitution, can be exercised *ex officio* by the Constitutional Chamber itself if it considers, at its own discretion, that its precedents have been ignored. This reveals that, if it did not exercise this power in the case of [Mrs. Chocrón Chocrón], it was because there was no reason to do so; in other words, it was inadmissible." Furthermore, according to the representatives, "from January 1, 2004, to April 30, 2008, it can be verified that more than 80% of the requests for special review of final judgments were declared INADMISSIBLE" by the Constitutional Chamber.

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[11] List of 40 judgments corresponding to the period from June 26, 2003, to June 14, 2004, in which the Constitutional Chamber of the Supreme Court of Justice ruled the appeal for constitutional review "admissible" (file of attachments to the answer to the application, attachment 7, volume IV, folios 1704 to 1709) and list of 225 judgments corresponding to the period from June 15, 2004, to December 12, 2009, in which the Constitutional Chamber of the Supreme Court of Justice ruled the appeal for constitutional review "admissible" (file of attachments to the answer to the application, attachment 8, volume V, folios 2126 to 2159).

2. Considerations of the Court

20. The Court notes that there is no dispute between the parties as regards the fact that this preliminary objection was not raised during the proceedings before the Commission. Thus, in keeping with its observations in the *case of Reverón Trujillo v. Venezuela*, the Court notes that the State is seeking that the Court modify its consistent case law which holds that, if the objection of failure to exhaust domestic remedies is not raised at the appropriate time, the possibility of raising it is lost.[12]

21. Although the supervision by the Inter-American Court is subsidiary, additional and complementary,[13] the Convention itself establishes that the rule of exhaustion of domestic remedies must be interpreted in keeping with generally-recognized principles of international law, which include the principle establishing that the use of this rule is a defense available to the State and, therefore, the procedural moment at which the objection has been submitted must be verified. If the objection is not presented during the admissibility proceedings before the Commission, the State will have forfeited the possibility of using this means of defense before this Court. As indicated in the case of *Reverón Trujillo,* this has been recognized by both the Inter-American Court[14] and the European Court of Human Rights.[15]

22. Consequently, the Court reiterates that the interpretation it has accorded to Article 46(1)(a) of the Convention for more than 20 years is in keeping with international law.

23. In addition, the Court reiterates that, according to its case law[16] and international case law,[17] it is not incumbent on either the Court or the Commission to identify, *ex*

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12 *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 20.

13 *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 Perozo et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 195, para. 64, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 26, 2010. Series C No 220, para. 10.

14 *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.

15 *Cf.* ECHR. *Cases of De Wilde, Ooms and Versyp Cases ("Vagrancy") v. Belgium*, Judgment of 18 June 1971, Series A no. 12, para. 55; ECHR. *Case of Foti and others v. Italy,* Judgment of 10 December 1982, Series A no. 56, para. 46, and ECHR. *Case of Bitiyeva and X v. Russia*, Judgment of 21 June 2007, para. 90 and 91.

16 *Cf. Case of Velásquez Rodríguez v. Honduras*, Preliminary objections. *supra* note 14, para. 88; *Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 194, para. 37, and *Case of Perozo et al. v. Venezuela, supra* note 13, para. 42.

17 *Cf. Case of Reverón Trujillo v. Venezuela, supra* note 12, which cites the following cases: ECHR, *Case of Deweer v. Belgium*, Judgment of 27 February 1980, Series A no. 35, para. 26; ECHR,

officio, the domestic remedies that must be exhausted; but rather, the State must indicate at the appropriate time the domestic remedies that must be exhausted and their effectiveness. In this case, the State should have established clearly before the Commission, at the admissibility stage of the instant case, its arguments regarding the remedies that it considered had not been exhausted. In this regard, the Court reiterates that it does not fall to the international organs to rectify the lack of precision in the State's arguments.[18]

24. The Court therefore rejects the preliminary objection.

IV
JURISDICTION

25. The Inter-American Court has jurisdiction to hear this case in the terms of Article 62(3) of the Convention, because Venezuela has been a State Party to the American Convention since August 9, 1977, and accepted the compulsory jurisdiction of the Court on June 24, 1981.

V
EVIDENCE

26. Based on the provisions of Articles 46, 49 and 50 of the Rules of Procedure, as well as on its case law regarding evidence and its assessment,[19] the Court will examine and assess the documentary probative elements forwarded by the parties on different procedural occasions, as well as the testimony of the alleged victim, the testimony and expert opinions provided by affidavit and during the public hearing before the Court, together with the helpful evidence requested by the Court. To this end, the Court will respect the principles of sound judicial discretion, within the corresponding legal framework.[20]

1. Documentary, testimonial and expert evidence

27. The Court received an affidavit made by the expert witness:

Case of Foti and others v. Italy, Judgment of 10 December 1982, Series A no. 56, 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.

18 *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 12, which cites the following case: ECHR, *Case of Bozano v. France*, Judgment of 18 December 1986, Series A no. 111, para. 46.

19 *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 Abrill Alosilla et al. v. Peru. Merits, reparations and costs*. Judgment of March 4, 2011. Series C No. 223, para. 35, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 224, para. 19.

20 *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 35, and *Case of Vera Vera et al. v. Ecuador*, *supra* note 19, para. 19.

a) *Antonio Canova González*, university professor, expert witness proposed by the Inter-American Commission, who gave an opinion on: (i) "Venezuela's domestic law on the functions of the Judiciary"; (ii) "the norms regulating the appointment and removal of judges"; (iii) "the situation of temporary judges;" (iv) "the powers of the Judicial Commission of the Supreme Court of Justice in the context of the Judiciary's transition process," and (v) "the effectiveness of the judicial remedies available in cases of arbitrary removal or dismissal."

28. Regarding the evidence given during the public hearing, the Court received the testimony of:

a) *Mercedes Chocrón Chocrón*, alleged victim, proposed by the Inter-American Commission, who testified on: (i) "the circumstances surrounding her removal from the Judiciary;" (ii) "the legal actions filed at the domestic level against that removal," and (iii) "the alleged damage suffered as a result of her removal," and

b) *Jesús Ollarves*, witness proposed by the representatives, former member of the Second Appeals Chamber of the Caracas Metropolitan Criminal Circuit, who testified on the impact that provisional justice has had on the Judiciary and on the cases brought before the Venezuelan criminal courts.

2. Admission of the documentary evidence

29. In this case, as in others,[21] the Court accepts the probative value of the documents presented by the parties at the appropriate procedural opportunity that were not contested or opposed, and whose authenticity was not questioned.

30. Regarding the newspaper articles, this Court has considered that they can be assessed when they contain public and noteworthy facts or declarations by State officials, or when they corroborate certain aspects of the case.[22] The Court decides to admit the documents that are complete or that, at least, allow verification of their source and date of publication. It will assess them, taking into account of the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

31. Also, the representatives forwarded several documents as evidence with their final written arguments; these had been requested by the Court based on the provisions of Article 58(b) of the Court's Rules of Procedure (*supra* paras. 13). Accordingly, they are also incorporated and the pertinent parts will be assessed, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.

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21 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 13, para. 140; *Case of Abrill Alosilla v. Peru*, *supra* note 19, para. 38, and *Case of Vera Vera et al. v. Ecuador*, *supra* note 19, para. 22.

22 *Cf. Case of Velásquez Rodríguez. Merits, supra* note 13, para. 146; *Case of Gomes Lund et al. ("Guerrilla do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 56, and *Case of Abrill Alosilla v. Peru*, *supra* note 19, para. 40.

32. Lastly, the Court adds the following domestic norms to the body of evidence, under Article 45(1) of the Rules of Procedure and finding them useful for deciding the case: the Internal Rules of Procedure of the Supreme Court of Justice[23] and the Reform of the Ethics Code for Venezuelan Judges.[24] In addition, regarding an argument of the State on legal doctrine as a source of international law (*infra* para. 91), the book entitled, "*La Convención Americana: teoría y jurisprudencia - vida, integridad personal, libertad personal, debido proceso y recurso judicial* [The American Convention: theory and case law - life, personal integrity, personal liberty, due process and judicial remedy] was added to the case file.[25]

3. Admission of the testimonial and expert evidence

33. Regarding the statement made before notary public by expert witness Antonio Canova González and the testimony given by alleged victim Mercedes Chocrón Chocrón and witness Jesús Ollarves during the public hearing, the Court admits them and finds them pertinent to the extent that they are in keeping with the purpose defined by the President of the Court in his Order to receive them (*supra* para. 8) and the purpose of this case, taking into account the observations made by the parties.

34. Pursuant to the Court's case law, the testimony of alleged victims cannot be assessed in isolation, but must be examined together with the rest of the evidence in the proceedings, because it is useful insofar as it can provide further information on the alleged violations and their consequences.[26] The Court will bear this in mind when assessing the testimony of the alleged victim in this case.

35. Furthermore, the Court notes that neither the representatives nor the State submitted observations on the opinion rendered before notary public by Mr. Canova González (*supra* para. 10).

36. In addition, the Court observes that, in its final written arguments, the State argued "the evident estoppel" incurred by the Commission and the representatives by proposing the testimony of witness Jesús Ollarves during the public hearing. According

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[23] *Cf.* Internal Rules of Procedure of the Supreme Court of Justice of March 8, 2006. Available [in Spanish] at: http://www.SCJ.gov.ve/informacion/acuerdos/reglamentoSCJ.htm (last accessed on June 1, 2011).

[24] *Cf.* Reform of the Ethics Code for Venezuelan Judges as published in Official Gazette No. 39,493 of August 23, 2010, available [in Spanish] at: http://150.188.8.226/cgi-win/be_alex.exe?Documento=T020700038334/1&Nombrebd=bibconsulta&term_termino_2=%5C%5C192.168.215.23/pgr/alexandr/db/bibpgr/edocs/2010/39493.pdf&term_termino_3=&term_termino_5=pdf&term_termino_4=%20112&ForReg=http://150.188.8.226/light/pruebagaceta/gaceta1.htm&TiposDoc=S (last accessed on June 1, 2011).

[25] *Cf.* Cecilia Medina Quiroga, "*La Convención Americana: teoría and jurisprudencia - vida, integridad personal, libertad personal, debido proceso and recurso judicial*," Santiago, Human Rights Center of the Law School, Universidad de Chile, available at: http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_1231064373/La%20Convencion%20Americana.pdf?url=%2FBibliotecaWeb%2FVarios%2FDocumentos%2FBD_1231064373%2FLa+Convencion+Americana.pdf (last accessed June 1, 2011).

[26] *Cf. Case of Loayza Tamayo. Merits, supra* note 21, para. 43; *Case of Cabrera García and Montiel Flores, supra* note 16, para. 39; *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011, Series C No. 221, para. 40, and *Case of Vera Vera et al. v. Ecuador, supra* note 19, para. 23.

to the State, "estoppel" was constituted because the Commission argued "that the provisional and permanent judges should enjoy the same stability in their posts," while witness Ollarves, proposed by the representatives, indicated that "this is not so." On this point, the Court finds that the estoppel principle is not applicable in relation to the State's argument[27] and that, in any case, its observation refers to the scope of testimonial evidence that, as has been established, the Court will duly assess based on the indicated criteria (*supra* para. 33).

37. Lastly, in its final arguments, the State indicated that, based on "[t]he transparency that the Court must maintain with regard to the administration of the probative burden, […] particular care must be taken to establish whether all the judges responsible for deciding a case are fully competent to perform this fundamental jurisdictional task." In particular, the State indicated the alleged "lack of competence that would arise as regards the [President of the Court] Diego García-Sayán if, [in] the final judgment in this case, […] some of the evidence requested, provided and weighed in the Apitz Barbera [case …] is assessed, particularly with regard to the expert opinions presented by Param Cumaraswamy, Jesús María Casal Hernández and Román Duque Corredor, […] because this judge recused himself from hearing that case; consequently, if the Court assesses this evidence […], it would be committing a serious error."

38. The Court finds that the State's observations on the possible use of these expert opinions (*supra* para. 8) are not based on facts that affect the impartiality of the President of the Court. Furthermore, the State's arguments are not related to the arguments set out by the President of the Court when recusing himself in the case of *Apitz Barbera et al.* Consequently, the Court rejects the State's observation. Nevertheless, the Court will not use these three expert opinions in this case, considering that the available body of evidence provides sufficient elements for deciding the merits of this case.

VI
PRIOR CONSIDERATIONS ON FACTS NOT INCLUDED IN THE APPLICATION

39. According to the representatives, "although it is not possible to learn the explicit content of the opinions […] that were grounds [for the decision of] the judges from

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[27] On this point, the Court recalls that, according to international practice, when a party to a litigation has adopted a specific position to its own benefit or to the detriment of the other party, under the estoppel principle, it cannot subsequently adopt a different position that contradicts the first one. *Cf. Case of Neira Alegría et al. v. Peru. Preliminary objections.* Judgment of December 11, 1991. Series No 13, para. 29; *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, para. 49, and *Case of Acevedo Buendía et al. ("Dismissed and Retired Employees of the Comptroller's Office") v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2009. Series C No. 198, para. 57. In addition, this principle has been used to grant full scope to the acknowledgement of responsibility made by a State or to an agreement signed by the State that it attempted to ignore at later stages of the proceedings. *Cf. Case of El Caracazo v. Venezuela. Reparations and costs.* Judgment of August 29, 2002. Series C No. 95, para. 52; *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, para. 49, and *Case of Acevedo Buendía et al. (costs.* Judgment of July 5, 2006. Series C No. 150, para. 49, and *Case of Acevedo Buendía et al. ("Dismissed and Retired Employees of the Comptroller's Office") v. Peru*, para. 57.

[either] the record of the removal of Judge Chocrón or the minutes of the meeting of the Judicial Commission," the facts of the case reveal a direct connection with the inspection carried out by the alleged victim in favor of Division General (National Guard) Carlos Rafael Alfonso Martínez." The representatives indicated that the General was "arrested on a military base, accused of alleged offenses committed in the context of anti-government activities" and was "the beneficiary of precautionary measures […] ordered by the Inter-American Commission, based on which there was an order for his release that had not been complied with." They added that "Mercedes Chocrón [Chocrón] was removed on February 3, 2003; [that is], a few days after having conducted the said judicial procedure." According to the representatives, this situation had "upset the Venezuelan government." In that regard, the representatives indicated that the provisional judges "began to be removed by the Judicial Commission in a discretionary manner and without any kind of disciplinary procedure" and that, "in many case, the political nature of these removals and appointments was evident." In addition, they referred to several cases involving judges who had been removed or whose appointment was "annulled" on grounds related to the alleged context of political polarization, especially "in the case of those who, through their rulings, had benefited individuals or institutions opposed to the Government," or that "occurred because those judges issued judicial rulings that were inconvenient or contrary to the Government's interests."

40. Responding to a question from the Court on whether the foregoing constituted a fact included in the application (*supra* para. 13), the Commission indicated that, during the proceedings on admissibility and merits before the Commission, "the petitioners alleged that the grounds for the removal of the [alleged victim] was a judicial action related to precautionary measures granted by the Commission in favor of Carlos Alfonso Martínez." However, it added that "[w]hen ruling on the merits, the Inter-American Commission considered that it was not necessary to analyze the reasons for the removal, because the procedure was sufficiently flawed to conclude that it constituted a violation of the American Convention." Thus, it indicated that, "[s]ince the reasons that led to the [alleged] victim's removal were not specified, the Commission [assumed] as a fact of the case that there was reasonable doubt about the real grounds for the decision."

41. For its part, the State indicated that, "[t]he statements made by the alleged victim on the reasons for her removal from her post are completely false, since she alleges that it was due to a judicial procedure at the residence of General Carlos Martínez Alfonso." The State indicated that "the facts alleged by the alleged victim are not the reason that she was removed from her post; but rather, it was the Judicial Commission's exercise of its discretionary powers to annul appointments of temporary judges."

42. In this regard, the Court notes that, according to its consistent case law, the alleged victims, their next of kin or their representatives may, under the proceedings before this Court, invoke the violation of rights other than those included in the application, provided that they do not allege facts that are not included therein,[28] since

[28] *Cf. Case of the "Five Pensioners" v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 155; *Case of Fernández Ortega et al. v. Mexico, Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, para. 218, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 228.

the application constitutes the factual framework of the proceedings.[29] For its part, given that a disputed case is substantially a litigation between a State and a petitioner or alleged victim,[30] the latter may refer to facts that help explain, contextualize, clarify or, as appropriate, refute facts that have been mentioned in the application, or respond to the claims made by the State,[31] based on their arguments and the evidence they provide, without jeopardizing the procedural balance or the adversarial principle, because the State has procedural opportunities to respond to these allegations at every stage of the proceedings. Moreover, supervening facts may be submitted to the Court at any stage of the proceedings before the judgment is delivered,[32] provided they are related to the facts of the proceedings.[33] In each case, the Court must determine the need to establish the facts, as they were presented by the parties or taking into account other elements of the body of evidence,[34] provided that the right of defense of the parties and the purpose of the *litis* are respected.

43. The Court observes that during the public hearing, the alleged victim referred to the fact alleged by the representatives regarding the possible relationship between her removal and the decision adopted in order to comply with the precautionary measures issued by the Inter-American Commission.[35] In addition, the Court underscores that a judicial remedy filed by the alleged victim it was indicated that "without doubt" her appointment was annulled following that judicial procedure to "ensure compliance with the [said] precautionary measures."[36]

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29 *Cf. Case of the "Mapiripán Massacre" v. Colombia. Preliminary objections* Judgment of March 7, 2005. Series C No. 122, para. 59; *Case of Fernández Ortega et al. v. Mexico*, *supra* note 28, para. 69, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 28, *para.* 134.

30 *Case of Manuel Cepeda Vargas v. Colombia*, *Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 49, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 56.

31 *Cf. Case of the "Five Pensioners" v. Peru*, *supra* note 28, para. 153; *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 30, para. 49, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 237.

32 Similarly, *Cf. Case of the "Five Pensioners" v. Peru*, *supra* note 28, para. 154; *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 30, para. 49, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay*, *supra* note 31, para. 224.

33 *Case of the "Five Pensioners" v. Peru*, para. 155; *supra* note 28, para. 155; *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 17, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 30, para. 49.

34 *Cf. Case of Yvon Neptune v. Haiti. Merits, reparations and costs.* Judgment of May 6, 2008. Series C No. 180, para. 19, and *Case of Rosendo Cantú et al. v. Mexico*. *Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 34, *and Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 28, para. 47.

35 During the public hearing, the alleged victim emphasized that she learned that her appointment had been annulled "after having conducted […] a judicial procedure under which the court was requested to visit General Carlos Alfonso Martínez and notify him of the precautionary measures granted by the Inter-American Commission." In addition, regarding the reasons for her removal, Mrs. Chocrón Chocrón indicated that "officially, [she] did not know what they were […], but [it happened] just after conducting a judicial procedure with General Carlos Alfonso Martínez." Testimony of Mercedes Chocrón Chocrón during the public hearing in this case.

36 *Cf.* appeal for annulment based on unconstitutionality and illegality and preventive *amparo* filed by Mercedes Chocrón on May 5, 2003, against Official letter No TPE-03-0152 of February 3, 2003 (merits file, volume II, folio 879).

44. Despite the foregoing, the Court has verified that, in its Report on Merits, the Commission did not refer to the fact that might have been the reason for the annulment of Mrs. Chocrón Chocrón's appointment. Subsequently, in its application, which established the case's factual framework, the Commission made no mention of that reason in either the body of the document or the footnotes, or of the alleged specific cases of the removal of judges for political motives. In addition, the said judicial remedy filed by the alleged victim (*supra* para. 43) was not forwarded as an attachment to the application in this case, but was presented by the representatives as part of their final written arguments. Lastly, although the Commission does refer to a "reasonable doubt" about the real reason behind the decision that annulled Mrs. Chocrón Chocrón's appointment, this assertion is not related to a specific fact in the application.

45. Therefore, the Court finds that the alleged fact that may have been the reason for the annulment of Mrs. Chocrón Chocrón's appointment does not form part of the factual framework of the application in this case.

46. In relation to the representatives' argument regarding the existence of a pattern of specific cases of the removal of judges for political motives, the Court recalls that, in order to analyze a pattern of this type, the Commission must have developed specific arguments based on which the respective case is placed in this context,[37] and it failed to do so in this matter. Additionally, having established that the alleged reason for the removal of the alleged victim does not constitute a fact in the application, the subsequent analysis of the constitution of an alleged context of the removal of judges for political motives is not appropriate in this case.

47. Based on the above, the Court concludes that it is not appropriate to rule on facts alleged by the representatives that were not submitted as such in the Commission's application.

VII
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION AND POLITICAL RIGHTS IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND TO ADOPT DOMESTIC LEGAL PROVISIONS

48. Regarding the alleged violation of Articles 8,[38] 25,[39] 1(1)[40] and 2[41] of the American Convention, the Commission indicated that "the facts of this case provide

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37 *Cf. Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 59.

38 Article 8(1) of the American Convention (Fair Trial) establishes 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.

39 Article 25(1) of the American Convention (Right to Judicial Protection) establishes that:

> 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

another example of the problems resulting from the provisional status of judges in the process of transition of the Judiciary in Venezuela." In particular, the Commission considered that "the transitional regulations applied to the [alleged] victim (which centered on the authority granted to the Judicial Commission […]) do not meet international standards on judicial independence and guarantees of due process." It also indicated that "this case reflects the harmful effects that the lack of guarantees in the transition process of the Judiciary in Venezuela has had in relation to the exercise of due process of law and the access to effective remedies."

49. The representatives agreed with the Commission and added that "a judicial restructuring process started in Venezuela in 1999, resulting in the prevalence of the concept of the provisional judge." Hence, "the so-called 'restructuring of the Venezuelan Judiciary,' which, […] eight years on, has not been completed, consists in the removal of judges and the appointment of new ones […] based on political criteria. [Therefore,] it can be said that […] it eliminated all the stability previously enjoyed by Venezuelan judges." They indicated that the creation of the "Judicial Commission […] launched a third stage of the 'judicial restructuring,' adopting a new formula for the removal from office of provisional and temporary judges, [by which] the provisional judges began to be removed in a discretionary manner and without any kind of disciplinary procedure." In this regard, they concluded that "[t]his mechanism for appointments and removals […] permitted the 'restructuring' of the Judiciary, sowing a climate of absolute terror among judges who simply became officials who could be freely appointed and removed."

50. The State affirmed that "Venezuela has an autonomous, independent and impartial Judiciary." In this regard, the State indicated that, "since 1999, a process of restructuring the Judiciary has been underway in Venezuela, aimed at adapting it to the principles of the new Constitution"; this entails "competitive examinations to obtain permanent posts, [which] is particularly complex taking into account the number of domestic courts, the new special competences created starting in 2000, and the need for all the competitive examinations to meet constitutional standards." Hence, the State indicated that, "[t]he process of restructuring the Venezuelan Judiciary required the temporary appointment of judges to cover the existing vacancies and to guarantee the continuity of the system for the administration of justice." Thus, it reiterated that "[t]hese non-permanent judges have been appointed exceptionally by a decision of the Judicial Emergency Commission, the Judicial Commission of the Supreme Court of

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though such violation may have been committed by persons acting in the course of their official duties.

40 Article 1(1) of the American Convention (Obligation to Respect Rights) stipulates that:

> 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.

41 Article 2 of the American Convention (Domestic Legal Effects) establishes that:

> 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.

Justice, or the plenary chamber of the highest court, without taking a competitive examination to obtain the post. […] Consequently, these judges, known as provisional judges, are not on a judicial career path and, therefore, are excluded from the benefits of stability and permanence."

51. To analyze the description of what happened to Mrs. Chocrón Chocrón and the scope that the parties attribute to the judicial restructuring process in Venezuela in recent years, the Court will now indicate the proven facts with regard to: (1) the general background of the restructuring, and (2) what happened to the alleged victim. Then, the Court will examine the legal disputes.

1. General background

1.1 Principal aspects of the judicial restructuring process in Venezuela

1.1.1. The National Constituent Assembly

52. According to the State, "[b]efore 1999, the Venezuelan Judiciary was experiencing a profound crisis that called into question its independence, autonomy and impartiality." Based on this and other reasons, a referendum was called which, on April 25, 1999, approved the convocation of a National Constituent Assembly (hereinafter "the Constituent Assembly"), "with a three-fold purpose: (i) to transform the State; (ii) to create a new legal system, and (iii) to achieve the effective functioning of a social and participatory democracy."

1.1.2. Decree on the Reorganization of the Judiciary

53. On August 12, 1999, the Constituent Assembly declared "the reorganization of all government bodies" due to the "grave political, economic, social, moral and institutional crisis."[42]

54. On August 19, 1999, the Constituent Assembly, by the Decree on the Reorganization of the Judiciary and the Penitentiary System (hereinafter "the Reorganization Decree"), established a Judicial Emergency Commission (hereinafter "the Emergency Commission").[43] The Commission's attributes included "preparation of the national plan for the evaluation and selection of judges, organization of the selection process for judges through competitive examinations for posts for all the courts and judicial circuits, and designation of the corresponding selection panels."[44] In addition, the decree established that the posts that became vacant would be filled by "the respective substitute or alternate judges, or at the discretion of the Commission, until the competitive examinations have been held; [and that i]n special cases the Emergency

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42 *Cf.* Decree on the reorganization of all government bodies issued by the National Constituent Assembly on August 12, 1999, published in Official Gazette No. 36,764 of August 13, 1999 (file of attachments to the application, volume I, attachment 1, folios 52 and 54).

43 *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 Official Gazette No. 36,805 of October 11, 1999 (file of attachments to the application, volume I, attachment 2, folios 55 to 62).

44 Article 3(5)(a) of the Decree on the Reorganization of the Judiciary and the Penitentiary System, *supra* note 43, folio 57.

Judicial Commission could appoint [them, provided they] complied with the requirements established for judges *pro tempore*[45] The said decree "eliminated the stability established by law for the judges in place, who could compete in the competitive examinations to be held to fill their posts."[46]

55. According to the Reorganization Decree, "the Constituent Assembly's declaration of a judicial emergency would be in force until the new Constitution of Venezuela was adopted."[47]

1.1.3. Constitution of the Bolivarian Republic of Venezuela

56. The Constitution of the Bolivarian Republic of Venezuela (hereinafter "the Constitution"), proclaimed by the Constituent Assembly on December 20, 1999,[48] established that the entry into a judicial career would be through competitive examinations. In addition, according to the Constitution, the Supreme Court of Justice (hereinafter "the SCJ") would create an Executive Directorate of the Judiciary to direct, regulate and administer the Judiciary, as well as to inspect and supervise the Republic's courts and public defenders. It also established that the judicial disciplinary jurisdiction would be the responsibility of the disciplinary tribunals determined by law. The disciplinary regime would be organized on the basis of the Ethics Code for Venezuelan Judges, which would be enacted by the National Assembly.[49] According to one of the transitory provisions of the Constitution, within the first year of its installation, the National Assembly would approve, *inter alia*, "the legislation on the judicial system."[50]

1.1.4. The Public Authorities Transition Regime and the Commission for the Restructuring and Operation of the Judicial System (CFRSJ)

57. On December 22, 1999, the Constituent Assembly decided on a Public Authorities Transition Regime that would "regulate the restructuring of the public sector in order to allow the Constitution to take effect immediately."[51]

58. According to the decree ordering this transition regime, the regime's provisions developed and complemented the transitory provisions established in the Constitution[52]

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45 Article 8 of the Decree on the Reorganization of the Judiciary and the Penitentiary System, *supra* note 43, folio 58.

46 Article 12 of the Decree on the Reorganization of the Judiciary and the Penitentiary System, *supra* note 43, folio 59.

47 Article 32 of the Decree on the Reorganization of the Judiciary and the Penitentiary System, *supra* note 43, folio 62.

48 *Cf.* 1999 Constitution of the Bolivarian Republic of Venezuela, published in Official Gazette No. 5,453 of March 24, 2000 (file of attachments to the answer to the application, volume IV, attachment 4, folios 1609 to 1655).

49 *Cf.* Article 267 of the Constitution, *supra* note 48, folio 1644.

50 *Cf.* Paragraph 5 of the fourth transitional provision of the Constitution, *supra* note 48, folio 1651.

51 *Cf.* Article 1 of the Decree on the Public Authorities Transition Regime of December 22, 1999, published in Official Gazette No. 36,920 on March 28, 2000 (file of attachments to the application, volume I, attachment 3, folios 63 to 67).

52 *Cf.* Article 2 of the Government Transition Regime Decree, *supra* note 51, folio 65.

and would be in force until the organization and operation of the institutions established in the Constitution had been fully implemented.[53]

59. Thus, the said decree created the Commission for the Restructuring and Operation of the Judicial System (hereinafter "the CFRSJ),[54] and decided that it would take over the powers granted to the Emergency Commission.[55] In addition, until the SCJ organized the Judiciary's Executive Directorate, "the responsibility of regulating and administering, inspecting and supervising the courts and public defenders," among other matters, would be exercised by the CFRSJ.[56] The responsibility for judicial discipline, which corresponded to the disciplinary tribunals, would be exercised by the CFRSJ until the National Assembly had enacted legislation to establish disciplinary procedures and tribunals.[57]

60. On September 29, 2000, the CFRSJ issued its rules of procedure, under which, its powers included "[h]earing and deciding on disciplinary procedures filed against judges" and "establishing the disciplinary regime."[58] In particular, article 23 of the CFRSJ rules of procedure established the type of sanctions that could be imposed on judges and other judicial officials and indicated that "[t]he sanctions of reprimand, suspension and dismissal [were] established in the Law on the Judicial Career, the Organic Law of the Judiciary and other applicable laws."[59]

1.1.5. The Judiciary's Executive Directorate and Judicial Commission

61. On August 2, 2000, the SCJ issued the Regulations for the Direction, Regulation and Administration of the Judiciary, under which it created both the Judiciary's Executive Directorate and the Judicial Commission.[60] According to these regulations, the Judiciary's Executive Directorate would initiate its functions on September 1, 2000, and, on that date, the CFRSJ would cease the functions that corresponded to the extinct Judiciary Council and would only be in charge of disciplinary functions while the legislation was enacted and the corresponding disciplinary tribunals were established.[61]

62. The SCJ Judicial Commission was created "for the purpose of exercising, by delegation, the functions of control and supervision of the Judiciary's Executive

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53 *Cf.* Article 3 of the Government Transition Regime Decree, *supra* note 51, folio 65

54 *Cf.* Article 22 of the Government Transition Regime Decree, *supra* note 51, folio 66.

55 *Cf.* Article 26 of the Government Transition Regime Decree , *supra* note 51, folio 66.

56 *Cf.* Article 22 of the Government Transition Regime Decree, *supra* note 51, folio 66.

57 *Cf.* Article 23 of the Decree on the Public Authorities Transition Regime, *supra* note 51, folio 66.

58 *Cf.* Article 3 of the Rules of Procedure of the Commission for the Restructuring and Operation of the Judicial System (CFRSJ), published in Official Gazette No. 37,080 of November 17, 2000 (file of attachments to the application, volume I, attachment 4, folios 68 to 72).

59 *Cf.* Article 23 of the CFRSJ Rules of Procedure, *supra* note 58, folio 72.

60 *Cf.* Articles 1 and 2 of the Regulations for the Direction, Governance and Administration of the Judiciary, issued by the Supreme Court of Justice on August 2, 2000, published in Official Gazette No. 37,014 of August 15, 2000 (file of attachments to the application, volume I, attachment 6, folio 133).

61 *Cf.* Article 30 of the Regulations for the Direction, Governance and Administration of the Judiciary, *supra* note 60, folio 138.

Directorate and any other functions that were established"[62] in the regulations for the administration of the Judiciary. For its part, article 28 established that, in addition to the functions delegated to it, the Judicial Commission had different functions to support the Executive Directorate.[63] As the Court will examine in detail in a subsequent section, SCJ case law indicates that the Judicial Commission is delegated by the Supreme Court to appoint judges of a provisional or temporary nature and to remove them when there are no disciplinary grounds (*infra* paras. 67, 68 and 74 to 76).

1.1.6. The Organic Law of the Supreme Court of Justice

63. The SCJ Organic Law, which had been decreed by the National Assembly on May 18, 2004, entered into force on May 20, 2004.[64] The Organic Law ordered the reorganization and restructuring of the Judiciary's Executive Directorate[65] and established that the CFRSJ would only be responsible for disciplinary functions while legislation was being enacted and the disciplinary jurisdiction and the corresponding disciplinary tribunals were created.[66] Also, its article 6 established that one of the powers of the SCJ is "to appoint and to swear in the judges of the Republic."[67]

1.1.7. Competitive examination for entry into the judicial career and promotion and evaluation procedures

64. On July 6, 2005, the SCJ Plenum adopted the "Competitive Examination for Entry into the Judicial Career and Promotion and Evaluation Procedures" (hereinafter "NEC"),[68] intended to "regulate entry, promotion and permanence in the judicial career [of any lawyer who fulfilled the requirements established in those rules] through competitive examinations and performance evaluations," as established in article 255 of the Constitution.[69]

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62 *Cf.* Article 2 of the Regulations for the Direction, Governance and Administration of the Judiciary, *supra* note 60, folio 133.

63 *Cf.* Article 28 of the Regulations for the Direction, Governance and Administration of the Judiciary, *supra* note 60, folios 137 and 138.

64 *Cf.* Organic Law of the Supreme Court of Justice (SCJ) of the Bolivarian Republic of Venezuela, enacted by the National Assembly on May 18, 2004, published in Official Gazette No. 37,942 of May 20, 2004 (file of attachments to the pleadings and motions brief, volume I, attachment E, folios 1320 to 1351).

65 *Cf.* Final and transitory derogation provision (a) of the SCJ Organic Law, *supra* note 64, folio 1349.

66 *Cf.* Final and transitory derogation provision (e) of the SCJ Organic Law, *supra* note 64, folio 1349

67 *Cf.* Article 6 of the Organic Law of the Supreme Court of Justice, *supra* note 64, folio 1330.

68 *Cf.* Competitive Examination for Entry into the Judicial Career and Promotion and Evaluation Procedures, issued by the Plenum of the SCJ on July 6, 2005, published in Official Gazette No. 38,282 of September 28, 2005 (file of attachments to the pleadings and motions brief, volume III, folios 1386 to 1401).

69 These procedures include the possibility of pre-registering in the Initial Training Program (ITP), which must be announced by the National School of the Judicature in two major national daily newspapers and on the SCJ website, setting out deadlines for the presentation of comments or objections from the community. Those who pass the ITP move on to the next stage, which consists of an "Knowledge examination" that includes written, oral and practical tests. Once the final result of the competition has been obtained, the selection panel prepares a merits-based list of participants. The vacant

1.1.8. Decision of the Supreme Court of Justice on the continuation of the comprehensive restructuring

65. By Decision No. 2009-0008 of March 18, 2009, the Supreme Court of Justice established that: (i) "[t]he comprehensive restructuring of the entire Venezuelan Judiciary" shall continue (article 1); (ii) "[t]o guarantee the efficiency and effectiveness of the restructuring process, the judges and administrative personnel of the Judiciary shall be subject to an obligatory institutional evaluation procedure" (article 2), and (iii) therefore, "[t[he posts that are vacant as a result of the restructuring process shall be filled by the Judicial Commission, and subsequently ratified by the Plenum of the Supreme Court of Justice" (article 4).[70]

1.1.9. Ethics Code for Venezuelan Judges

66. The "Ethics Code for Venezuelan Judges" was published on August 6, 2009,[71] and reformed on August 23, 2010.[72] The Code "establishes the ethical principles that guide the conduct of the judges of the Republic, as well as the disciplinary regime, in order to guarantee their independence and suitability." Article 39 of the Ethics Code establishes that "[t]he bodies that, in the exercise of their jurisdiction, have disciplinary powers over the judges of the Republic are the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court. They will hear and apply (in first and second instance, respectively), the disciplinary procedures for violations of the principles and obligations contained in the Code."[73] In addition, the Code establishes the actions that could constitute disciplinary offenses and the corresponding sanctions (articles 29 to 33), as well as the characteristics, conditions and stages of the disciplinary procedure (articles 51 to 90). Finally, it establishes that "[a]s of the entry into force of the […] Code, and once the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court have been established, the Commission for the Restructuring and Operation of the Judicial System will cease to function and, consequently, the cases that are underway will be interrupted and forwarded to the Judicial Disciplinary Tribunal."[74]

1.2. Provisional and temporary judges in Venezuela

67. In accordance with the Decree on the Reorganization of the Judiciary (*supra* paras. 53 to 55), both the Political and Administrative Chamber (hereinafter "the SPA") and the SCJ Constitutional Chamber maintain that the provisional and temporary judges

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posts must be filled with the applicants who have obtained the highest rankings in the competition. *Cf.* Articles 46, 47, 5, 6, 16, 22, 24 and 27 of the NEC, *supra* note 68 (folios 1387, 1389 to 1392, 1396 and 1397).

70 Decision No. 2009-0008 of the Supreme Court of Justice of March 18, 2009 (file of attachments to the pleadings and motions brief, volume III, attachment 17, folios 1402 to 1405).

71 *Cf.* Ethics Code for Venezuelan Judges, published in Official Gazette No. 39,236 of August 6, 2009 (file of attachments to the pleadings and motions brief, volume III, attachment 10, folios 1295 to 1315).

72 *Cf.* Reform of the Ethics Code for Venezuelan Judges, *supra* note 24.

73 *Cf.* Article 39 of the Ethics Code for Venezuelan Judges, *supra* note 71, folio 1304.

74 *Cf.* First transitory provision of the Ethics Code for Venezuelan Judges, *supra* note 71, folio 1313.

can be freely appointed and removed. Indeed, when deciding an administrative appeal for annulment in 2000, the SPA found that "the right to stability […] is reserved to judges who enter the judicial career by the path established in the Constitution and developed by law; that is, by competitive examinations, [and that] the said right refers to the post that the official occupies, from which he or she cannot be removed or suspended, except for the reasons and according to the procedures that have been established; in other words, following compliance with the applicable disciplinary regime."[75] In addition, the SPA stated that:

> Those holding a post for which they have not competed lack the right being examined and, consequently, may be removed from the post in question under the same conditions that it was obtained; that is, without the administrative authority being obliged to justify the removal according to the provisions of the disciplinary regime, which are applicable - we insist – only to career judges; that is, those judges who obtain a post following a competitive examination.[76]

68. This SPA case law has been reiterated in other judgments, including the one handed down in the 2004 ruling on the appeal for annulment filed by Mrs. Chocrón Chocrón (*infra* paras. 87 and 88), and in another judgment delivered in 2006,[77] which reiterated the precedent established for the alleged victim. The Constitutional Chamber also upheld this case law[78] on finding that:

> Provisional judges […] occupy judicial posts, but they do not enjoy the status of career judges, because they were not hired as the result of a competitive examination in which, following different examinations (written, practical and oral), they were evaluated. The Judicial Commission appointed them, delegated to do so by the Plenum of the Supreme Court of Justice, owing to

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75 *Cf.* judgment No. 02221 of the Administrative and Political Chamber of the Supreme Court of Justice of November 28, 2000 (file of attachments to the answer to the application, volume XII, attachment 20, folio 5814).

76 *Cf.* judgment No. 02221 of the Administrative and Political Chamber of the Supreme Court of Justice, *supra* note 75, folio 5814.

77 Judgment No. 1225 of the Administrative and Political Chamber of the Supreme Court of Justice of May 17, 2006. This judgment emphasized that a judge's stability is obtained through the competitive examination process and that this stability is not enjoyed by provisional judges (file of attachments to the answer to the application, volume XII, attachment 21, folios 5820 to 5826).

78 In two 2005 judgments, of December 13 and 16, the Constitutional Chamber of the Supreme Court of Justice found that, "[I]ndeed, as already indicated by the Political and Administrative Chamber, provisional judges who enter the Judiciary to fill a vacancy do not enjoy the stability enshrined in the Constitution, because they are officials whose entry has not been confirmed by a competitive examination. Thus, they can be removed from their posts without the need for an administrative procedure before their removal." Judgments Nos. 5111 and 5116 of the Constitutional Chamber of the Supreme Court of Justice of December 13 and 16, 2005 (file of attachments to the answer to the application, volume XII, attachments 23 and 24, folios 5852, 5862 and 5863). Also in its judgment No. 1413 of July 10, 2007, the Constitutional Chamber indicated that it "ha[d already] ruled, with regard to posts held on a temporary basis, that they do not confer on officials - be they judicial or administrative - a permanent status and, consequently, they do not enjoy the rights inherent in the career, such as, stability in the post. Hence, they may very well be suspended or removed from the post in keeping with the powers of the corresponding judicial or administrative authority." Judgment No. 1413 of the Constitutional Chamber of the Supreme Court of Justice of July 10, 2007 (file of attachments to the answer to the application, volume XII, attachment 22, folio 5836).

> the need to fill judicial posts while the said process of restructuring and reorganization of the Judiciary was completed. […] Evidently, there is a difference between career judges and provisional judges: the former acquire their permanence after passing the examination; in contrast, provisional judges are appointed in a discretionary manner, following an analysis of their credentials. Career judges enjoy stability and can only be sanctioned or removed from their posts if it is proved that, during a public oral hearing with guarantees of defense […] they committed the disciplinary violations established in the Organic Law of the Council of the Judicature and the Law on the Judicial Career. This is not the case with provisional judges, who may be removed from their posts in the same way as they were appointed: discretionally.[79]

69. When assessing the situation of the provisional status of judges in Venezuela in the case of *Reverón Trujillo*, the Court indicated that, "from August 1999 until [2009], provisional judges did not have stability in their posts; they are appointed discretionally and can be removed without being subject to any pre-established procedure."[80] In addition, at the time of the facts of the *Reverón Trujillo* case (from 2002 to 2004) – around the same time as the facts of the *Chocrón Chocrón* case (2003 and 2004) – "the percentage of provisional judges in the country was approximately 80%." However, "[i]n 2005 and 2006, a program was implemented by which these provisional judges appointed discretionally were able to obtain their permanence. The number of provisional judges had fallen to approximately 44% by the end of 2008."[81]

70. The file of this case includes a speech inaugurating the 2010 judicial year, in which the President of the Supreme Court of Justice[82] stated that "a total of 1,900 judges […] constitute [the] judicial personnel throughout the country."[83] Regarding the results of the work of the Judicial Commission, she reported that "during 2010, […] 206 provisional judges, 858 temporary judges and 315 judges *pro tem* were appointed." In this regard, the President clarified that "these appointments are not the result of new posts of judge, but rather they respond to vacancies that have occurred in the existing structure of the Judiciary and do not necessarily entail the creation of new courts; rather, most of them fill the need to continue serving the public." In particular, she indicated that, during 2010, the Judicial Commission had "annulled 67 appointments of provisional or temporary judges and ordered the precautionary suspension of 40 permanent judges." With regard to the Restructuring and Operation Commission, the SCJ President mentioned that, in 2010, "106 final rulings [were delivered]; namely, 23 reprimands, 13 suspensions, 40 removals, 21 declarations of responsibility, and 9

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79 *Cf.* judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice of December 20, 2007 (file of attachments to the answer to the application, volume XII, attachment 18, folios 5783).

80 *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 106

81 *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 106.

82 Speech by the President of the Supreme Court of Justice inaugurating the judicial year. 2010 Annual Report on the Venezuelan Judiciary (merits file, volume II, folios 914 to 931).

83 Speech by the President of the Supreme Court of Justice inaugurating the judicial year, *supra* note 82, folio 915.

acquittals."[84]

71. According to the information mentioned in this speech by the President of the SCJ of Venezuela, the Court observes the following: (i) in 2010, the Judicial Commission appointed 1,064 provisional and temporary judges, which represents 56% of all the judges in Venezuela, based on a total of 1,900 judges throughout the country, and (ii) the Judicial Commission annulled 67 appointments and the CFRSJ filed 40 disciplinary procedures that ended in removal. For his part, expert witness Canova indicated that "a review […] of the decisions of the Judicial Commission published on the [SCJ] website in 2010 […] revealed that at least 58 provisional and temporary judges from different judicial circuits in Venezuela and of different categories or levels were removed [by the said Commission] in this free, discretionary manner […] without a prior proceeding or justification."[85]

2. Facts in relation to Mrs. Chocrón Chocrón

2.1. Authority of the Judicial Commission to annul the appointment of judges

72. The Judicial Commission was created by the Supreme Court of Justice on August 2, 2000, by means of the Regulations for the Direction, Governance and Administration of the Judiciary. With the creation of this body, the Operation and Restructuring Commission ceased its administrative functions and only remained responsible for disciplinary functions, while the corresponding disciplinary tribunals were being established (*supra* para. 61).

73. The SCJ Judicial Commission was created "in order to exercise, by delegation, the functions of control and supervision of the Judiciary's Executive Directorate and other functions established" in the said Direction, Governance and Administration Regulations[86] (*supra* para. 62). According to article 26 of these regulations, the Commission comprises six magistrates representing each of the Supreme Court's Chambers.[87] In turn, article 28 of the Regulations for the Direction, Governance and Administration of the Judiciary establishes that the Judicial Commission will have the following powers, among others:

> a. To approve the regulations issued by the Judiciary's Executive Directorate.
> b. To propose to the Plenum the appointment and removal of the three Directors who compose the Steering Committee of the Judiciary's Executive Directorate.
> c. To appoint and replace the Coordinator of the Steering Committee of the Judiciary's Executive Directorate.

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[84] Speech by the President of the Supreme Court of Justice inaugurating the judicial year, *supra* note 82, folio 925.

[85] Affidavit prepared by expert witness Antonio Canova González on January 20, 2011 (merits file, volume II, folio 636).

[86] Article 2 of the Regulations for the Direction, Governance and Administration of the Judiciary, *supra* note 60, folio 133.

[87] *Cf.* Article 26 of the Regulations for the Direction, Governance and Administration of the Judiciary, *supra* note 60, folio 137.

d. To propose to the Plenum the policies that the Judiciary's Executive Directorate should follow and ensure compliance.
e. To submit the draft regular and special budgets of the Judiciary to the Plenum for discussion and approval.
f. To keep the Plenum informed periodically on its actions and those of the Judiciary's Executive Directorate.
g. To evaluate, at least on a quarterly basis, the reports presented by the Steering Committee of the Judiciary's Executive Directorate on the results of its work.
h. To propose to the Plenum the regulations for the organization and operation of the General Inspectorate of Courts, the Public Defense Service, and the Judicial School.
i. To monitor the General Inspectorate of Courts, the Public Defense Service and the Judicial School.
j. To propose to the Plenum the candidates for the post of Inspector General of Courts and his or her deputy. It may also propose their removal.
k. To propose to the Plenum the candidates for the post of Director of the Public Defense Service and his or her deputy. It may also propose their removal.
l. To propose to the Plenum the candidates for the post of Director of the Judicial School. It may also propose his or her removal."[88]

74. In the instant case, the parties agree that one of the functions delegated to the Judicial Commission by the Supreme Court of Justice is to appoint provisional and temporary judges, and to remove them when there are no disciplinary grounds. Specifically, the SPA of the SCJ has indicated that the "Judicial Commission appoints [the judges], by delegation from the Plenum of the Supreme Court of Justice, owing to the need to fill judicial posts while the above-mentioned process of the restructuring and reorganization of the Judiciary is completed."[89] The SCJ considered that these powers did not negate the job stability that administrators of justice should have, because:

> The Judicial Commission is authorized to annul the appointment of judges who have entered the Judiciary without taking the respective competitive examination, avoiding the prior administrative procedure, since their stability

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88 The internal rules of procedure of the Supreme Court of Justice also establish specific functions for the Judicial Commission, namely: "[t]o approve the regulations issued by the Judiciary's Executive Directorate. To submit to the consideration of the Plenum the policies that the Judiciary's Executive Directorate should follow and ensure compliance"; "[t]o submit the draft budgets for the Judiciary's Executive Directorate to the Plenum for discussion and approval"; "[t]o keep the Plenum informed periodically on its actions and those of the Judiciary's Executive Directorate"; "[t]o evaluate, at least on a quarterly basis, the reports provided by the Judiciary's Executive Directorate on the results of its work"; "[t]o propose to the Plenum the regulations for the organization and operation of the General Inspectorate of Courts, the Public Defense Service and the Judicial School," and "[t]o submit to the consideration of the Plenum the policies on the reorganization of the Judiciary and their norms." Cf. Article 79 of the Internal Rules of Procedure of the Supreme Court of Justice, *supra* note 23. In 2009, the Judicial Commission's competence to fill vacancies arising from the institutional evaluation of all the judges during the Judiciary's comprehensive restructuring process was confirmed. Subsequently, those posts had to be ratified by the Plenum of the Supreme Court of Justice. Cf. Decision No. 2009-0008 of the Supreme Court of Justice, *supra* note 70, folios 1402 and 1403.

89 Judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 79, folio 5783.

would be subject to their having sat the competitive examination and obtained a permanent post."[90]

75. Notwithstanding the foregoing, at the domestic level, there were differences of opinion between the Political and Administrative Chamber and the Constitutional Chamber of the Supreme Court of Justice with regard to the Judicial Commission's competence to annul appointments of judges based on "comments" submitted to this Commission. Initially, the Political and Administrative Chamber considered that an administrative decision, based on "comments submitted to the Commission," to "annul" the appointment of a provisional judge "means that it gave that decision a connotation that can only be understood as a punishment, implying that an error had been committed."[91] Thus, according to the said Chamber, "the competence to order [the removal] corresponded to the Restructuring and Operation Commission […], and not to the Judicial Commission."[92] Nevertheless, the Chamber considered that "this does not entail a generalization" from which it could be "inferred that, in all cases in which the Judicial Commission considered that judges must be removed […], it has to open an administrative procedure," because the Commission "retains the power to annul the appointments it makes, in keeping with the powers conferred by the Plenum, exercising a necessarily prompt process."[93] Hence, the Chamber concluded that, "should the Judicial Commission presume that a long-serving judicial official has committed an error, the appropriate step […] is to forward the matter to the Restructuring and Operation Commission […] so that […] it may examine the matter, respecting [the official's] constitutional rights."[94]

76. This opinion of the Political and Administrative Chamber was subsequently annulled by the Constitutional Chamber of the Supreme Tribunal, which considered that "the decisions annulling the appointment of provisional judges named by the Judicial Commission are not disciplinary decisions, but rather decisions taken in exercise of discretionary powers, [so that] a decision of this nature does not entail the application of a sanction resulting from an error, but is a decision based on opportuneness."[95]

2.2. Appointment of Mrs. Chocrón Chocrón as a temporary judge

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90 Judgment No. 01989 of the Supreme Court of Justice of August 2, 2006. Cited in: Judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 79, folio 5768

91 Judgment of the Political and Administrative Chamber of the Supreme Court of Justice of August 7, 2007. Cited in: Judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 79, folio 5771.

92 Judgment of the Political and Administrative Chamber of the Supreme Court of Justice of August 7, 2007. Cited in: Judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 79, folio 5772.

93 Judgment of the Political and Administrative Chamber of the Supreme Court of Justice of August 7, 2007. Cited in: Judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 79, folio 5773.

94 Judgment of the Political and Administrative Chamber of the Supreme Court of Justice of August 7, 2007. Cited in: Judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 79, folios 5773 and 5774.

95 Judgment No. 2414 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 79, folio 5786.

77. From 1982 to 2003, Mrs. Chocrón Chocrón held several temporary posts within the Judiciary. The time spent in these posts adds up to approximately six years and four months as a judge in the Judiciary.[96]

78. On October 28, 2002, by Decision No. 2002-1162, the Judicial Commission appointed Mrs. Chocrón Chocrón Judge of the First Instance Court of the Caracas Metropolitan Area Criminal Judicial Circuit "on a temporary basis," owing to the resignation of the judge who had been occupying this post. The Judicial Commission founded her appointment on "the urgency of filling the vacancies that had occurred in the country's different courts, to avoid bringing judicial proceedings to a standstill, and

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[96] Mercedes Chocrón Chocrón entered the Judiciary as Judge Rapporteur of the Ninth Criminal Court of First Instance of the Federal District and Miranda State Judicial Circuit. Mrs. Chocrón Chocrón was appointed to that post on February 15, 1982, and held it "approximately" until the end of 1984. *Cf.* certification issued on October 25, 1982, by the Ninth Criminal Court of First Instance of the Federal District and Miranda State Judicial Circuit (file of attachments to the application, volume I, attachment 17, folio 437 and file of attachments to the answer to the application, volume XII, attachment 28, folio 5880); testimony given by Mercedes Chocrón Chocrón on April 1, 2011, on post held as Judge Rapporteur of the Ninth Criminal Court of First Instance of the Federal District and Miranda State Judicial Circuit (merits file, volume II, folio 874); income tax withholding slips from January 1, 1983, to December 31, 1983, of the beneficiary Mercedes Chocrón Chocrón (merits file, volume II, folio 878), and income tax withholding slips from January 1, 1984, to December 31, 1984, of the beneficiary Mercedes Chocrón Chocrón (merits file, volume II, folio 877). Certification that, from May 13 to June 28, 1991 (that is, for 47 days), Mrs. Chocrón Chocrón served as a substitute for the Permanent Judge of the Nineteenth Superior Criminal Court of the Federal District and Miranda State Judicial Circuit. *Cf.* certification issued on July 25, 1991, by the Nineteenth Superior Criminal Court of the Federal District and Miranda State Judicial Circuit (file of attachments to the application, volume I, attachment 18, folio 439 and file of attachments to the answer to the application, volume XII, attachment 28, folio 5881). Subsequently, from 1994 to 1997, Mrs. Chocrón worked as Temporary Judge in her capacity as First Associate Judge of the Sixteenth Criminal and Public Patrimony Oversight Court of the Caracas Metropolitan Area Judicial Circuit. In point of fact, Mrs. Chocrón served from September 19 to October 4, 1994; from December 12, 1994, to January 23, 1995; from June 23 to September 29, 1995; from February 12 to 29, 1996; from March 27 to June 20, 1996, and from February 17 to May 14, 1997. *Cf.* certification issued on December 22, 1999, by the Sixteenth Criminal and Public Patrimony Oversight Court of the Caracas Metropolitan Area Judicial Circuit (file of attachments to the application, volume I, attachment 19, folio 441 and file of attachments to the answer to the application, volume XII, attachment 28, folio 5882). In 1996 and 1997, Mrs. Chocrón served as a temporary and provisional judge in her capacity as Second Substitute of the Thirty-second Criminal Court of First Instance. She occupied this post from June 25 to September 30, 1996, and from September 15 to October 3, 1997. *Cf.* certification issued on July 23, 1999, by the Thirty-second Criminal and Public Patrimony Oversight Court of the Caracas Metropolitan Area Judicial Circuit (file of attachments to the application, volume I, attachment 20, folio 443 and file of attachments to the answer to the application, volume XII, attachment 28, folio 5883). In addition, Mrs. Chocrón was appointed Second Associate Judge of the Thirty-seventh Court of the Caracas Metropolitan Area Criminal Circuit from October 26 to November 10, 1998, and from December 21, 1998, to February 2, 1999. *Cf.* certification issued on July 16, 1999, by the Thirty-seventh Court of the Caracas Metropolitan Area Criminal Circuit (file of attachments to the application, volume I, attachment 21, folio 445 and file of attachments to the answer to the application, volume XII, attachment 28, folio 5879). Also, from 1999 to 2001, Mrs. Chocrón served as First Associate Judge of the Transitory Criminal Proceedings Regime. She held that post from July 30, 1999, to April 3, 2001. *Cf.* Special issue of the Official Gazette of the Bolivarian Republic of Venezuela No. 5,370, Decision No. 75 of July 16, 1999, page 45 (file of attachments to the application, volume I, attachment 22, folio 447 and 448) and certification issued on April 3, 2001, by the Regional Administrative Directorate of the Capital District of the Judiciary's Executive Directorate indicating that Mrs. Chocrón had served as regular Judge of First Instance of the Transitory Criminal Proceedings Regime from July 30, 1999, to April 3, 2001 (file of attachments to the application, volume I, attachment 23, folio 452).

having examined the credentials of the applicants."[97] Subsequently, in an official letter dated October 30, 2002, the President of the SCJ Plenum notified Mrs. Chocrón of her appointment and, in this regard, summoned her "[b]ecause she had been appointed by the Judicial Commission" as a temporary judge. The official letter indicated that Mrs. Chocrón was notified "for reasons of urgency, so that, if she accepted the post, [she was requested] to acknowledge receipt and appear before the President of the corresponding Criminal Judicial Circuit to be sworn in." The President of the SCJ Plenum stated that "the conclusion of the publication process was pending in order to find out if any objections would be raised to the appointment [of Mrs. Chocrón Chocrón]."[98] Neither the decision appointing Mrs. Chocrón Chocrón as a temporary judge nor the official letter notifying her of this appointment cited any normative provision regulating the conditions or the time frame for her appointment to take effect.

79. On November 5, 2002, Mrs. Chocrón Chocrón sent a letter to the President and the other justices of the SCJ "indicat[ing her] acceptance of [the said] post."[99] Thus, the swearing in of Mrs. Chocrón Chocrón as a temporary judge before the President of the Criminal Judicial Circuit of the Caracas Metropolitan Area is recorded in minutes dated November 11, 2002.[100]

80. On November 25, 2002, the Judiciary's Executive Directorate "inform[ed] the public" of the "list of candidates," including Mrs. Chocrón Chocrón, for a series of judicial posts in the Caracas Metropolitan Area. This publication established that "the public [was] invited to submit objections to and/or complaints about any of [those] preselected [on the list] to the Judiciary's Executive Directorate within eight days of the date of [the] publication […] in an original letter, that included name and surname, identity number, signature, and occupation."[101] In this way, the public had until December 3, 2002, to submit any possible objection to and/or complaint about any of the candidates. The case file does not reveal that any objection to and/or complaint about Mrs. Chocrón Chocrón's candidacy was made within the said time frame.

2.3. Removal of Mrs. Chocrón Chocrón and remedies filed against this decision

81. On February 3, 2003, three months after Mrs. Chocrón Chocrón had been appointed, the Judicial Commission met and, among other matters, decided to annul the appointment of the alleged victim as a temporary judge "because of […] comments

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97 *Cf.* Decision No. 2002-1162 of the Judicial Commission of the Supreme Court of Justice of October 28, 2002, (file of attachments to the answer to the application, volume XII, folios 5870 to 5872 and file of attachments to the application, volume I, attachment 24, folios 454 to 456), and letter from Mercedes Chocrón to the President and Justices of the Supreme Court of Justice dated November 5, 2002 (file of attachments to the application, volume I, attachment 26, folio 461).

98 Official letter No. TPE-02-1901 from the President of the Plenum of the Supreme Court of Justice dated October 30, 2002 (file of attachments to the application, volume I, attachment 25, folio 459).

99 Letter addressed by Mercedes Chocrón to the President and other Justices of the Supreme Court of Justice, *supra* note 97, folio 461.

100 Minutes No. 008-02 of November 11, 2002 (file of attachments to the application, volume I, attachment 27, folio 463).

101 List of candidates published by the Judiciary's Executive Directorate on November 25, 2002 (file of attachments to the application, volume I, attachment 28, folio 465).

made to [the Supreme Court of Justice]."[102] The Judicial Commission stated the following:

> "Additional Points:" Consideration of the comments presented by Justices concerning the appointment of Mercedes Chocrón Chocrón to the post of Judge of the Criminal Court of First Instance of the Caracas Metropolitan Area Judicial Circuit. Those present stated that the appointment as temporary judge was conditional on no objections being presented and that it was obligatory to take into consideration the opinions of the Justices, recalling that, in any case, temporary judges can be replaced because this Supreme Court is empowered to appoint them until the posts are filled through the respective competitive examinations. Consequently, having studied the comments made to this court, it is decided to annul the appointment of Mercedes Chocrón to the post of temporary judge of the Criminal Court of First Instance of the Caracas Metropolitan Area Judicial Circuit decided at the session held on October 28, 2002."[103] (Underlining added)

82. On February 3, 2003, Mrs. Chocrón Chocrón was informed of the decision adopted against her by the Judicial Commission, although no reference was made to the said "comments" that had apparently been determinant for annulling her appointment, and their content was not indicated.[104] On February 25, 2003, the Judiciary's Executive Directorate of the SCJ published in a national newspaper that the appointment of the alleged victim had been annulled and that "another temporary judge [had been] appointed to fill the resulting vacancy."[105] The content of the comments was not specified at that time either. In addition, during the public hearing in this case, Mrs. Chocrón Chocrón stated that those who "removed [her] from the post never informed [her] of the content of the comments presented to the Judicial Commission."[106]

83. On February 26, 2003, Mrs. Chocrón Chocrón filed an administrative appeal for reconsideration before the Judicial Commission, indicating that the decision had been issued without the existence "against [her] of any administrative inquiry or file." She indicated that her "performance in the post had been in keeping with the proper conduct of a judge strictly respecting legality and good practice."[107]

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102 Minutes of the meeting of the Judicial Commission of the Supreme Court of Justice of February 3, 2003 (file of attachments to the application, volume I, attachment 30, folio 469 and 470).

103 Minutes of the meeting of the Judicial Commission of the Supreme Court of Justice, *supra* note 102, folios 469 and 47. On February 5, 2003, the court that had been assigned to Mrs. Chocrón was suspended. *Cf.* Minutes No. 009-03 of the Fortieth Supervisory Court of First Instance of the Caracas Metropolitan Area Judicial Circuit of February 5, 2003 (file of attachments to the application, volume I, attachment 31, folio 473).

104 Official Letter No. TPE-03-0152 of February 3, 2003, from the President of the Plenum of the Supreme Court of Justice (file of attachments to the application, volume I, attachment 29, folio 467).

105 Publication by the Judiciary's Executive Directorate in the newspaper *El Nacional* of February 25, 2003 (file of attachments to the application, volume I, attachment 32, folio 475).

106 Testimony of Mercedes Chocrón Chocrón, *supra* note 35.

107 Appeal for reconsideration filed by Mercedes Chocrón before the President and other members of the Judicial Commission of the Supreme Court of Justice on February 26, 2003 (file of attachments to the application, volume I, attachment 33, folio 477).

84. On June 16, 2003, the Judicial Commission declared the appeal for reconsideration filed by Mrs. Chocrón Chocrón inadmissible, considering that "the appellant's appointment was made in the exercise of the eminently discretionary powers of the competent body, which, in principle, is called on to guarantee the continuity of the service."[108] The Judicial Commission indicated that:

> The appointment of the appellant, as revealed by her status as a "temporary judge," was justified by the urgent need to fill in for the total absence of the permanent judge, and given the lack or non-existence of substitute judges appointed by the corresponding competitive examination. Thus, this appointment was the result of the application of a measure designed to ensure the continuity of the service of the administration of justice, and due to the existence of a vacuum in the usual way of meeting the need.[109]

85. In addition, the Commission indicated that the decision to "annul" the appointment "is not a disciplinary decision; in other words, it is not the application of a sanction resulting from an error; but rather a decision based on reasons of opportunity." It added that; (i) "the appellant became a member of the Judiciary but did not do so through the only way to enter the judicial career established in the Constitution, which is the competitive examination process"; (ii) "since the appellant failed to enter the judicial career, it is clear that […] she did not enjoy the benefits conferred by the judicial career, which include, above all, stability in the exercise of her functions"; (iii) "since the appellant does not enjoy stability in the exercise of the post, it is evident that the body empowered to appoint her could use the same power and, consequently, proceed to revoke freely the appointment. This implies the exercise of a broad discretionary power that has no substantive limits," and (iv) that the decision adopted did not constitute a disciplinary decision, but rather was "a decision based on reasons of opportunity; reasons that, therefore, cannot be questioned or subject to review."[110]

86. On May 5, 2003, Mrs. Chocrón Chocrón filed an administrative appeal for annulment based on unconstitutionality and illegality, together with an application for preventive *amparo* before the SPA of the SCJ against the decision annulling her appointment.[111] She alleged: (i) lack of competence of the Judicial Commission, because "the only body competent to issue administrative decisions in exercise of disciplinary powers [was the current CFRSJ];"[112] (ii) the total absence of proceedings, which was supported by the "failure to mention in any section of the decision that is the purpose of the […] appeal for annulment, the result of the opening of any administrative inquiry, or of the procedural rules applicable [to it], or whether the interested party was

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108 Decision of the Judicial Commission of the Supreme Court of Justice of June 16, 2003 (file of attachments to the application, volume I, attachment 34, folio 481).

109 Decision of the Judicial Commission of the Supreme Court of Justice, *supra* note 108, folio 481.

110 Decision of the Judicial Commission of the Supreme Court of Justice, *supra* note 108, folio 482.

111 Appeal for annulment based on unconstitutionality and illegality, together with an application for preventive *amparo* filed by Mercedes Chocrón, *supra* note 36, folios 879 to 913.

112 Appeal for annulment based on unconstitutionality and illegality, together with an application for preventive *amparo* filed by Mercedes Chocrón, *supra* note 36, folios 901 and 902

notified of a preliminary investigation […] so that she could submit her arguments and offer evidence,"[113] and (iii) the lack of justification, because the administrative decision on her "removal [was] not founded, and did not even describe the 'comments presented to [that] court.'"[114] In this regard, she argued that the preventive *amparo* should be granted, because her "right to enjoy stability in the judicial career [was being] violated, and also to be removed or suspended from her post by means of the procedure expressly established by law."[115]

87. The SPA of the SCJ declared the administrative appeal for annulment inadmissible[116] as follows:

> In order to clarify the limits of the competence, particularly with regard to the separation of an official of the Judiciary, it is essential to differentiate between the removal arising from a disciplinary decision and when, to the contrary, this occurs through a removal decision, which is equivalent to annulling the appointment. Thus, it should be clarified that, nowadays, the entire disciplinary function (that is, with regard to permanent judges who have achieved guaranteed stability because they have passed the corresponding competitive examination, and with regard to provisional judges) is managed exclusively by the Commission for the Restructuring and Operation of the Judicial System, a transitory body created to act until the disciplinary jurisdiction is established. The case is different when it refers to the direct removal of a provisional or temporary official, without any disciplinary reason because, currently, that power is the responsibility of the Judicial Commission of the Supreme Court of Justice, by express delegation of the Plenum. It is worth noting that the Judicial Commission has the power both to appoint judges provisionally and to annul those appointments when the majority of its members choose to do so and provided that there is no disciplinary reason that obliges the body responsible for applying sanctions to take action. In this way, and based on this reasoning, the Political and Administrative Chamber does not waver in confirming the competence of the Judicial Commission of the Supreme Court of Justice to take action, within the indicated limits, as regards the appointment and removal of officials appointed on a provisional basis.[117]

88. With regard to the arguments concerning the absolute and total absence of procedure and the lack of justification for taking the decision, the SPA indicated that:

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113 Appeal for annulment based on unconstitutionality and illegality, together with an application for preventive *amparo* filed by Mercedes Chocrón, *supra* note 36, folio 906.

114 Appeal for annulment based on unconstitutionality and illegality, together with an application for preventive *amparo* filed by Mercedes Chocrón, *supra* note 36, folio 909.

115 Appeal for annulment based on unconstitutionality and illegality, together with an application for preventive *amparo* filed by Mercedes Chocrón, *supra* note 36, folio 911.

116 Judgment No. 01798 of the Political and Administrative Chamber of the Supreme Court of Justice of October 19, 2004, (file of attachments to the application, volume I, attachment 35, folios 485 to 500).

117 Judgment No. 01798 of the Political and Administrative Chamber of the Supreme Court of Justice, *supra* note 116, folios 496 and 497.

> As is recognized, any disciplinary sanction established in the Law on the Judicial Career must necessarily be preceded by the corresponding administrative procedure, whether the individual in question is a career official or an official who can be freely appointed and removed; while, when the removal of a judge who has been appointed provisionally is sought, the administrative decision ordering his separation from the post is not subject to any procedure, precisely because the judge's guarantee of career stability and, consequently, the right to be subject to the respective procedure, are achieved through the competitive examination that is now enshrined in the Constitution as a *sin qua non* requirement for accessing the post of permanent or career judge. […] As can be seen, the appellant is in the position of those who have entered the Judiciary on a temporary basis, and her stability is therefore subject to the respective competitive examination process. This means that, in these circumstances, the claims made by the lawyer, Mercedes Chocrón, lack sustainable legal grounds, because, although she could be appointed to the post of judge of the First Instance Court of the Caracas Metropolitan Area Judicial Circuit by the Judicial Commission, this appointment must be interpreted as being temporary. In that regard, this Chamber finds that, just as the Judicial Commission had the power to appoint her directly without her having taken the respective competitive examination, it had the same competence to annul her appointment without the requirement to submit her to any procedure, or the obligation to provide specific legal grounds for her removal, given that her stability would always be subject to her taking the competitive examination to earn permanence in the post, which has not been verified in her case and which, therefore, does not permit changing the results obtained."[118] (Underlining added)

89. The Court observes that, in this case, the Judicial Commission and the SPA applied the criterion according to which the Judicial Commission is competent to annul the appointments of provisional and temporary judges without any kind of justification, taking into account that they are considered to be officials who can be freely removed. In view of the relationship of this issue with the violations alleged in the instant case, the first legal dispute that the Court will decide relates to the compatibility of this criterion with the American Convention.

3. The principle of judicial independence in relation to the free removal of provisional and temporary judges

3.1. Arguments of the parties

90. The Commission indicated that "in contrast to other public posts where a free appointment and removal arrangement may operate, in the case of judges the guarantee of stability in the exercise of their post should be reinforced." It added that the guarantees of judicial independence "make no distinction between those appointed provisionally, temporarily or permanently." In addition, it indicated that, in the case of

[118] Judgment No. 01798 of the Political and Administrative Chamber of the Supreme Court of Justice, *supra* note 116, folio 498.

provisional and temporary judges "the time frame or term for their permanence in the post should be defined," "in order to guarantee that these judges will not be removed from their posts because of the rulings they make or based on arbitrary decisions" against them.

91. The State indicated that, "[t]he absence of a guarantee of stability and permanence for provisional judges is fully and legally justified, [because] provisional judges enter the Judiciary without having passed the competitive examination." In this regard, the State indicated that "the standard [of judicial independence] argued by the [Inter-American Commission] was not constituted in this case," because it "does not conform to the provisions of Article 38(d) of the Statute of the International Court of Justice, since [it did not take into account] the teachings of [Cecilia Medina Quiroga,] one of the most highly qualified publicists of the various nations."[119] The State argued that, according to the said legal doctrine:

> There is no single solution for designing a system of appointments, promotions and transfers of judges that fully provides for their independence. There are States in which the appointment is left exclusively to the Executive; others, in which the system involves a second body, which can be the Judiciary itself, or Congress; more developed models create an independent body to handle these tasks; lastly, there are States in which the judges are elected by popular vote."

92. The State also indicated that the said legal doctrine underscores the following problems for judicial independence: (i) the appointment of judges by "popular election," owing to the "risk of politicization"; (ii) "the participation of political bodies such as Congress," which could "politicize the appointment of the judges," and (iii) "a short mandate," because this makes "it difficult for the judge to uphold his points of view […] before the body that will determine his appointment. Therefore, if the post is not subject to tenure, terminating only when certain circumstances arise such as misconduct, illness or other, it is advisable that, at least, the mandate be long." Finally, the State indicated that judicial "independence can only be achieved when the funding of the judicial system is in the hands of the system itself, and not in those of the Executive or Congress, and when the remuneration of the judges allows them to subsist in the same way as other professionals."

93. Based on the foregoing, the State argued that the appointment of Mrs. Chocrón Chocrón complied with the standard of judicial independence, because it can "clearly be concluded that judges will have greater independence when they are appointed by the Judiciary itself, as in this case." Also, the State argued that the above-mentioned legal doctrine "contradicts the argument put forward by the [Inter-American Commission] when it mentioned that the legally relevant issue is that the time frame should be defined, which does not distinguish whether that time frame should be long or short. In addition, curiously, it disregards the fact that, […] while it is true that the alleged victim

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[119] Article 38(d) of the Statute of the International Court of Justice provides that, "judicial decisions and the teachings of the most highly qualified publicists of the various nations" are a "subsidiary means for the determination of rules of law." As an example of this type of legal doctrine, the State cites what the former President of the Inter-American Court, Cecilia Medina Quiroga, indicated in her book, "*La Convención Americana: teoría and jurisprudencia - vida, integridad personal, libertad personal, debido proceso and recurso judicial*," *supra* note 25.

in this case was not appointed for a specific term, it is also true that the alleged victim performed her functions as a judge for a very long period of time." In addition, the State indicated that "the cited teachings of the distinguished publicist […] makes it clear that there is an evident distinction between the stability enjoyed by permanent and provisional judges, because it establishes that only the former shall be removed owing to misconduct, illness, or other factors, duly proved through the corresponding disciplinary procedure," and that, "although provisional judges do not have stability in the performance of their functions, they should have a long mandate." Lastly, the State indicated that, "[r]egarding budgetary autonomy, this is precisely one of the innovations included in the Constitution of the Bolivarian Republic of Venezuela; in other words, for more than 10 years and for the first time in the republican history of the country, the Venezuelan Judiciary has complete budgetary autonomy."

94. The representatives agreed with the Commission's arguments (*supra* para. 90). In addition, regarding the State's argument on teachings as a source of international law, they referred to the case of *Reverón Trujillo*, arguing that it was signed by Cecilia Medina Quiroga "in her capacity as Judge [and President of the Court] and not as an academic." This judgment "reiterates that, in the case of provisional judges, it is required that they be able to enjoy the benefits of permanence until the legal decision that terminates their mandate."

3.2. Considerations of the Court

95. The Court finds it appropriate to make some clarifications regarding certain arguments made by the State. First, the Court observes that, in the instant case, the procedure for the appointment of Mrs. Chocrón Chocrón in the last post she held as a temporary judge and the budgetary autonomy of the Judiciary in Venezuela are not in dispute; consequently, it will not analyze those arguments. Second, contrary to the State's arguments regarding the long period of time during which Mrs. Chocrón Chocrón served as a judge, the Court observes that the alleged victim had only been in the post for three months when her appointment was annulled (*supra* para. 81). Third, the Court emphasizes that it is not competent to decide specifically the best institutional framework for guaranteeing judicial independence. The Court's contentious jurisdiction is restricted to analyzing whether the American Convention has been violated in a particular case in which a specific institutional framework has been applied and, when appropriate, to determining the pertinent reparations.

96. Fourth, the Court observes that the expression "subsidiary means for the determination of rules of law" embodied in Article 38(d) of the Statute of the International Court of Justice implies accepting that the teachings of the most highly qualified publicists are not, in themselves, a source of international law, but rather a tool for identifying the sources of law. In this regard, although the teachings on a specific issue serve a relevant function for the understanding or interpretation of the sources of law, those teachings do not, in themselves, create a standard or rule of law, especially when the Court has already established previously a line of case law in cases relating to judicial independence (*infra* paras. 97 to 100). Thus, what is appropriate to analyze is whether the arguments put forward by the State for the annulment of the appointment of provisional or temporary judges without, presumably, guaranteeing them a reasoned decision or a minimum stability in the exercise of the post are sound.

97. In this regard, the Court's case law has indicated that the scope of judicial guarantees and effective judicial protection for judges must be analyzed in relation to the standards for judicial independence. In this regard, in the *Reverón Trujillo* case, the Court specified that, in contrast to other public officials, judges have guarantees owing to the necessary independence of the Judiciary, which the Court has understood as "essential for the exercise of judicial functions."[120] In this regard, the Court reiterates that one of the main purposes of the separation of public powers is to guarantee the independence of judges.[121] The purpose of the protection is to prevent the judicial system in general and its members in particular from finding themselves subject to possible undue restrictions in the exercise of their function, imposed by bodies outside the Judiciary or even by those judges who exercise review or appellate functions.[122]

98. According to the case law of this Court and of the European Court, as well as according to the United Nations Basic Principles on the Independence of the Judiciary (hereinafter "Basic Principles"), the following guarantees are derived from judicial independence: an adequate appointment process[123] tenure in the post[124] and guarantees against external pressure.[125]

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120 *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; *Case of Palamara Iribarne v. Chile.* Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 135, para. 145, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 67.

121 *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001. Series C No. 71, para. 73; *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, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 67.

122 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 55, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 67.

123 *Cf. Case of the Constitutional Court v. Peru*, *supra* note 121, para. 75; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 138, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 70. 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 United Nations Basic Principles on the Independence of the Judiciary, adopted at the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from August 26 to September 6, 1985, and confirmed by the General Assembly in its resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985. The Basic Principles emphasize integrity, suitability and training or appropriate legal qualifications as fundamental elements in the appointment of judges. Similarly, all the decisions related to the professional career of judges must be based on objective criteria, with the judge's personal merit, qualifications, integrity, ability and appropriate training being the fundamental elements to take into consideration. The Court underlines that in the *Reverón* case, it specified that, when States establish procedures for the appointment of their judges, they must take into account that not just any procedure satisfies the conditions required by the Convention for the adequate implementation of a truly independent regime. If basic parameters of objectivity and reasonableness are not respected, it would be possible to design a regime that permitted a high degree of discretionary authority in the selection of career judicial personnel, owing to which the individuals selected would not necessarily be the most suitable. Cf. *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 74.

124 *Cf. Case of the Constitutional Court v. Peru*, *supra* note 121, para. 75; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 138, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 70. See also, Principle 12 of the United Nations Basic Principles, *supra* note 123.

125 *Cf. Case of the Constitutional Court v. Peru*, *supra* note 121, para. 75, *Case of Palamara Iribarne v. Chile*, *supra* note 120, para. 156, and *Case of Reverón Trujillo v. Venezuela*, supra note 12, para. 70. See also Principles 2, 3 and 4 of the United Nations Basic Principles, *supra* note 123.

99. Among the aspects of tenure relevant for this case, the Basic Principles establish that, "[t]he term of office of judges […] shall be adequately secured by law"[126] 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."[127] Also, the Human Rights Committee has indicated that "[j]udges may be dismissed only on serious grounds of misconduct or incompetence and in accordance with fair procedures ensuring objectivity and impartiality set out in the Constitution or the law."[128] This Court has made use of these principles and has stated that the authority in charge of the procedure of removing a judge must act independently and impartially in the procedure established for that purpose and permit the exercise of the right of defense.[129] This is so, because the free removal of judges raises the objective doubt of the observer regarding the real possibility of judges deciding specific disputes without fear of reprisals.[130]

100. Regarding the guarantee against external pressure, the Basic Principles establish that judges will decide matters 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."[131] In addition, the Principles establish that, "[t]here shall not be any inappropriate or unwarranted interference with the judicial process."[132]

101. The Court observes that the Venezuelan Constitution includes these principles when it establishes in Article 255 a uniform regime for the judicial career with guarantees of stability for judges.[133]

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126 *Cf.* Principle 11 of the United Nations Basic Principles, *supra* note 123.

127 *Cf.* Principle 12 of the United Nations Basic Principles, *supra* note 123.

128 *Cf.* United Nations, Human Rights Committee, General Comment No. 32, Article 14, Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, para. 20. Also, in the same General Comment, the Committee stated that, "[t]he dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary." In addition, the Basic Principles establish that judges "shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties" and that "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct." *Cf.* Principles 18 and 19 of the United Nations Basic Principles, *supra* note 123.

129 *Cf. Case of the Constitutional Court v. Peru*, *supra* note 121, para. 74; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 44, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 78.

130 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 44, and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 78. See also Principles 2, 3 and 4 of the United Nations Basic Principles, *supra* note 123.

131 *Cf.* Principle 2 of the United Nations Basic Principles, *supra* note 123.

132 *Cf.* Principle 4 of the United Nations Basic Principles, *supra* note 123.

133 According to the Constitution "[e]ntry into the judicial career and the promotion of judges shall be effected through competitive examinations that ensure the suitability and excellence of the participants; they shall be selected by panels from the judicial circuits in the manner and conditions established by law. […] Judges may only be removed or suspended from their posts by the procedures expressly established by law. *Cf.* Article 255 of the Constitution of the Bolivarian Republic of Venezuela, *supra* note 48, folio 1643.

102. On this issue, the Court finds it necessary to emphasize that the parties equate the situation of provisional and temporary judges as regards the type of stability they enjoy in their posts. In this regard, the Supreme Court of Justice, itself, specifically in response to the remedies filed by Mrs. Chocrón Chocrón in this case, indicated that "the direct removal of a provisional or temporary official […] without any disciplinary reason, [is a] power exercised by the Judicial Commission […] by express delegation of the Plenum."[134] In addition, other rulings of the Supreme Court of Justice have equated provisional and temporary judges.[135] Thus, in the specific context of the instant case, the Court will use the expression "provisional nature" to refer to both provisional and temporary judges.

103. In the *Reverón Trujillo* case, the Court found that provisional judges in Venezuela exercise exactly the same functions as permanent judges; specifically, they administer justice.[136] Consequently, the Court indicated that the accused have the right, derived from the Venezuelan Constitution itself and from the American Convention, for the judges deciding their disputes to be and to appear to be independent. Thus, the State must offer the guarantees derived from the principle of judicial independence to both permanent and provisional judges.[137]

104. The Court reiterates that, although provisional and permanent judges must have the same guarantees (*supra* para. 103), these guarantees do not entail equal protection for both types of judge, because provisional and temporary judges are, by definition, selected in a different way and their permanence in the post is not indefinite. In this regard, in the *Reverón Trujillo* case, the Court recognized, as the State is again arguing in this case, that provisional and temporary judges have not demonstrated the conditions and aptitude to exercise the function with the guarantees of transparency imposed by the competitions. However, the Court reiterates that this does not mean that provisional and temporary judges should not have some kind of appointment procedure because, according to the Basic Principles, "[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives."[138]

105. Furthermore, the Court reiterates that in the same way that the State is obliged to guarantee an appropriate procedure for appointing provisional judges, it must guarantee them a certain tenure in their posts. This Court has stated that the provisional status "must be subject to a resolutive condition, such as fulfillment of a predetermined term, or the holding and completion of a competitive examination to appoint a permanent

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134 Judgment No. 01798 of the Political and Administrative Chamber of the Supreme Court of Justice, *supra* note 116, folio 497.

135 Judgment No. 02221 of the Political and Administrative Chamber of the Supreme Court of Justice, *supra* note 75, folio 5814; Judgment No. 01225 of the Political and Administrative Chamber of the Supreme Court of Justice, *supra* note 77, folio 5824; Judgment No. 1413 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 78, folio 5837, and Judgment No. 5116 of the Constitutional Chamber of the Supreme Court of Justice, *supra* note 78, folio 5852.

136 *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 114.

137 *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 114.

138 *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 115.

replacement for the provisional judge."[139] In this way, in the case of provisional judges, the guarantee of tenure translates into a requirement that they may enjoy all the benefits of permanence until the resolutive condition occurs that puts a legal end to their mandate.[140]

106. Also, in the *Reverón Trujillo* case, the Court indicated that the tenure of provisional judges is closely related to the guarantee against external pressure, because, if provisional judges do not have the security of permanence during a predetermined term, they will be vulnerable to pressure from different sectors, mainly from those who have the authority to decide on dismissals or promotions in the Judiciary.[141]

107. Nevertheless, since a review of credentials cannot be equated to a competitive examination, and it cannot be maintained that the stability that comes with a permanent post is the same as the stability that comes with a provisional post with a resolutive condition, this Court has held that provisional appointments must be the exception and not the rule, because prolonging the provisional status of judges or the fact that most judges are provisional gives rise to significant impediments to judicial independence.[142] Moreover, the Court has specified that, for the Judiciary to fulfill its function of guaranteeing the greatest suitability of its members, provisional appointments cannot be prolonged indefinitely so that they become permanent appointments. This is another reason why the provisional status is only admissible as the exception and not as the general rule, and why it must be of limited duration in order to be compatible with the right of access to public service under equal conditions.[143]

108. Taking into account its previous case law, the Court reiterates that the transition regime in Venezuela seeks a legitimate purpose in keeping with the Convention: that the Judiciary be composed of the most suitable individuals to perform its judicial functions. However, in practice, the application of the regime has not been effective for achieving the proposed objective.[144] First, this is because the regime has lasted nearly 12 years. On March 18, 2009, the SCJ even issued a decision ordering the "comprehensive restructuring" of the entire Judiciary and that all judges be submitted to "an obligatory institutional evaluation process," as well as allowing the Judicial Commission to suspend and dismiss judges who did not pass this evaluation.[145] In addition, the above-mentioned speech of the SCJ President (*supra* para. 70) indicated that, despite the time that has passed, the restructuring process was ongoing in different ways.

109. Second, despite the adoption of the Ethics Code to regulate the disciplinary

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139 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra* note 121, para. 43, and Case of Reverón Trujillo v. Venezuela, *supra* note 12, para. 116.

140 *Cf. Case of Reverón Trujillo v. Venezuela, supra* note 12, para. 116.

141 *Cf. Case of Reverón Trujillo v. Venezuela, supra* note 12, para. 117

142 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra* note 121, para. 43, and Case of Reverón Trujillo v. Venezuela, *supra* note 12, para. 118.

143 *Cf. Case of Reverón Trujillo v. Venezuela, supra* note 12, para. 118.

144 *Cf. Case of Reverón Trujillo v. Venezuela, supra* note 12, para. 119.

145 *Cf.* Decision No. 2009-0008 of the Supreme Court of Justice, *supra* note 70, folios 1402 and 1403.

regime of the judges, the case file does not indicate that the disciplinary tribunals have been established (*supra* para. 66)

110. Third, in 2010, 56% of the Judiciary's judges were provisional and temporary according to the speech by the SCJ President and, at the time of the facts of this case, this figure was 80% (*supra* paras. 69 and 71). In addition to creating impediments to judicial independence (*supra* para. 97), this is particularly relevant because Venezuela does not offer such judges the guarantee of tenure required by the principle of judicial independence. In addition, the Court observes that provisional and temporary judges are appointed discretionally by the State; in other words, without competitive examinations (*supra* paras. 67 and 68), and many of them have been made permanent through the "Special Program to Regularize Permanence (PET)." This means that the respective posts have been filled without allowing individuals who are not part of the Judiciary to compete with the provisional judges to accede to these posts. As indicated in the *Reverón Trujillo* case, even though evaluations of suitability have been made under the PET, this procedure grants job security to those who were initially appointed on an entirely discretionary basis.[146]

111. Based on the above, the Court will now analyze the impact that the use of this jurisprudential criteria of free removal of provisional and temporary judges may have had in relation to the alleged violation of the rights in this case.

4. Obligation to provide grounds and right to defense

4.1. Arguments of the parties

112. The Commission argued that the victim was denied judicial guarantees "because she was not informed of the comments made to the Judicial Commission" and "because she was not allowed the opportunity to exercise her defense in an adversarial proceeding." It added that "although it was not part of a formal disciplinary procedure, the removal [of Mrs. Chocrón Chocrón from her post] was similar to a sanction because of the nature of the result, as well as its justification based on "comments" received. The Commission indicated that, "[i]n the case of [Mrs.] Chocrón Chocrón […] no disciplinary procedure intervened; but rather her removal was ordered by the SCJ Judicial Commission which, for more than a decade, has appointed and removed hundreds of judges under the so-called transition process of the Judiciary." The Commission and the representatives argued that the CFRSJ was the body "responsible for exercising disciplinary functions in the case of members of the Judiciary, [because] the Judicial Commission does not have constitutional or legal authority to exercise disciplinary powers over the judges or officials of the Judiciary, or to remove or annul previous appointments."

113. The representatives indicated that the State "appeared to be shielding itself behind a kind of absolute immunity from administrative and judicial oversight by indicating that the possibility of removing provisional and/or substitute judges is a discretionary power which it understands is not subject to any substantive limit, to the extent that it does not even refer to, much less explain, the supposed 'comments' that resulted in the decision to annul the appointment of [Mrs. Chocrón Chocrón]." Thus,

146 *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 121.

according to the representatives, "if any kind of comment, complaint or accusation against [Mrs.] Chocrón [Chocrón] existed, she had the right to know about it in order to exercise her defense." In addition, the representatives emphasized that, "since no procedure existed for the removal of [Mrs.] Chocrón Chocrón, evidently she was not granted the right to exercise her defense upon learning the reasons for which she was being dismissed." They also indicated that "the Venezuelan State cannot attempt to justify the competence of the Judicial Commission […] by arguing that the annulment of the appointment of a provisional judge is not a disciplinary measure, but a simple discretionary decision, without providing any grounds." The representatives added that "the removal of [Mrs.] Chocrón Chocrón from her post constitutes a disciplinary measure, because an attempt is made to base it on supposed 'comments that were made to [the] Judicial Commission'; thus, the annulment of her appointment was based on some alleged comments, wrongful acts, complaints or even rumors presented to that administrative body. Consequently, this was a reaction decision, responding to the need to punish an alleged unlawful conduct." They also argued that the annulment of the appointment was comparable to a disciplinary sanction, because it "affects the sphere of the rights […] of the provisional, temporary, substitute or *pro tempore* judge, since it consists in the deprivation of a right, [such as] the annulment of a favorable decision, the loss of an expectation or a right, or the imposing of an obligation to pay a fine."

114. For its part, the State indicated that, "[t]he Judicial Commission does not function as a disciplinary body, but rather as an administrator in the appointment of the judges, as well as in the annulment of these appointments at any time, in accordance with case law, which has established that this is a discretionary decision of the Commission. Hence, it was not the facts argued by the alleged victim that led to her removal from the post, but the Judicial Commission's exercise of its discretionary powers to annul the appointment of temporary judges." Therefore, the State reiterated that "the Judicial Commission is fully competent, because it constitutes parallelism, in that the body that issued the decision granting the post to [Mrs.] Chocrón Chocrón is the same one that annulled that decision."

4.2. Considerations of the Court

115. This Court has indicated that any public authority, whether administrative, legislative or judicial, whose decisions may affect the rights of the individual can be required to adopt the said decisions with full respect for the guarantees of due legal process.[147] In this regard, Article 8 of the Convention establishes the guidelines for due legal process, which is composed of a series of requirements that must be observed in the procedural instances in order to allow the individual to defend his or her rights adequately against any decision of the State that may affect them.[148] Also, the Court has indicated that "any State body that exercises functions of a substantially jurisdictional nature has the obligation to adopt decisions that respect the guarantees of due process of

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147 *Cf. Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 6, 2009. Series C No. 200, para. 139, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2010 Series C No. 218, para. 142.

148 *Cf. Case of the Constitutional Court v. Peru*, *supra* note 121, para. 69, and *Case of Vélez Loor v. Panama*, *supra* note 147, para. 142. See also *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27.

law in the terms of Article 8 of the American Convention."[149] In that regard, the Court recalls that, "[i]n any matter, even in labor and administrative matters, the discretionary powers of the Administration has limits that may not be exceeded, one of them being respect for human rights. The conduct of the Administration must be regulated and it may not invoke public order to reduce the guarantees of its subjects discretionally."[150]

116. Regarding this, in the instant case the Court finds that Mrs. Chocrón Chocrón's appointment was annulled based on "comments" the content and nature of which were never specified (*supra* paras. 81 and 82). Since the content of those comments is not known, and based on the arguments of the parties, the Court considers that, in the instant case, there are insufficient elements to allow it to conclude that the decision annulling the appointment of Mrs. Chocrón Chocrón was of a sanctioning nature. Nevertheless, the Court observes, based on the response to the different remedies filed against the removal decision, that the action of the Judicial Commission was based on its authority to remove provisional and temporary judges in a discretionary manner (*supra* paras. 84 and 85), so that it will now analyze whether this entailed a violation of Mrs. Chocrón Chocrón's judicial guarantees.

117. On this issue, the Court observes that the temporary appointment of Mrs. Chocrón Chocrón was not limited to a specific term or resolutive condition (*supra* para. 78). Thus, taking into account that the Court has reiterated that provisional and temporary judges must have a certain degree of stability in their posts, because their provisional status is not the same as their being freely removable (*supra* para. 105), the alleged victim could legitimately expect to remain in her post until the competitive examinations established in the Constitution were conducted. This means that the removal of Mrs. Chocrón Chocrón could only be admissible in the context of a disciplinary procedure or by a duly-founded administrative decision. Consequently, the decision annulling Mrs. Chocrón Chocrón's appointment had to be founded.

118. Regarding this obligation to provide the grounds for decisions that affect the stability of judges in their post, the Court reiterates its case law to the effect that the grounds "are the exteriorization of the reasoned justification that allows a conclusion to be reached."[151] The obligation to found decisions is a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society.[152] For this reason, decisions made by domestic bodies that can affect human rights must be duly founded; otherwise they would be arbitrary decisions.[153] In this

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149 *Cf. Case of the Constitutional Court v. Peru. Competence.* Judgment of September 24, 1999. Series C No. 55, para. 71, and *Case of Vélez Loor v. Panama*, *supra* note 147, para. 141.

150 *Cf. Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs.* Judgment of February 2, 2001. Series C No. 72, para. 126, and *Case of Vélez Loor v. Panama*, *supra* note 147, para. 141.

151 *Cf. 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. 107; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 77, and *Case of Escher et al. v. Brazil*, *supra* note 147, para. 208

152 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 77, and *Case of Escher et al. v. Brazil*, *supra* note 147, para. 208.

153 *Cf. Case of Yatama v. Nicaragua, Preliminary objections, merits, reparations and costs.* Judgment of June 23, 2005. Series C No. 127, paras. 152 and 153; *Case of Tristán Donoso v. Panama.*

regard, the considerations of a ruling and certain administrative decisions must reveal the facts, grounds and laws on which the authority based itself to make its decision in order to eliminate any sign of arbitrariness.[154] Furthermore, the justification demonstrates to the parties that they have been heard and, in those cases where the decision can be appealed, allows them to contest the decision and to obtain another examination of the matter before a higher court.[155] Based on the foregoing, the obligation to provide the grounds for a decision is one of the "due guarantees" included in Article 8(1) to safeguard the right to due process.

119. Venezuela's domestic law has also established the obligation to found administrative decisions. In this regard, the Organic Law of Venezuelan Administrative Procedure establishes the following:

> Article 9. Administrative decisions of a private nature must be founded, with the exception of those that relate to formalities, or unless there is a specific legal provision. To this end, they must refer to the facts and the legal grounds for the decision.
>
> Article 12. Even when a legal or regulatory provision leaves some measure or decision to the discretion of the competent authority, the said measure or decision must be duly proportionate and adapted to the factual presumption and the purpose of the law, and comply with the necessary procedures, requirements and formalities for its validity and effectiveness."[156]

120. Taking into account the scope of the obligation to provide grounds in both international and domestic law, as well as the guarantees of judicial independence that must be in effect in order to sanction or to remove a judge (*supra* paras. 98 to 100), the Court considers that the authority to annul the appointment of judges based on "comments" must be minimally founded and regulated, at least as regards specifying the facts that support those comments, and that the respective grounds are not of a disciplinary or sanctioning nature. If a disciplinary sanction is involved, then, in addition to the jurisdiction of the Restructuring and Operation Commission being involved (*supra* para. 59), the justification requirement would be even greater, because

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Preliminary objection, merits, reparations and costs. Judgment of January 27, 2009. Series C No. 193, para. 153, and *Case of Escher et al. v. Brazil*, *supra* note 147, para. 139. In addition, the European Court has indicated that judges should indicate with sufficient clarity the reasons base don which they take their decisions. *Cf.* ECHR, *Hadjianastassiou v. Greece*, judgment of 16 December 1992, Series A no. 252, para. 23.

154 *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs.* Judgment of September 19, 2006. Series C No. 151, para. 122, and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 78.

155 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 78. For its part, the Human Rights Committee has considered that "the absence of a reasoned judgment of the court of appeal is likely to prevent the author from successfully arguing his petition before" a higher court, thus preventing him from making use of an additional remedy. United Nations, Human Rights Committee, Hamilton v. Jamaica, Communication No. 333/1988, CCPR/C/50/D/333/1988, 23 March 1994.

156 Brief answering the observations made by the Venezuelan State of October 12, 2005 (file of attachments to the application, volume II, folios 545 and 546)

the purpose of disciplinary oversight is to assess the conduct, suitability and performance of the judge as a public official and, therefore, to analyze the seriousness of the conduct and the proportionality of the sanction.[157] In the disciplinary sphere, it is essential to indicate the violation precisely and to submit arguments that allow it to be concluded that the comments provide sufficiently grounds to justify removing a judge from a post. In this case, although the Court could not conclude that the decision annulling Mrs. Chocrón Chocrón's appointment was of a sanctioning nature (*supra* para. 116), the Court considers that its unjustified discretionary nature transformed the administrative decision of removal into an arbitrary decision that, by unduly affecting her right to job stability, violated the obligation to provide adequate grounds.

121. Moreover, since comments against Mrs. Chocrón Chocrón exist, they should have been clearly and expressly indicated so as to allow her to exercise fully her right to defense.[158] Impeding the individual from exercising her right to defense from the onset of a procedure that involves her and in which the authorities order or execute actions that affect rights is empowering the State's investigative authorities at the expense of fundamental rights of the individual. The right to defense obliges the State to treat the individual at all times as a true subject of the procedure, in the broadest sense of that concept, and not simply as an object of it.[159]

122. In sum, any provisional or temporary judge in Venezuela subject to a procedure to annul his or her appointment for non-disciplinary reasons should be made aware of the content of any "comments" made against them and their post so that, as appropriate, they can contest such comments. In addition, in this case, if the decision to remove Mrs. Chocrón Chocrón had been founded, the alleged victim could have better prepared the appeals filed to defend herself, eliminating the margin of error produced by conjecture.

123. Based on the above, the Court finds that the State failed to comply with its obligation to provide grounds for the decision to annul the appointment of Mrs. Chocrón Chocrón as a temporary judge and, consequently, its obligation to permit an adequate defense that granted her the possibility of contesting the comments made against her, all of which violates the due guarantees established in Article 8(1), in relation to Article 1(1) of the American Convention.

5. Effectiveness of the remedies

5.1. Arguments of the parties

124. The Commission argued that the appeal for annulment filed by the victim "not only failed to constitute an effective remedy to guarantee the rights violated by her

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157 Similarly, this Court ordered that the punishment be proportionate to the nature and seriousness of the crime being prosecuted, taking into account any attenuating and aggravating circumstances in the case. *Cf. Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 133.

158 *Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114*; Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 149, and *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs.* Judgment of November 17, 2009. Series C No. 206, para. 28.

159 *Cf. Case of Barreto Leiva v. Venezuela*, *supra* note 158, para. 29, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 154

removal by the Judicial Commission, but also perpetuated the said violation by keeping [Mrs.] Chocrón Chocrón completely unaware of the reasons for her removal."

125. The representatives indicated that the State had abstained "from examining the administrative remedy contesting the removal filed before the courts [and] merely […] repeat[ed] the reasons it had given in the administrative sphere concerning the free removal of provisional judges." Thus, according to the representatives, "[t]his case reveals that, when an examination of the dispute is inconvenient, the Venezuelan State understands that the right to effective judicial protection is limited to merely allowing access to the courts, rather than to the possibility of a decision on whether a specific decision of the public authorities is contrary to the law and, in particular, to provide integral reparation and to re-establish the legal situation violated."

126. For its part, the State indicated that the Judicial Commission, through the appeal for reconsideration, had offered a response that guaranteed judicial protection through "a simple and prompt remedy that permitted the reparation of the juridical situation allegedly violated by the Administration." In addition, according to the State, "the alleged victim made use of the judicial remedies" to contest the decision annulling her appointment as a temporary judge. Hence, the State underscored that "it is not a question of the inexistence of procedural means to claim the right allegedly affected, but rather [of] the absence of legal arguments for the court to grant the appeal for annulment in favor of the appellant." Thus, the State concluded that, "the existence of procedural remedies does not imply *per se* that appellants must obtain a favorable result." Lastly, the State reiterated that "the alleged victim could have exercised the remedy of constitutional review […]; however, at no point did she do this."

5.2. Considerations of the Court

127. The Court has indicated that Article 25(1) of the Convention establishes the obligation of the States Parties to guarantee to all persons subject to their jurisdiction an effective judicial remedy against acts that that violate their fundamental rights.[160] This effectiveness supposes that, in addition to the formal existence of the remedies, these achieve results or responses to the violations of the rights contemplated in the Convention, the Constitution or law.[161] In this regard, those remedies that, owing to the general conditions of the country or even the specific circumstances of a given case, turn out to be illusory cannot be considered effective. This can be the case, for example, when their ineffectiveness has been revealed in practice, because of the absence of the means for executing their decisions or due to any other situation constituting a context of denial of justice.[162] Thus, the proceeding must be designed to implement the

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160 *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, *supra* note 14, para. 91; *Case of Rosendo Cantú et al. v. Mexico*, *supra* note 34, para. 164, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 141.

161 *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs. supra* note 121, para. 90; *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 59; *Case of Barreto Leiva v. Venezuela, supra* note 158, para. 101, and see also, *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*, *supra* note 148, para. 23.

162 *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 74, para. 137; *Case of Acevedo Jaramillo et al.* para. 213, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru.*

protection of the right recognized in the judicial decision by the appropriate execution of that ruling.[163]

128. Moreover, as the Court has indicated previously, when evaluating the effectiveness of remedies filed in the domestic administrative law jurisdiction,[164] the Court must observe whether the decisions made in it have made an effective contribution to ending a situation that violated rights, by ensuring the non-repetition of the harmful actions and guaranteeing the free and full exercise of the rights protected by the Convention.[165] The Court does not evaluate the effectiveness of the remedies filed based on an eventual ruling favorable to the interests of the victim.

129. In this regard, the Court observes that, in the instant case, the Judicial Commission and the Political and Administrative Chamber of the Supreme Court of Justice based their decisions, fundamentally, on the argument that the said Commission can annul the appointment of provisional or temporary judges in a discretionary manner. Indeed, according to the evidence in the case file, in Mrs. Chocrón Chocrón's case, the two bodies merely indicated, in response to the arguments of the victim, that "the Judicial Commission has the power to appoint judges provisionally and to annul their appointment when the majority of its members decide this"[166] (*supra* paras. 84, 85, 87 and 88). Thus, the Court considers that, in response to the remedies filed by Mrs. Chocrón Chocrón, she did not receive a response that could have safeguarded the minimum requirements of justification and the right of defense in relation to the administrative decision issued against her. The response received prevented an effective challenge of the Judicial Commission's decision owing to the use of a criterion contrary to the principle of judicial independence (*supra* para. 89).

130. Based on the above, the Court finds that the State violated the right to judicial protection recognized in Article 25(1), in relation to Article 1(1) of the American Convention, to the detriment of Mrs. Chocrón Chocrón.

6. Permanence in public office under equal conditions

6.1. Arguments of the parties

Preliminary objections, merits, reparations and costs. Judgment of July 1, 2009. Series C No. 198, para. 69.

163 *Cf. Case of Baena Ricardo et al. v. Panama. Competence.* Judgment of November 28, 2003. Series C No. 104, para. 73; *Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of February 7, 2006. Series C No. 144, para. 213, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru*, *supra* note 27, para. 69.

164 *Cf. Case of the "Mapiripán Massacre" v. Colombia. Merits, reparations and costs*, *supra* note 22, para. 210; *Case of the "La Rochela Massacre" v. Colombia*, *supra* note 16, para. 217; *Case of the Ituango Massacres*, *supra* note 16, para. 338, and *Case of the Pueblo Bello Massacre*, *supra* note 136, para. 206.

165 *Cf. Case of the "Mapiripán Massacre" v. Colombia*, *supra* note 164, para. 214; *Case of the Ituango Massacres v. Colombia*, *supra* note 164, para. 339, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 30, para. 139.

166 Judgment No. 01798 of the Political and Administrative Chamber of the Supreme Court of Justice, *supra* note 116, folios 496 and 497.

131. The representatives alleged a violation of Article 23(1)(c) of the Convention,[167] because "it is evident that, in Venezuela, the general conditions of access and permanence of provisional and permanent judges are not the same, […] because the former are officials who are freely appointed and removed while the latter have stability, autonomy and independence." They indicated that "[t]he illegitimate distinction between permanent judges and provisional judges" that was allegedly applied to Mrs. Chocrón Chocrón "to annul her appointment as a judge […] violated her right to access, permanence, promotion and eventual retirement in the Judiciary." They added that this "distinction is clearly arbitrary and capricious," because "it is neither reasonable nor legitimate that some judges can be removed in a discretionary manner [and others not]."

132. The Inter-American Commission did not allege the violation of Article 23 in this case. Although, in its Report on Admissibility, the Commission considered that, in the case of Mrs. Chocrón Chocrón, "violations of Articles 23(1)(c) and 24 of the American Convention could have been constituted,"[168] in the Report on Merits, the Commission found that "the petitioner did not present any substantive arguments that could prove that when the facts of the case took place, Mercedes Chocrón [Chocrón] was the subject of unequal treatment in relation to other judges in the same conditions," and therefore concluded that the said article had not been violated.[169]

133. For its part, the State indicated that the representatives "seek to ignore inter-American case law and to incorporate into these proceedings facts that are not included in the application." Despite this, the Venezuelan State indicated, *ad cautelam*, that the provisional status "was not applied to the alleged victim; but rather, she was duly informed of the temporary nature of her functions when she was appointed as a temporary judge." In this regard, according to the State, "this was not an arbitrary or capricious appointment, but responded to a particularity of the Venezuelan judicial system." It also indicated that "the concept of temporary judge does not entail discriminatory or unlawful treatment, because those who accepted the post were aware of their temporary status and the possibility that they could be removed from the post, either by the Judicial Commission in exercise of its competence, or because another person had obtained the permanent post through the competitive examination. According to the State, "the elimination of the juridical category of temporary judge would mean, far from being a violation of the conditions of equal access to administrative posts, the possibility that, given the lack of permanent judges, the vacancies could not be filled on time, because the organization of a competitive examination entails extensive logistics in order to grant those permanent posts to the most suitable individuals." In this regard, "the failure to appoint temporary judges would cause the collapse of the judicial system […], in the context of the restructuring process." According to the State, "claiming that all judges should enjoy absolute stability would make it impossible to make the corrections required for the proper functioning of the Venezuelan Judiciary." According to the State, Mrs. Chocrón

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167 The pertinent part of Article 23(1) establishes the following:

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.

168 Report on Admissibility No. 38/06, *supra* note 4, folio 50.

169 Report on Merits No. 9/09, *supra* note 5, folio 34.

Chocrón "has not stated that it would be impossible for her to access the Venezuelan system of justice, or that she has been discriminated against in the selection procedures because she was a temporary judge."

6.2. Considerations of the Court

134. Taking into account that the violation of Article 23(1)(c) was not argued by the Inter-American Commission (*supra* para. 132), the Court reiterates that the alleged victims and their representatives may invoke the violation of rights other than the ones included in the application, provided this refers to facts already included in the application (*supra* para. 42) and that it is done at the appropriate procedural moment - in the pleadings and motions brief - which is what occurred in this case. The purpose of this possibility is to implement the procedural faculty of *locus standi in judicio*, recognized to the alleged victims or their representatives in the Court's Rules of Procedure, without exceeding the limits established in the Convention to their participation and to the exercise of the Court's jurisdiction, or prejudicing or violating the right of defense of the State, which has procedural opportunities to respond to the arguments of the Commission and of the representatives at all stages of the proceedings. Thus, it is for the Court, finally, to decide in each case on the admissibility of arguments of this nature in order to safeguard the procedural balance of the parties.[170]

135. In this regard, the Court emphasizes that, in the cases of *Apitz Barbera et al.* and *Reverón Trujillo*, it indicated that Article 23(1)(c) does not establish the right to accede to public office, but rather the right to do so "on general terms of equality." This means that this right is respected and guaranteed when "the criteria and processes for appointment, promotion, suspension, and removal are objective and reasonable," and when the "individual is not discriminated against" in the exercise of this right.[171] In addition, the Human Rights Committee has interpreted that the guarantee of protection covers both access and permanence under conditions of equality and non-discrimination with regard to the procedures of suspension and dismissal.[172] In this regard, the Court has indicated that access under equal conditions constitutes an insufficient guarantee if it is not accompanied by the effective protection of permanence in the post to which the individual has acceded,[173] especially if stability is considered a component of judicial independence. Also, equal opportunities in access to and stability in the post guarantee

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170 *Cf. Case of the "Mapiripán Massacre" v. Colombia, supra* note 164, para. 58; *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 165, and *Case of Vélez Loor v. Panama, supra* nota 147, para. 43.

171 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra* note 121, para. 206, and *Case of Reverón Trujillo v. Venezuela, supra* note 12, para. 138. See also: United Nations, Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, CCPR/C/21/Rev. 1/Add. 7, 12 July 1996, para. 23.

172 *Cf.* United Nations, Human Rights Committee, *Pastukhov v. Belarus* (814/1998), ICCPR, A/58/40 vol. II (5 August 2003) 69 (CCPR/C/78/D/814/1998) paras. 7.3 and 9; *Adrien Mundyo Busyo, 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.

173 *Cf. Case of Reverón Trujillo v. Venezuela, supra* note 12, para. 138.

freedom from all political interference or pressure.[174]

136. The Court observes that, in this case, Mrs. Chocrón Chocrón's access to public service is not in dispute. Moreover, with regard to the State's arguments concerning the need for temporary judges (*supra* para. 133), there is no dispute either concerning the possible use of this type of judge to fill vacancies during a judicial restructuring process or given the need to provide service. Also, the Court notes that this case differs from the *Reverón Trujillo* case, where there was a difference in the treatment of judges who were subject to reinstatement after an arbitrary dismissal and judges who did not obtain that reparation. In any case, the Court points out that the arguments presented by the representatives with regard to the conditions of permanence of temporary and provisional judges have been addressed in aspects examined in the preceding sections 3, 4 and 5. Consequently, the Court finds it unnecessary to rule on the alleged violation of Article 23(1)(c) of the American Convention.

7. Obligation to adopt domestic legal provisions

7.1. Arguments of the parties

137. The Commission argued that "the transitory regulations applied to the victim (concentrated in the powers granted to the Judicial Commission of the SCJ) do not satisfy international standards in the area of judicial independence and guarantees of due process." Thus the Commission asked the Court to "conclude and declare that the absence of clear rules for the appointment, permanence and removal of judges regardless of the nature of their appointment, coupled with the effect of a transitory regime, constitutes a violation of Article 2 of the Convention."[175]

138. The representatives referred to the alleged violation of the obligation to adopt domestic legal provisions as a result of the violation of the rights to judicial guarantees and to judicial protection in this case (*supra* paras. 113 and 125).

139. The State did not refer specifically to the alleged violation of Article 2 of the American Convention. However, when referring to the regime of provisional judges in Venezuelan case law, the State indicated that "aware of the obligation established in Article 2 of the American Convention […], and given the constitutional obligation to guarantee the continuity of the administration of justice and the right of everyone to access to justice, it had proceeded to make temporary and special appointments of non-permanent judges to fill the vacancies that occurred."

7.2. Considerations of the Court

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174 *Cf.* United Nations, Human Rights Committee, General Comment No. 32, *supra* note 128, para. 19.

175 Article 2 of the Convention (Domestic Legal Effects) establishes the following:

> 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.

140. Article 2 of the Convention obliges the States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms protected by the Convention.[176] In other words, the States not only have the positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights established in the Convention, but must also avoid enacting laws that prevent the free exercise of those rights, and eliminating or amending laws that protect them.[177]

141. In the instant case, the Court notes that the restructuring of the Venezuelan Judiciary began with the Decree on the Reorganization of the Judiciary in August 1999 (*supra* paras. 53 to 55), more than 12 years ago. Although the Ethics Code for Venezuelan Judges was adopted within the framework of this restructuring process, according to the information available in the case file, its implementation by the establishment of disciplinary tribunals had not occurred at the date of this judgment, even though the Constitution established that the legislation on the judicial system should be enacted within a year of the installation of the Constituent Assembly (*supra* para. 56). Also, several decisions of the Judicial Commission and the Supreme Court of Justice, including those in this case, have defended the criterion of the free removal of provisional and temporary judges (*supra* paras. 67, 68, 74, 84, 85, 87 and 88), even though this type of judge must have a minimum stability.

142. Consequently, owing to the specific consequences in this particular case, the inexistence of clear norms and practices for the full exercise of judicial guarantees in the removal of provisional and temporary judges adversely affected the obligation to adopt appropriate and effective measures to guarantee judicial independence, which results in the failure to comply with Article 2 in relation to Articles 8(1) and 25(1) of the American Convention.

IX
REPARATIONS
(Application of Article 63(1) of the American Convention)

143. Based on the provisions of Article 63(1) of the American Convention,[178] the Court has established that any violation of an international obligation that has caused

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176 *Case of Gangaram Panday v. Suriname. Preliminary objections* Judgment of December 4, 1991. Series C No. 12, para. 50, and *Case of Reverón Trujillo v. Venezuela supra* nota 12, para. 130. See also: *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights).* Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 48.

177 *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. Preliminary objection and merits.* Judgment of May 6, 2008. Series C No. 179, para. 122, and *Case of Heliodoro Portugal v. Panama, supra* note 14, para. 57.

178 Article 63(1) stipulates that, "[i]f 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."

harm entails the obligation to provide adequate reparation,[179] and that this provision "reflects a customary norm that is one of the fundamental principles of contemporary international law on State responsibility."[180]

144. In this case, the State indicated, as a general argument, that since "it had not failed in its international obligation to respect and guarantee the rights" of Mrs. Chocrón Chocrón, and had "adopted the necessary provisions of domestic law to ensure the enjoyment and exercise of those rights," "no damage was caused to [her], or obligation to provide any reparation." However, based on the violations of the American Convention declared in the preceding chapters, the Court will analyze the claims submitted by the Commission and the representatives, as well as the position presented *ad cautelam* by the State. It will do so in keeping with the criteria established by the Court's case law on the nature and scope of the obligation to provide reparation, so as to order measures intended to repair the damage caused to the victim.

145. The reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. It this is not possible, as in most cases, the Court will determine measures to ensure the rights violated, repair the consequences of the violations, and establish compensation for the damage caused.[181] Accordingly, the Court has considered the need to grant different measures of reparation in order to redress the damage in full; thus, in addition to pecuniary compensation, measures of restitution and satisfaction, and guarantees of non-repetition are especially relevant to the damage caused.[182]

146. This Court has established that the reparations must have a causal relationship with the facts of the case, the violations declared, and the damage proved, as well as with the measures requested to repair the respective damage. Therefore, the Court must examine these elements in order to rule appropriately and in keeping with the law.[183]

A. Injured Party

147. The Court reiterates that, according to Article 63(1) of the American Convention, the person who has been declared a victim of the violation of any right

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179 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25; *Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 86, and *Case of Vera Vera et al. v. Ecuador*, *supra* note 19, para. 106.

180 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 62; *Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 86, and *Case of Vera Vera et al. v. Ecuador*, *supra* note 19, para. 106.

181 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra* note 179, paras. 25 and 26; *Case of Bayarri v. Argentina*, *supra* note 14, para. 120; and *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 126.

182 *Cf. Case of the Mapiripán Massacre v. Colombia. Preliminary objections*. Judgment of March 7, 2005. Series C No. 122, para. 294; *Case of the Ituango Massacres v. Colombia*, *supra* note 164, para. 396, and *Case of the Dos Erres Massacre v. Guatemala*, *supra* note 170, para 226.

183 *Cf. Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of May 6, 2006. Series C No. 147, para. 177; *Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 89, and *Case of Vera Vera et al. v. Ecuador*, *supra* note 19, para. 107.

enshrined in the Convention is considered an injured party.[184] Therefore, the Court considers Mercedes Chocrón Chocrón to be an "injured party", and as victim of the violations declared in Chapter VII, she will be eligible for the reparations that the Court orders below.

B. Integral measures of reparation: restitution and satisfaction, and guarantees of non-repetition

148. The Court will determine measures that seek to repair the non-pecuniary damage and that are not of a monetary nature, and will order measures of public scope or repercussion.[185]

149. International case law and, in particular, that of the Court have established repeatedly that the judgment constitutes *per se* a form of reparation.[186] Nevertheless, considering the circumstances of the case *sub judice*, and in light of the effect on Mrs. Chocrón Chocrón owing to the changes in her situation, her expectations of professional development, and the other non-pecuniary consequences resulting from the violations of Articles 8(1) and 25(1), in relation to Article 1(1) and 2 of the American Convention, that have been declared to the detriment of the victim (*supra* paras. 123, 130 and 142), the Court finds it pertinent to order the following measures.

1. Restitution

150. The Commission and the representatives requested that the victim be reinstated in her post as Criminal Judge of First Instance of the Caracas Metropolitan Area Judicial Circuit, or, failing that, in a post of equal seniority and on the same judicial circuit, with the same remuneration, fringe benefits, and other pertinent legal consequences that would correspond to her if she had not been arbitrarily dismissed. In addition, the representatives requested "that, when her reinstatement has been agreed, the Judicial Commission of the Supreme Court of Justice, or any other authority assuming its functions, be ordered to refrain from removing [Mrs. Chocrón Chocrón] in a discretionary manner and without due process […] so that her stability in the post is respected until the competitive examinations are held for the posts in her category and judicial circuit."

151. According to the State, "in this case, it is not appropriate to reinstate" the victim "in the post that she held in the Judiciary, given her status as provisional judge and her entry into the justice system without sitting the corresponding competitive examination." Consequently, it argued that "in this case, the rule of *in integrum restitutio* 'cannot' be applied, and therefore other form of reparation must be provided."

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184 *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. 82; Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 87, and Case of *Vera Vera et al. v. Ecuador*, *supra* note 19, para. 109.

185 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84; *Case of Vélez Loor v. Panama*, *supra* note 147, para. 261, and *Case of Salvador Chiriboga v. Ecuador. Reparations and costs.* Judgment of March 3, 2011. Series C No. 222, para. 125.

186 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs*, Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 132, and Case of *Vera Vera et al. v. Ecuador*, *supra* note 19, para. 135.

According to the State, "[a] measure of reparation that would be appropriate and that would provide an opportunity for allowing the re-entry" of Mrs. Chocrón Chocrón "to the exercise of judicial functions, consists in her registration for the next competitive examinations to be held, provided that […] she indicates her willingness to take part in the examination and meets the corresponding requirements."

152. The Court notes that, according to the State, it is not possible to order the reinstatement of Mrs. Chocrón Chocrón as reparation, because she was serving as a temporary judge. However, in the preceding chapters, the Court found that provisional or temporary judges must enjoy all the benefits of permanence until a resolutive condition occurs that would terminate their mandate legally (*supra* para. 105). Also, regarding permanence in the exercise of public office and its relationship with the stability of judges, the Court reiterates its case law that the proper response to the arbitrary removal of a judge is their reinstatement.[187] In the *Reverón Trujillo* case, the Court indicated that immediate reinstatement after an arbitrary removal is the least damaging measure to satisfy both the objectives of the judicial restructuring and the guarantee of tenure inherent in an independent judiciary.[188] And that, "this is so because, otherwise, the States could remove the judges and thus intervene in the Judiciary without much expense or control."[189] Also, "this could instill fear in other judges, when they observe that their colleagues are removed and then not reinstated, even when the removal was arbitrary. This fear could also affect judicial independence, since it would encourage the judges to follow instructions or to abstain from challenging both the appointing and the sanctioning bodies."[190]

153. Consequently, the Court declares that, in this case, the State must reinstate Mrs. Chocrón Chocrón to a post similar to the one she held, with similar remuneration, fringe benefits and seniority, to those she would have had today if she been reinstated immediately. The State must implement this measure within one year from notification of this judgment. The Court clarifies that the reinstatement should be with the same temporary status that Mrs. Chocrón Chocrón had when she was removed. However, this provisional status must be understood as the Court has described it in this judgment (*supra* para. 105).

154. Nevertheless, if for reasons beyond the victim's control, the State cannot reinstate Mrs. Chocrón Chocrón in the Judiciary, it must pay her compensation, and the Court establishes this, in equity, at US$30,000 (thirty thousand United States dollars) or the equivalent in local currency, within six months of the decision establishing that Mrs. Chocrón Chocrón will not be reinstated, or on the expiry of the one-year period granted in the preceding paragraph.

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187 *Cf. Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 123.

188 The Court also considered that "the adverse effect on the rights of the provisional judge who was appointed following the victim's removal was not excessive either, because it is reasonable that the resolutive condition of the appointment of the new provisional judge would be interpreted as depending on the validity of the removal of the previous judge. Cf. *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 122.

189 *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 81

190 *Case of Reverón Trujillo v. Venezuela*, *supra* note 12, para. 81

2. Satisfaction

155. The Commission did not ask the Court to order any measure of satisfaction.

156. The representatives asked that "the judgment handed down in these proceedings be made public." In this regard, they requested that the State "publicly acknowledge its international responsibility by the publication of the main paragraphs of the judgment on merits handed down in this case in a national newspaper."

157. The State did not refer to this measure of reparation.

158. The Court finds, as it has in other cases,[191] that the State must publish, within six months of notification of this judgment:

a) This official summary of this judgment prepared by the Court, once, in the Official Gazette;

b) The official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation, and

c) This entire judgment, available for one year, on an official web site.

3. Guarantees of non-repetition

159. "Taking into account that the violations alleged in [this case] were caused by the consideration that temporary and provisional judges in Venezuela can be appointed and removed freely," the Commission asked the Court to "reiterate to the State the order given in the Reverón Trujillo case with regard to the amendment of the norms and practices that reflect that consideration."

160. The representatives asked the Court to order the State to "take appropriate measures to organize the competitive examinations for all the judicial posts according to the guidelines established […] in the Venezuelan Constitution, which means that any legal professional, and not only the judges holding the posts, can participate in the examinations." In addition, they asked that the State "abstain from continuing the arbitrary and discretionary removal of provisional judges in order to guarantee them the necessary autonomy and independence and that, in the cases in which it is agreed to sanction provisional judges, they are guaranteed a review of the decision before an independent judge with competence to grant integral reparation of the situation." Additionally, the representatives requested the "establishment of the disciplinary tribunals referred to in the Constitution and also in the Ethics Code for Venezuelan Judges […], as these are the bodies that should process and decide on disciplinary proceedings against judicial officials." The representatives also asked that the Supreme Court of Justice "make public, by an official decision, the determination to abandon the practice of discretionary removals of provisional judges and that, in the cases in which

[191] *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 Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 22, para. 273, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 217.

sanctions are annulled, it re-establish the situation violated by, among other actions, the reinstatement of the judges to their posts with all the legal effects."

161. Lastly, the representatives indicated that the promulgation of the Ethics Code for Venezuelan Judges "does not guarantee the independence of the Judiciary" because "the judges that comprise the disciplinary tribunals would be elected by entities whose members would be elected by the Citizen's Power and the so-called "Community Councils"; […] "more than 20 reasons for the removal of a judge have been stipulated […]"; "the Legislature is authorized unilaterally to elect judges until the above-mentioned bodies are constituted […]," and "the Judicial Commission retains its powers until the establishment of the first" disciplinary tribunals, and this has not occurred "to date."

162. Taking into account that the Court has declared violations of the rights to judicial guarantees and judicial protection, both in relation to the principle of judicial independence (*supra* paras. 123 and 130), the Court considers that, as a guarantee of non-repetition, the State must, within a reasonable time, adapt the domestic legislation, decisions and regulations issued as part of the judicial restructuring process in Venezuela to the relevant international standards and to the American Convention. This entails amending the norms and practices that allow provisional and temporary judges to be removed freely, as well as full respect for judicial guarantees and other rights for this type of judge.

163. Regarding the Ethics Code for Venezuelan Judges (*supra* para. 66), the Court observes that expert witness Canova stated that "neither the creation of the Judicial Electoral Colleges nor the appointment of disciplinary judges […] has been carried out to date."[192] Therefore, although the said Ethics Code had been promulgated at the date of this judgment, the Court orders that it be implemented as soon as possible in order to guarantee the impartiality, independence and stability of the disciplinary bodies whose creation is pending. In addition, the Court reiterates what it indicated in the *Apitz Barbera et al.* case, to the effect that "this [Code] must ensure both the impartiality of the disciplinary organ, permitting, *inter alia*, that its members may be recused, and its independence, providing for an appropriate process for the appointment of its members and ensuring their permanence in office."[193]

164. Furthermore, the Court emphasizes that the Supreme Court of Justice, the Judicial Commission, and the other disciplinary bodies must ensure the protection of the rights of the provisional and temporary judges. In this regard, in keeping with its case law, this Court recalls that it is aware that domestic authorities are subject to the rule of law and, therefore, obliged to apply the legal provisions in force.[194] Nevertheless, when a State is a party to an international treaty such as the American Convention, all its organs, including its judges and other bodies related to the administration of justice, are

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192 Affidavit made by expert witness Antonio Canova González, *supra* note 85, folio 621.

193 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, *supra* note 121, para. 253.

194 *Cf. Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 28, para. 202, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 225.

also subject to it. This obliges them to ensure that the effects of the provisions of the Convention are not diminished by the application of norms contrary to its object and purpose. The judges and other organs related to the administration of justice at all levels are obliged to monitor *ex-officio* that domestic law is in keeping with the American Convention in the context of their respective competences and procedural regulations. In this task, the judges and organs related to the administration of justice must take into account not only the treaty, but also the interpretation of it made by the Inter-American Court, the ultimate interpreter of the American Convention.[195]

165. Thus, for example, the highest courts in the region have referred to the Convention and monitored compliance with it, taking into account interpretations made by the Inter-American Court. The Constitutional Chamber of the Supreme Court of Justice of Costa Rica has indicated that:

> It should be noted that, if the Inter-American Court of Human Rights is the natural organ to interpret the American Convention on Human Rights […] the authority of its ruling when interpreting the Convention and judging domestic laws in light thereof, whether in an adversarial case or in a simple consultation, will have - in principle - the same weight as the law interpreted.[196]

166. For its part, the Constitutional Court of Bolivia has indicated that:

> The Pact of San Jose, Costa Rica, as a legal component of constitutionality is composed of three essential parts that are strictly interrelated: the first, comprising the preamble; the second, the dogma, and the third, the organization. Specifically, Chapter VIII of this instrument regulates the Inter-American C[ourt] of Human Rights. Consequently, following a "systemic" criterion of constitutional interpretation, it must be established that this organ and, consequently, the decisions it issues, also form part of this constitutionality.
>
> This is so for two specific juridical reasons, namely: (1) the purpose of the jurisdiction of the Inter-American Court of Human Rights, and (2) the application of the legal doctrine of the *effet utile* of its judgments on human rights[197]

167. Also, the Supreme Court of Justice of the Dominican Republic has established that:

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195 *Cf. Case of Almonacid Arellano et al. v. Chile*, *supra* note 194, para. 124; *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra* note 28, para. 202, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 225.

196 *Cf.* Judgment of May 9, 1995, handed down by the Constitutional Chamber of the Supreme Court of Justice of Costa Rica. Action on Unconstitutionality. Opinion 2313-95 (file 0421-S-90), Consideration VII.

197 Judgment handed down on May 10, 2010, by the Constitutional Court of Bolivia (file No. 2006-13381-27-RAC), section III.3 on "The Inter-American Human Rights System: considerations and effects of the judgments issued by the Inter-American Court of Human Rights."

> Consequently, both the provisions of the American Convention on Human Rights and also their interpretation by the jurisdictional organs are binding for the Dominican State and, therefore, for the Judiciary. They were created as a means of protection, according to Article 33 of the Convention, which grants [the Court] authority to hear matters related to compliance with the commitments assumed by States parties.[198]

168. Furthermore, the Constitutional Court of Peru has stated that:

> The binding nature of the judgments of the [Inter-American] Court is not exhausted with their operative paragraphs (which evidently involve only the State that is a party to the proceedings); rather, it extends to the considerations or *ratio decidendi*, with the addition that, owing to the primacy of the [Fourth Final Transitory Provision (CDFT)] of the Constitution and article V of the Preliminary Chapter of the [Constitutional Procedural Code], in the said sphere the judgment is binding for all domestic public authorities, even in those cases in which the Peruvian State has not been a party to the proceedings. Indeed, the [Inter-American] Court's capacity to interpret and apply the Convention, recognized in Article 62(3) thereof, added to the mandate of the CDFT of the Constitution, means that the interpretation made of the provisions of the Convention in any proceedings is binding for all domestic public authorities, including, of course, this court.[199]

169. That Court also established that:

> A direct relationship between the Inter-American Court of Human Rights and this Constitutional Court is revealed; a relationship which is twofold: on the one hand, *reparatory*, because when the fundamental right violated is interpreted in light of the decisions of the Court, the possibility of providing adequate and effective protection is optimized; and, on the other hand, *preventive*, because, by respecting it, the harmful institutional consequences that the adverse judgments of the Inter-American Court of Human Rights have for the legal certainty of the Peruvian State are avoided.[200]

170. The Argentine Supreme Court of Justice of the Nation has indicated that the decisions of the Inter-American Court "are binding for the Argentine State (Art. 68(1) of the ACHR)"; consequently, the Supreme Court has established that "in principle, it must subordinate the content of its decisions to those of the said international court."[201] Also, this Supreme Court has established "that the interpretation of the American

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198 *Cf.* Decision No. 1920-2003 delivered by the Supreme Court of Justice of the Dominican Republic on November 13, 2003.

199 Judgment handed down by the Constitutional Court of Peru on July 21, 2006 (file No. 2730-2006-PA/TC), twelfth consideration.

200 *Cf.* Judgment 00007-2007-PI/TC handed down by the Plenum of the Constitutional Court of Peru on June 19, 2007 (Callao Bar Association v. Congress of the Republic), twenty-sixth consideration.

201 Judgment delivered by the Argentine Republic Supreme Court of Justice of the Nation on December 23, 2004 (file 224. XXXIX), "Espósito, Miguel Angel re. expiry of the statute of limitations on the criminal action, filed in his defense," sixth consideration.

Convention on Human Rights must be guided by the case law of the Inter-American Court of Human Rights," because "this is an obligatory interpretive standard for the Argentine authorities within their sphere of jurisdiction and, consequently, also for the Supreme Court of Justice of the Nation in order to safeguard the obligations assumed by the Argentine State under the inter-American system for the protection of human rights."[202]

171. Furthermore, the Constitutional Court of Colombia has stated that, since the Colombian Constitution indicates that constitutional rights and obligations must be interpreted "in accordance with the international human rights treaties ratified by Colombia," it follows "that the case law of the international courts that are responsible for interpreting those treaties constitutes a relevant hermeneutic criterion for establishing the meaning of the constitutional provisions on fundamental rights." [203]

172. In conclusion, irrespective of the legal reforms that the State must adopt (*supra* para. 162), judicial interpretations regarding judicial guarantees and other rights of provisional and temporary judges must be made in light of judicial independence, harmonizing them with the principles established in this Court's case law that have been reiterated in this case. Based on control of compliance with the Convention, it must be established that the competent authority shall examine the facts that entail annulling appointments, and removing or dismissing temporary or provisional judges in a procedure in which the person concerned can exercise his or her right of defense; that the obligation to provide a reasoned decision is respected, and that access is granted to an effective remedy, guaranteeing due permanence in the post.

4. Other measures of reparation requested

173. The representatives required, as a means of reparation, that the State "refrain from taking any measure of retaliation or revenge against [the victim] or her lawyers, so that all the obligations" ordered by the Court "are complied with in good faith and in a timely manner."

174. In this regard, the Court reiterates that, in keeping with the provisions of Article 53 of the Court's Rules of Procedure, "[t]he States may not prosecute alleged victims, witnesses or expert witnesses, or take reprisals against them or their next of kin, owing to the testimony or expert opinions they provide to the Court." This is also applicable to the representatives of the victims.

175. In addition, the Court recalls that, according to Article 68(1) of the American Convention, "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." Furthermore, the Court reiterates that the obligation to comply with the provisions of the judgments of the Court corresponds to a basic principle of international law, supported by international case law, according to which the States are required to fulfill their international treaty-based obligations in good faith *(pacta sunt servanda)* and, as this Court has indicated

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[202] Judgment of the Argentine Supreme Court of Justice of the Nation, Mazzeo Lilo et al., remedy of cassation and unconstitutionality. M. 2333. XLII. et al., of July 13, 2007, para. 20.

[203] Judgment C-010/00 delivered by the Constitutional Court of Colombia on January 19, 2000, para. 6.

previously and pursuant to Article 27 of the 1969 Vienna Convention on the Law of Treaties, they may not invoke the provisions of internal law as justification for failure to perform a treaty.[204] The convention-based obligations of State Parties are binding upon all State authorities and organs.[205]

176. Based on the above, the Court finds that it is not necessary to order a specific measure of reparation to guarantee compliance in good faith with the obligations arising from this judgment, or to protect the victim and her representatives from possible reprisals, because the State has assumed these obligations through the direct application of the basic principles of international law, the American Convention, and the Court's Rules of Procedure.

C. Compensation

1. Pecuniary damage

177. In its case law, the Court has developed the concept of pecuniary damage and the situations in which it must be compensated.[206]

1.1 Arguments of the parties

178. The Commission did not ask the Court for a specific amount for this concept in favor of the victim. However, it asked the Court to "order the State to pay the salary and the work-related and/or fringe benefits that the victim has failed to receive since her removal and until her reinstatement."

179. For their part, the representatives stated that, from the time the victim was removed from her post, "she ceased to receive her salary and other work-related benefits applicable to first instance criminal judges. Additionally, the severance payment she received contained material errors, such as the date of her entry into the Judiciary and the date on which she was removed from her post." Accordingly, the representatives asked that the State be ordered "to calculate and pay all the back pay and other work-related benefits that [Mrs. Chocrón Chocrón] stopped receiving, taking into account all the raises, bonuses and other benefits received by first instance criminal judges." Therefore, they "requested that the corresponding calculation include both interest on

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204 *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts.* 1 and 2 of the American Convention on Human Rights), *supra* note 176, para. 35; *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 22, para. 177, and *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 59.

205 *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts.* 1 and 2 of the American Convention on Human Rights), *supra* note 176, para. 35; *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 166, para. 104, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*, *supra* note 22, para. 177.

206 This Court has established that pecuniary damage involves "the loss of or detriment to the victims' income, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal connection to the facts of the case." *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Cabrera García and Montiel Flores v. Mexico*, *supra* note 13, para. 248, and Case of *Vera Vera et al. v. Ecuador*, *supra* note 19, para. 128.

arrears and currency exchange correction (indexation), owing to the significant loss of value that the Venezuelan currency has suffered."

180. The State "ask[ed] the Court […] that, if it found it appropriate to grant compensation for pecuniary damage, it take into consideration" that on May 27, 2002, "the Judiciary's Executive Directorate paid [Mrs. Chocrón Chocrón] the sum of Bs.31,023,959.43 as a severance payment corresponding to her years of service as a provisional criminal judge." According to the State, Mrs. Chocrón Chocrón "has not proved […] that she has exercised the pertinent remedies to obtain a rectification as regards her disagreement with the amount of the severance payment, so that this reparation should not be included, because she has not exhausted all the domestic remedies for rectification, and because these facts are not part of the international litigation."

1.2 Considerations of the Court

181. The Court observes that, in her testimony during the public hearing, Mrs. Chocrón Chocrón indicated that she was receiving an "income left [to her] by [her] late husband, because [she] receives no income […] of any kind from her profession since [she is] waiting to be reinstated in the post, [because she] always made a living from [her] profession and [her] judicial career."[207]

182. Also, the case file contains a "Severance payment statement" dated November 10, 2004, that has not been contested, and its authenticity has not been questioned. It indicates that Mrs. Chocrón Chocrón received a severance payment of Bs.31,023,959.43 for her services from July 31, 1999, to May 27, 2002. This amount includes the interest on the severance payment and an advance on interest on the severance payment. The severance document reads as follows:

> By signing this statement, I confirm my agreement with the items and amounts received from the Judiciary's Executive Directorate owing to the termination of the work relationship that I had with this body; consequently, I have no remaining claims, either with regard to the items paid at this time or with regard to any other item arising from the work relationship.[208]

183. During the public hearing, Mrs. Chocrón Chocrón indicated that, although she was not in agreement with the severance payment, she "did not challenge it, because, at the time, [... she] needed the money that was [paid to her] by the Judiciary's Executive Directorate."[209] Based on the foregoing, the Court concludes that Mrs. Chocrón Chocrón received a severance payment for services rendered from 1999 to 2002.

184. Nevertheless, the Court considers that the severance payment made to Mrs. Chocrón Chocrón refers only to her years of service as a temporary judge. However, in the context of pecuniary damage, it is necessary to recognize the salary and fringe

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207 Testimony given by Mercedes Chocrón Chocrón during the public hearing, *supra* note 35.

208 *Cf.* Statement of severance pay issued by the Judiciary's Executive Directorate on November 10, 2004 (file of attachments to the answer to the application, volume XII, attachment 33, folio 5917).

209 Testimony given by Mrs. Mercedes Chocrón Chocrón during the public hearing, *supra* note 35..

benefits that the victim ceased to receive from the time of her arbitrary removal until the date that this judgment is handed down, including the pertinent interest and other related items. Consequently, the Court decides to establish, in equity, the sum of US$50,000.00 (fifty thousand United States dollars) that the State must pay within one year of notification of this judgment.

2. Non-pecuniary damage

185. The Court has developed the concept of non-pecuniary damage in its case law, together with the circumstances under which it should be compensated.[210]

2.1 Arguments of the parties

186. The Commission did not request a specific amount for this item in favor of the victim.

187. The representatives indicated that, "[t]he violations denounced in this case have caused [Mrs.] Chocrón [Chocrón] significant non-pecuniary damage, because […] she was arbitrarily removed without any proceeding, and that removal was made public." In this regard, they asked the Court to "order compensation, in equity, for the non-pecuniary damage caused," in accordance with the Court's case law. On this basis, they considered that the amount for non-pecuniary damage was the sum of "fifty thousand United States dollars (US$ 50,000)."

188. The State argued that "[it had not] been proved how [Mrs.] Chocrón [Chocrón] had been affected in a non-pecuniary way, because the termination of the work relationship resulted in payment of the compensation provided for in the Organic Labor Law, which the victim received. In addition, [Mrs.] Chocrón [Chocrón] is not prevented from exercising her profession as a lawyer, and she could work in that area and obtain an income for herself and/or her family, so that her separation from the post of judge does not imply *per se* a down-grading of her situation, or non-pecuniary damage against her." In this regard, the State, "asked that the Court assess the facts in this case objectively and, should it grant compensation for non-pecuniary damage, do so assessing the true scale of the damage to the […] victim."

2.2 Considerations of the Court

189. The Court observes that the only evidence of non-pecuniary damage in the case file relates to the victim's testimony during the public hearing. Mrs. Chocrón Chocrón indicated that, since her appointment was annulled, she has not participated in any competitive examination, "because during all that time [… she has] been with [her] lawyers dealing with the corresponding procedures to obtain [her] reinstatement to the post and a favorable decision." Similarly, the victim indicated that, "following [her] removal, [she] has never returned to exercise [her] profession as a lawyer because […

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[210] The Court has established that non-pecuniary damages "may include distress and suffering caused directly to the victims or their next of kin, the harm to values of great significance to the individual, as well as changes of a non-pecuniary nature in the living conditions of the victims or their family." *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala.* Reparations and costs, *supra* note 181, para. 84; *Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 116, and *Case of Vera Vera et al. v. Ecuador*, *supr*a note 19, para. 133.

she] consider[s] that [she] continues to be a judge and [… she] will not exercise [her] profession until [her] legal situation has been resolved."[211]

190. In this regard, the Court has held that it is inherent in human nature that any individual who suffers a human rights violation experiences suffering and, therefore, non-pecuniary damage is evident.[212]

191. Nevertheless, considering the circumstances of the case *sub judice* and that the Court has no evidence to assess, other than the above-mentioned statement by the victim, the Court decides to order, in equity, that the State pay the sum of US$10,000.00 (ten thousand United States dollars) or the equivalent in national currency as compensation for non-pecuniary damage. The State must pay this amount directly to Mrs. Chocrón Chocrón within one year of notification of this judgment.

D. Costs and expenses

192. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparations established in Article 63(1) of the American Convention.[213]

193. The Commission asked the Court to "order the State […] to pay the costs and expenses that have arisen and arise from processing this case both in the domestic sphere and before the inter-American system."

194. The representatives indicated that Mrs. Chocrón Chocrón "has had to incur significant expenditure to defend herself at the domestic and international levels from her illegal removal, mainly related to the professional fees of the lawyers who represented her in both the domestic administrative and judicial proceedings, and in the proceedings before the Inter-American Commission and [the] Inter-American Court." According to the representatives, Mrs. Chocrón Chocrón has "had to incur costs […] such as: subpoenas, certified copies, notification expenses, courier expenses, international telephone calls, and mobile phone calls." However, the representatives indicated that "it had not been possible to compile the proof of this information and, consequently, [they] were unable to provide support for the amount spent by [Mrs.] Chocrón [Chocrón] during the domestic proceedings." Despite this, they indicated that the victim had spent Bs.8,000,000 (equal to US$10,521.00) on professional fees and Bs.850,000 (equal to US$531) on procedural expenses. Regarding the proceedings before the inter-American system, the victim had allegedly spent US$35,000 on professional fees,[214] and approximately US$10,000.00 on procedural expenses. Subsequently, in the attachments to their final written arguments, the representatives

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211 Testimony given by Mrs. Mercedes Chocrón Chocrón, *supra* note 35.

212 *Cf. Case of Reverón Trujillo, v. Venezuela*, *supra* note 12, para. 176, and *Case of Abrill Alosilla et al. v. Peru*, *supra* note 19, para. 131.

213 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs. Judgment of August 27*, 1998. Series C. No. 39, para. 79; *Case of Abrill Alosilla et al. v.. Peru*, *supra* e19, para. 133, and Case of *Vera Vera et al. v. Ecuador*, *supra* note 19, para. 140.

214 *Cf.* Proposed agreement on professional fees dated May 11, 2009, addressed to Mercedes Chocrón Chocrón, signed by *Consultores Jurídicos* (file of attachments to the pleadings and motions brief, volume III, folios 1600 and 1601)

forwarded documentation supporting some of the said procedural expenses in the proceedings before the Inter-American Court for a sum of approximately US$7,681.85.

195. For its part, the State argued that the "representatives of the […] victim had not provided enough evidence to prove the alleged expenses she incurred to cover what they classify as 'procedural expenses' under domestic law and under the inter-American system […]." It added that, "[t]he Commission's application itself recognizes that the State should only be obliged to pay the expenses that have been duly proved by the victim."

196. Regarding the reimbursement of costs and expenses, it is for the Court to assess their extent prudently. They include the expenses incurred before the authorities of the domestic jurisdiction, as well as those arising during these proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that the amount is reasonable.[215]

197. In the instant case, the Court observes that the representatives did not forward vouchers proving the sums paid by the victim during the processing of this case at the domestic level for professional fees and procedural expenses. However, the Court finds it reasonable to assume that during the years in which the case was processed before the domestic jurisdiction, the victim had financial outlays. Furthermore, the Court observes that Mrs. Chocrón Chocrón and the representatives incurred diverse expenses related to fees, collection of evidence, transport and communication services during the international processing of this case.[216] Although some amounts have not been fully proved,[217] the Court can infer that the victim and the representatives incurred expenses for approximate amounts.

198. Based on the foregoing considerations, the Court determines that the State must deliver the sum of US$18,000.00 (eighteen thousand United States dollars) to the victim for costs and expenses. The said amount shall be paid within one year of notification of this judgment. Mrs. Chocrón Chocrón will, in turn, pay the amount she considers appropriate to her representatives in the domestic jurisdiction and in the proceedings before the inter-American system. During the proceeding of monitoring compliance with this judgment, the Court may order that the State reimburse the victim or her representatives for any reasonable expenses duly authenticated during that procedural stage.

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215 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra* note 213, para. 82; *Case of Abrill Alosilla et al. v. Peru, supra* note 19, para. 137, and *Case of Vera Vera et al. v. Ecuador, supra* note 19, para. 144.

216 *Cf.* Expenditure for Caracas-Costa Rica-Caracas tickets; accommodation for three nights in San Jose, Costa Rica; transportation services; food at the airport and the hotel, domestic and international telephone calls; airport tax in Costa Rica for Mrs. Chocrón Chocrón; invoices for postal service; and invoice for authentication of a document (merits file, attachments to the final written arguments of the representatives, volume II, folios 937 to 958.).

217 Expenses for taxis between Caracas and Maiquetía and domestic taxes, as well as partial amounts for general transportation, airport restaurant, hotel restaurant, exit taxes (merits file, attachments to the final written arguments of the representatives, volume II, folios 934 to 936).

E. Method of complying with the payments ordered

199. The State must pay the compensation for pecuniary and non-pecuniary damage directly to the victim, and also the reimbursement of costs and expenses, within one year of notification of this judgment, in the terms of the following paragraphs. Furthermore, the State must pay the victim the amount established in paragraph 154 of this judgment within six month of the decision establishing that Mrs. Chocrón Chocrón will not be reinstated into a post similar to the one she occupied, or on the expiry of the one-year period granted for this reinstatement.

200. If the beneficiary should die before she receives the respective compensation, it shall be paid directly to her heirs, in accordance with the applicable domestic law.

201. The State must comply with its obligations by payment in United States dollars or the equivalent in Venezuelan currency, using the exchange rate in force on the market in New York, United States of America, on the day before the payment to make the respective calculation.

202. If, for reasons that can be attributed to the beneficiary of the compensation or her heirs, it is not possible to pay the amounts decided within the period indicated, the State shall deposit the said amounts in their favor in an account or certificate of deposit in a solvent Venezuelan financial institution in United States dollars and under the most favorable financial terms allowed by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall be returned to the State, with the accrued interest.

203. The amounts allocated in this judgment as compensation and reimbursement of costs and expenses must be paid to the individuals indicated in full, in keeping with the provisions of this judgment, without reductions for possible taxes or charges.

204. If the State falls into arrears with its payments, it must pay interest on the amount owed corresponding to Venezuelan banking interest on arrears.

XII
OPERATIVE PARAGRAPHS

205. Therefore,

THE COURT,

DECIDES,

unanimously,

1. To reject the preliminary objection filed by the State in the terms of paragraphs 20 to 24 of this judgment.

DECLARES:

unanimously, that:

2. The State has violated Articles 8(1), in relation to Article 1(1) of the American Convention, to the detriment of Mrs. Chocrón Chocrón, in the terms of paragraphs 115 to 123 of this judgment.

3. The State has violated Article 25(1), in relation to Article 1(1) of the American Convention, to the detriment of Mrs. Chocrón Chocrón, in the terms of paragraphs 127 to 130 of this judgment.

4. It is not necessary to rule on the alleged violation of Article 23(1)(c), in relation to Article 1(1) of the American Convention, to the detriment of Mrs. Chocrón Chocrón, in the terms of paragraphs 134 to 136 of this judgment.

5. The State has failed to comply with Article 2, in relation to Articles 8(1) and 25(1) of the American Convention, in the terms of paragraphs 140 to 142 of this judgment.

AND ORDERS:

unanimously, that,

6. This judgment is *per se* a form of reparation.

7. The State must reinstate Mrs. Chocrón Chocrón in a post comparable to the one she held, with similar remuneration, fringe benefits and seniority to those she would have today if she had been reinstated immediately, within six months at the most of notification of this judgment, in the terms of paragraphs 153 and 154 hereof. Failing that, the State must pay her the amount established in paragraph 154 of this judgment.

8. The State must adapt, within a reasonable period of time, its domestic legislation to the American Convention by amending the norms and practices that consider that provisional judges can be removed freely, in accordance with paragraphs 162 and 172 of this judgment.

9. The State must make the publications indicated in paragraph 158 of this judgment within six months of its notification.

10. The State must pay the amounts established in paragraphs 184, 191 and 198 for pecuniary and non-pecuniary damage, and reimbursement of costs and expenses, within one year of notification of this judgment, in the terms of paragraphs 199 to 204 hereof.

11. The Court will monitor full compliance with this judgment in exercise of its authority and in compliance with its obligations under the American Convention. It will consider the case closed when the State has complied fully with the provisions of this judgment.

12. The State shall submit a report to the Court on the measures adopted to comply with this judgment within one year of its notification.

Done, at San Jose, Costa Rica, on July 1, 2011, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary