INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE SUPREME COURT OF JUSTICE (QUINTANA COELLO *ET AL.*) *v.* ECUADOR

JUDGMENT OF AUGUST 23, 2013

(Preliminary Objection, Merits, Reparations and Costs)

In the case of the *Supreme Court of Justice (Quintana Coello et al.)*,

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

Diego García-Sayán, President;
Manuel E. Ventura Robles, Vice-President;
Alberto Pérez, Judge;
Eduardo Vio Grossi, Judge;
Roberto F. Caldas, Judge;
Humberto Antonio Sierra Porto, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), renders the following Judgment which is structured as follows:

Table of Contents

I
INTRODUCTION TO THE CASE AND PURPOSE OF THE DISPUTE

1. *The case before the Court.* – On August 2, 2011, in accordance with Articles 51 and 61 of the American Convention, the Inter-American Commission on Human rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court the case of "Quintana Coello *et al*." (hereinafter "brief submitting the case") against the Republic of Ecuador (hereinafter "the State " or "Ecuador"), concerning "the [alleged] arbitrary removal of 27 judges of the Supreme Court of Justice of Ecuador through a parliamentary resolution on December 8, 2004, in the [alleged] absence of a clear legal framework regulating the grounds and proceedings for their removal from office, and [allegedly] disregarding the constitutional norms under which they were appointed with respect to the indefinite nature of their appointment and the cooptation system as a means of filling possible vacancies." According to the Commission, "[t]he victims were denied even minimal guarantees of due process, were not granted a hearing, and had no opportunity to defend themselves" and "[n]or was there any effective judicial remedy available to them to oppose the arbitrary action of the National Congress."

2. *Proceeding before the Commission* – The proceeding before the Commission was as follows:

a) *Petition.* – On December 30, 2004 Mr. Hugo Quintana Coello and 26 other former judges of the Supreme Court of Justice of Ecuador filed an initial complaint before the Commission;

b) *Admissibility Report.* – On February 27, 2007 the Commission adopted Admissibility Report No. 8/07[1];

c) *Report on Merits.* – On March 31, 2011 the Commission approved the Report on Merits No. 65/11[2], in accordance with Article 50 of the Convention (hereinafter also "the Report on Merits" or "Report No. 65/11"), in which it reached a number of conclusions and made several recommendations to the State, namely:

   a. *Conclusions.* – The Commission concluded that the State of Ecuador [was] responsible for the violation of […] Articles 8, 9 and 25 of the American Convention, in conjunction with the obligations set out in Articles 1(1) and 2 thereof, with respect to Hugo Quintana Coello, Alfredo Contreras Villavicencio, Teodoro Coello Vásquez, Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Brito Mieles, Nicolás Castro Patiño, Galo Galarza Paz, Luis Heredia Moreno, Estuardo Hurtado Larrea, Ángel Lescano Fiallo, Galo Pico Mantilla, Jorge Ramírez Álvarez, Carlos Riofrío Corral, José Vicente Troya Jaramillo, Rodrigo Varea Áviles, Jaime Velasco Dávila, Miguel Villacís Gómez, Gonzalo Zambrano Palacios, Milton Moreno Aguirre, Arturo Donoso Castellón, Ernesto Albán Gómez, Hernán Quevedo Terán, Jorge Andrade Lara, Clotary Salinas Montaño and Armando Serrano Puig."

   b. *Recommendations.* – Consequently, the Commission issued the following recommendations to the State:

      i. "Reinstate the victims in the judiciary, if they so wish, in a position similar to those that they held, with the same remuneration, social benefits and rank comparable to that they would hold today if their functions had not been terminated. If, for grounded reasons, reinstatement is not possible, the State shall pay reasonable indemnification to the victims or, where applicable, to their successors.

---

[1] In its Report, the Commission declared the petition "admissible" and ruled itself competent to hear the complaint lodged by the petitioners with respect to the possible violation of Articles 8, 9 and 25 of the American Convention, pursuant to Articles 1(1) and 2". *Cf.* Admissibility Report No. 8/07, Case 12.600, Hugo Quintana Coello and others, Ecuador, on February 27, 2007 (File of attachments to the report, volume IV, page 1387).

[2] Merits Report No 65/11, Case 12.600, Hugo Quintana Coello and others "Justices of the Supreme Court of Justice", Ecuador, March 31, 2011 (File of attachments to the report, volume I, pages 6 to 607).

ii. Pay the victims the salaries and labor and/or social benefits they did not receive from the time they were dismissed until the time their reincorporation takes effect, or else the alternative compensation referred to in the foregoing recommendation.

iii. Adopt measures to prevent a recurrence of what happened, including measures to ensure that domestic rules and regulations and relevant practices are governed by clear criteria and provide guarantees with respect to the appointment, term and dismissal of judges, in accordance with the norms established in the American Convention."

d) *Notification of the State.* – The Merits Report was notified to the State on May 2, 2011. The State was granted a period of two months to report on its compliance with the recommendations. On July 15, 2011 the State of Ecuador presented a report which, in the Commission's view, "did not reveal any substantial progress on implementation of the recommendations."

e) *Submission to the Court.* - On August 2, 2011, considering "the need to obtain justice for the [alleged] victims", the Commission submitted the case to the Court. The Commission appointed Commissioner Luz Patricia Mejía, and then Executive Secretary of the Inter-American Commission, Santiago A. Cantón, as its delegates and appointed Assistant Executive Secretary Elizabeth Abi-Mershed and Silvia Serrano Guzmán, an attorney of the Executive Secretariat of the Commission, as its legal advisors.

II
PROCEEDING BEFORE THE COURT

3. *Notification of the State and of the representatives* – The Commission notified the State and the representatives of the alleged victims of the submission of the case on September 21, 2011.

4. *Brief of pleadings, motions and evidence.* – On November 18, 2011 Ramiro Ávila Santamaría and David Cordero Heredia (hereinafter "the representatives") submitted to the Court their brief of pleadings, motions and evidence (hereinafter "brief of pleadings and motions"). They agreed substantially with the Commission's arguments and asked the Court to declare the State's international responsibility for the violation of the same articles cited by the Commission. In addition, they requested that the Court declare the violation of Articles 23 (Right to Participate in Government) and 24 (Right to Equal Protection before the Law) of the Convention, to the detriment of the 27 alleged victims.

5. *Answer brief.* – On February 14, 2012 the State submitted to the Court a brief containing a preliminary objection, an analysis of the recommendations issued by the Inter-American Commission, its answer to the brief submitting the case and observations to the brief of pleadings and motions (hereinafter "answer brief"). In addition, the State appointed Mr. Erick Roberts Garcés as its Principal Agent, and Mr. Alonso Fonseca and Mrs. María Dolores Miño as Alternate Agents.

6. *Observations to the preliminary objection*– On May 8 and 11, 2012 the representatives of the alleged victims and the Commission, respectively, presented their observations to the preliminary objection filed by the State.

7. *Public hearing and additional evidence* –The President of the Court (hereinafter "the President") in an Order of December 20, 2012, summoned the parties to a public hearing and specified the statements that would be received at the public hearing and those that

would be received by *affidavit*[3]. The public hearing was held on February 4, 2013 during the Court's 98th Regular Period of Sessions, which took place at its seat.[4] During the hearing the Court received the statements of one alleged victim and three expert witnesses, as well as the observations and final oral arguments of the Commission, the representatives of the alleged victims and the State, respectively. The Court also required the parties to present certain information and documentation at the hearing to facilitate adjudication.

8. *Amici curiae* - On March 22, 2012 the *Fundación Vida Solidaria* and others[5] presented an *amicus curiae* brief in this case. On August 7, 2012 a group of 68 people also presented an *amicus curiae* brief. Similarly, on January 4, 2013 Mrs. María Nazareth Ramos and Emilia Carrasco, students of the Legal Clinic of the University of San Francisco of Quito, presented another *amicus curiae* brief.

9. *Arguments and final written observations* – On March 4, 2013 the representatives of the alleged victims and the State submitted their final written arguments, and the Commission presented its final written observations.

10. *Observations of the representatives and the State.* – The briefs of arguments and final written observations were conveyed to the parties and the Commission on March 11, 2013. On March 31, 2011 the representatives of the alleged victims forwarded their observations to the answers provided by the State in its final arguments. On April 1, 2013, the Commission submitted its observations to the answers presented by the State in its final arguments.

11. In its brief of April 9, 2013, the State pointed out that the Inter-American Commission "is not granted the opportunity to submit final written arguments as the State and the representatives of the alleged victims are." It also asked the Court "to dismiss and not assess the observations presented" by the representatives "since these clearly contravene [d] the regulations regarding the Final Written Proceedings" before the Court. In this regard, the Secretariat, following the instructions of the President of the Court, sent a note on April 16, 2013[6] informing the parties and the Inter-American Commission that the final deadline granted to the parties was limited to "referring only, if they deem[ed] it pertinent, to the information, clarifications or documentation provided by the parties and the Commission in response to the notes of Secretariat of February 13, 2013." Thus, said request was limited to ending the dispute regarding the arguments and evidence presented in response to the concerns raised by the full Court both to the parties and the Inter-American Commission.

III
JURISDICTION

12. In accordance with Article 62(3) of the American Convention, the Court has jurisdiction to hear this case, given that Ecuador has been a State Party to the Convention

---

[3] *Cf. Case of Quintana Coello et al. v. Ecuador*. Order of the President of the Inter-American Court of December 20, 2012. Available at: http:www.Courtidh.or.cr/docs/asuntos/quintana_20_12_12.pdf .

[4] The following persons appeared at the hearing: a) for the Inter-American Commission: José of Jesus Orozco Hernández, Silvia Serrano Guzman and Jorge H. Meza Flores; b) for the representatives of the alleged victims: David Cordero Heredia and Ramiro Ávila Santamaría, and c) for the State of Ecuador: Erick Roberts Garcés, Alonso Fonseca, María del Carmen Jacome and Carlos Espín Arias.

[5] Amicus Curiae brief submitted by the *Fundación Vida Solidaria* and signed by the Vice-president and executive director of the Foundation, Mrs. Ibeth Liliana Suasnavas.

[6] Note of the Secretariat of the Inter-American Court of April 16, 2013 (Merits file, volume V, page 2124).

since December 28, 1977, and recognized the Court's contentious jurisdiction on July 24, 1984.

IV
PARTIAL ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

A. Partial acknowledgment of responsibility by the State and observations of the Commission and the representatives

13. In the course of the public hearing the State announced the following:

> "Ecuador partially acknowledges [responsibility…] only […] in relation to certain rights […]. One, judicial guarantees, Article 8 of the American Convention, inasmuch as [the judges] were dismissed from their positions without being afforded an opportunity to appear before the National Congress. Two, the principle of legality (freedom from *ex post facto* laws), Article 9 of the American Convention, inasmuch as the law contained no specific grounds for removing the judges from office, and that the National Congress's resolution could have been understood as an *ad-hoc* proceeding of a punitive nature. Three, the right to a simple, prompt and effective remedy, Article 25 of the Convention, inasmuch as the State did not provide the former judges with an effective legal remedy against the National Congress's Resolution of 2004 in order to determine whether it constituted a human rights violation. Four, the right to equal protection before the law, Article 24 of the Convention, inasmuch as the former judges did not have access to the action of constitutional *amparo* against the National Congress's resolution, unlike the rest of the population which has always had a broad right to such action. […]
>
> [T]he Ecuadorian State has specifically accepted the facts that it considers violate the rights of the former judges […] and therefore partially acknowledges the alleged violation of Articles 8(1), 8(2), 9, 24, and 25 of the American Convention on Human Rights in the context of the facts mentioned, discounting the fact that the rights which it accepts have been violated, could stem from other circumstances or facts of a temporary nature different from this case.
>
> [T]he dismissal of the judges is not in dispute [… nor is the fact that] the rules of due process were violated in the dismissal of the judges, […] the principle of legality, […] that they were not afforded an effective remedy to assert their rights and […] that they received a discriminatory treatment as regards being afforded an opportunity to present actions of *amparo*, to which other persons within the State had access."

14. The Commission considered that "the State's acknowledgement constitute[d] a positive contribution to this process, to the victims' rights and, in general, to the application of human rights in the region." However, it pointed out that "the manner in which the State described its acknowledgement was ambiguous regarding the specific facts that it recognizes as violations under those Articles." This, because the State considered that the violation of Article 8 of the Convention was limited "to the victims' inability to appear at the session where they were dismissed from office." However, "it made no mention of one of the main violations: the right to be heard by a competent, independent and impartial authority." The Commission added that there is still a dispute over reparations. Furthermore, it stated that it understood that "the acknowledgement of international responsibility […] by its very nature, and by including the violation of Article 25 of the Convention, impli[ed] the withdrawal of the preliminary objections filed."

15. The representatives, for their part, said they "welcome[ed] the acquiescence of the State." However, they argued that this acquiescence did not allow for an examination of "the scope of the facts and the rights recognized as having been violated by the State."

16. In this regard, the Court required the State to determine in its final arguments "which specific facts ha[d] caused the alleged violations of the rights enshrined in the

American Convention, for which the State had accepted international responsibility."[7] In response to this requirement, the State did not specify the facts upon which its partial acknowledgment of responsibility was based, and only submitted to this Court the information provided by the state agents during the public hearing.

B. Considerations of the Court

17. In accordance with Articles 62 and 64 of the Rules of Procedure[8], and in exercise of its international responsibility to protect human rights - a matter that transcends the will of the parties - the Court must ensure that acts of acquiescence are acceptable for the purposes of the inter-American system. In doing so, the Court must not only verify the formal conditions of said acts, but also examine them in relation to the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances surrounding a particular case and the attitude and position of the parties[9], in order to determine, as far as possible and in the exercise of its jurisdiction, the truth of the matter.[10]

18. In this case, the Court considers that the State's partial acceptance of the facts and its acknowledgement of some claims of law are a positive contribution to the conduct of these proceedings, to the fulfillment of the principles underlying the American Convention,[11] and that they partially satisfy the need to provide reparation to victims of human rights violations.[12] The Court considers, as it has in other cases,[13] that the State's acknowledgement has full legal effects under Articles 62 and 64 of the Court's Rules of Procedure, and high symbolic value in preventing the repetition of similar facts.

19. In this regard, the Court emphasizes that the State has accepted certain facts upon acknowledging its responsibility in relation to Articles 8(1), 8(2), 9, 24 and 25 of the American Convention. Nevertheless, the facts to which the State refers do not encompass the entire factual framework outlined by the Commission and the representatives in their briefs; therefore, a dispute remains concerning the facts which the Court must resolve.

---

7 Note of the Secretariat of the Inter-American Court of Human Rights of February 13, 2013 (Merits file, volume IV, page 1481).

8 Articles 62 and 64 of the Rules of the Court establish: Article 62. Acquiescence- If the respondent informs the Court of its acceptance of the facts or its total or partial acquiescence to the claims stated in the presentation of the case or the brief submitted by the alleged victims or their representatives, the Court shall decide, having heard the opinions of all those participating in the proceedings and at the appropriate procedural moment, whether to accept that acquiescence, and shall rule upon its juridical effects.

Article 64. Continuation of a Case- Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding Articles.

9 *Cf. Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of García and Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 29, 2012 Series C No. 258, para. 16.

10 *Cf. Case of Kimel v. Argentina*, para. 24, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala. Merits Reparations and Costs.* Judgment of November 20, 2012 Series C No. 253, para. 20.

11 *Cf. Case of El Caracazo v. Venezuela. Merits*. Judgment of November 11, 1999. Series C No. 58, para. 43, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, para. 28.

12 *Cf. Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 26, 2010. Series C No. 213 para. 18, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, para. 28.

13 *Cf. inter alia*, *Case of Kimel v. Argentina*, paras. 23 to 25, and *Case of Gudiel Álvarez et al. ("Diario Militar") V. Guatemala*, para. 28.

20. First, the Court declares that the dispute over the violation of Article 8 of the Convention has ceased, given that the judges were removed from their positions without being afforded an opportunity to appear before the National Congress. However disputes persist on other aspects related to Article 8 of the Convention.

21. With respect to the State's acknowledgement of the violation of Article 9 of the Convention, based on the fact that Ecuadorian law did not establish specific grounds for dismissing the judges from office, "which, through the National Congress's resolution could have been understood as an *ad-hoc* proceeding of a punitive nature," the Court considers that said acquiescence does not address several arguments presented by the Commission and the representatives on this matter (*infra* paras. 127 and 128). For example, the representatives mentioned the existence of a proceeding for sanctioning Supreme Court justices and stated that the grounds for such sanctions were very broad and undefined (*infra* para. 128).

22. Similarly, the Court notes that the State acknowledged its international responsibility for the violation of the rights enshrined in Articles 24 and 25 of the Convention. Its acknowledgement regarding Article 25 of the Convention was made under the premise that the Supreme Court justices allegedly did not have access to "a simple prompt and effective remedy", given that "in the case of the former judges, the State did not provide them with an effective and appropriate legal remedy against the National Congress Resolution of 2004, which would determine whether this constituted a human rights violation." However, the acknowledgement of responsibility on this point is not clear regarding the specific facts which produced that violation and were alleged by the Commission and the representatives, for which reason there are still disputes regarding that article.

23. In relation to Article 24 of the Convention, the State accepted its international responsibility for the fact that "the former judges did not have access to the action of constitutional *amparo* against the National Congress's resolution, unlike the rest of the population." On this point the representatives offered arguments concerning the alleged discrimination practiced, given that some judges were dismissed while others were not. Therefore, the dispute on this point continues.

24. Furthermore, there is still a dispute regarding the alleged violations of Articles 1(1), 2 and 23 of the American Convention, which were not acknowledged by the State. There is also disagreement over possible reparations, costs and expenses; therefore, the Court shall decide on appropriate measures of reparation in this case, in the relevant chapter of this Judgment.

25. Considering that disputes remain with respect to several points related to some of the facts, the alleged violations of Articles 8, 9, 23, 24 and 25 in conjunction with Articles 1(1) and 2 of the Convention, and regarding the corresponding measures of reparation, the Court deems it necessary to issue a Judgment that establishes the facts that occurred, specifies the scope of the violations acknowledged and rules on the remaining disputes, where pertinent, for the resolution of this case. The Court emphasizes that this ruling serves to provide reparation for the victims, avoid the repetition of similar facts and, in general, satisfy the purposes of the inter-American jurisdiction on human rights.[14]

V
PRELIMINARY OBJECTION

[14] *Cf. Case of Tiu Tojín v. Guatemala.* Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case García and Family v. Venezuela*, para. 24.

Arguments of the Commission and of the Parties

26. The State presented an objection regarding the failure to exhaust domestic remedies. It held that the alleged victims did not exhaust the remedies available to them in the domestic courts and therefore the Court should declare the petition inadmissible. It argued that the remedy of unconstitutionality was appropriate to address the claims of the alleged victims, since its purpose was to revoke the action challenged and annul its effects. The State argued that it was a simple remedy to pursue, and that there was no justification for not having done so. Regarding the contentious-administrative remedy, the State argued that this remedy could be used by "any natural and juridical person against regulations, acts and resolutions of the Public Administration[…] that impair the rights established […] by law."

27. The Commission held that "the State's arguments were duly analyzed" at "the proper procedural stage", that is, "during the admissibility stage." As regards the unconstitutionality suit, the Commission specified that in its admissibility report it had examined "the lack of access to the remedy because of the requirement to collect 1000 signatures, a requirement that the Commission considered 'excessive', expressly indicating that if 'the domestic remedy is conceived in such a manner as to be practically inaccessible to the alleged victim, certainly there is no obligation to exhaust it in order to remedy the legal situation.'" Furthermore, the Commission pointed out that "the State did not offer any arguments concerning the appropriateness of using the contentious administrative remedy to challenge violations of constitutional rights." The Commission added that "the Constitutional Court itself had already established that [an unconstitutionality suit] was the only admissible action to suspend the effects of a parliamentary resolution."

28. The representatives presented similar arguments. As regards the unconstitutionality suit, they pointed out that the available domestic legal options did not provide for direct access to the Constitutional Tribunal given that "in the case of the signatures, the waiting period would be the length of time it took to collect these, while the process before the Ombudsman's Office was not regulated and the unconstitutionality suit did not have the scope to determine reparations to those affected." They offered various arguments regarding the supposed lack of independence and impartiality of the Constitutional Tribunal that would hear the matter. As to the contentious-administrative action, the representatives argued that "in this case, the [alleged] victims [did] not only not seek financial reparation, but also reinstatement in their positions and comprehensive reparation, which includes an acknowledgement of the violations, measures of satisfaction and guarantees of non-repetition."

Considerations of the Court

29. Having regard to Article 42(6), and in accordance with the provisions of Articles 61, 62 and 64 of its Rules of Procedure, the Court considers that, by acknowledging responsibility in this case, the State has accepted the Court's full jurisdiction to hear it; consequently, the preliminary objection regarding the failure to exhaust domestic remedies, is, in principle, incompatible with that acknowledgement.[15] Consequently, the objection raised has no purpose and it is not appropriate to analyze it.[16]

---

[15] Similarly, regarding a preliminary objection for failure to exhaust domestic remedies, *Cf. Case of the "Massacre of Mapiripán" v. Colombia. Preliminary objections.* Judgment of March 7, 2005. Series C No. 122, para. 30, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 27, 2012. Series C No. 245, para. 30.

[16] Similarly, the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 30.

VI
EVIDENCE

30. Based on the provisions of Articles 46, 50, 57 and 58 of the Court's Rules of Procedure, as well as its case law regarding evidence and the assessment thereof,[17] the Court shall now examine and assess the documentary evidence forwarded by the parties at different procedural stages, the statements of the alleged victims and witnesses, the expert opinions rendered by affidavit and at the public hearing before the Court, as well as the evidence to facilitate adjudication of the case. In doing so, this Court shall adhere to the principles of sound judgment, within the applicable legal framework.[18]

A. Documentary, testimonial and expert evidence

31. The Court received several documents presented as evidence by the Inter-American Commission, the representatives and the State, attached to their main briefs. The Court also received the following statements rendered by affidavit:

A) Expert witness proposed by the Commission

1) Param Cumaraswamy, former United Nations Rapporteur on the Independence of Judges and Lawyers, who referred to the principle of judicial independence under international human rights law and the implications of strict compliance with that principle in guarantees of due process and legality (freedom from *ex post facto* laws). He also referred to the requirements for ensuring that a constitutional or legal framework to regulate procedures for the removal of judges, is compatible with the guarantees of due process and legality, as corollaries of the principle of judicial independence. Finally, he referred to the application of these standards in any amendments or structural reforms applied to the Judiciary.

B) Alleged victims proposed by the representatives

1) Eduardo Enrique Brito Mieles[19] *and 2) Armando José Ramón Serrano Puig,* who made statements on the alleged facts of the case, the alleged personal effects they suffered and continue to suffer due to the violation of their human rights, and the ways in which they would feel redressed if an alleged violation of their rights were to be declared.

C) Witnesses proposed by the representatives

1) *Alexandra Vela* and *2) Enrique Ayala Mora,* members of the 1997 Constituent Assembly, who referred to: i) the process for the selection of judges, and ii) discussions regarding constitutional norms for the regulation of the Supreme Court of Justice and the scope of such constitutional regulations, and

---

[17] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala.* Merits. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Suárez Peralta v. Ecuador.* Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 30.

[18] *Cf. Case of the "White Van" (Paniagua Morales and other) v. Guatemala. Merits*, para. 76, and *Case of Suárez Peralta V. Ecuador*, para. 30.

[19] The President of the Court summoned this alleged victim to testify by affidavit in the resolution December 20, 2012. However, the representatives informed the Court that Mr. Brito could not render his statement due to health reasons. Notwithstanding the foregoing, the Court received as documentary evidence a written statement from Mr. Brito which was forwarded by the representatives together with the brief of pleadings and motions. Brief of the representatives of January 23, 2013 (Merits file, volume II, pages 1040 and 1041).

3) *Ramiro Rivera*[20] and *Luis Fernando Torres,* congressmen of the National Congress of Ecuador in 2004, who testified on the alleged events that took place in the National Congress in connection with the dismissal of the judges of the Supreme Court of Justice, how the alleged facts occurred, the convocation, the establishment of the parliamentary majority and the alleged reasons for the judges' dismissal given by the congressmen during the sessions of Congress.

D) Expert witness proposed by the representatives

1) *Luis Pásara,* university professor, who described the administration of justice in the region, referred to international standards of judicial independence, the scope of the rights involved in this case and the guarantees afforded to the judicial branch.

E) Expert witnesses proposed by the State

1) *Alejandra Cárdenas,* university professor, who referred to political rights in Ecuador, the historical background, the issue of political rights in law and democracy, political rights and the Constitution, political rights since the return to democracy (1979-1998), and political rights in the Montecristi Constitution, as these relate to this case;

2) *Daniel Kersffeld,* coordinator of the UNASUR Governance Schools Network project, who discussed procedures for appointing judges in the UNASUR countries, general background, a brief account of justice issues in the UNASUR countries, common problems and conflicts and the institutions responsible for appointing judges in the UNASUR countries;

3) *Miguel Ruiz,* university professor, who referred to Ecuador's political culture, the process from dictatorship to the recent democracy (1972-1979), the political parties (the right, the left and populism), social movements and the new political parties, and the alleged crisis in Ecuador's political parties;

4) *Antero Flores Araoz,* former Speaker of the Peruvian Congress and university professor, who referred to the legal lessons learnt from cases involving the Republic of Peru before the Inter-American Court of Human Rights, historical background (criteria for selecting cases), the discussion on fourth instance, legal assessments by Peruvian institutions and innovations in Peru's Constitutional Law as well as some conclusions applicable to the region, in relation to this case;

5) *Mónica Rodríguez,* university professor, who explained the processes for appointing judges in Europe, general points, procedures in Spain, Portugal, Italy and Germany, institutions for appointing judges and the influence of European doctrine and theory in Latin America, as it relates to this case, and

6) *Antonio Guerrero Carrasco* and *7) Diego Zalamea León,* university professors, who referred to the procedure for appointing judges of Ecuador's National Court of Justice in 2011-2012, the legitimacy of the restructuring of the judiciary in Ecuador, the

[20] The President of the Court summoned this witness to testify by means of an affidavit in the Order of December 20, 2012. However, the representatives reported that "[t]he witness […] Ramiro Rivera could not be contacted in order to render his statement," for which reason they did not present said testimony. Brief of the representatives of February 1, 2013 (Merits file, volume IV, pages 1251 and 1252).

technical and legal methodologies applied in the appointment of judges of Ecuador's National Court of Justice, and comparative law, as it relates to this case.

32. As to the evidence rendered at the public hearing, the Court heard the statements of:

A) Alleged victim

1) Arturo Javier Donoso Castellón, who testified on the alleged facts of the case, the personal effects he allegedly suffered and still suffers because of the alleged violation of his human rights and the manner in which he would feel redressed if an alleged violation of his rights were to be declared.

B) Expert witness proposed by the representatives

1) Julio César Trujillo, a member of the 1998 Constituent Assembly and of the National Council for Higher Education, who testified on the way in which due process is applied under the Ecuadorian judicial system, definition of the natural judge, definition of the principle of independence and impartiality and the procedure for appointing and removing the judges of Ecuador's highest court, in relation to this case.

C) Expert witnesses proposed by the State

1) *Marcelo Bonilla,* university professor, who discussed the problem of the division of powers and democracy in Ecuador, the tripartite division of powers in the 1998 Constitution, checks and balances, and the division of powers in the 2008 Constitution, in relation to this case, and

2) *César Landa,* former president of the Constitutional Court of Peru and university professor, who referred to rights acquired and rights fulfilled, the doctrine of non-justiciable political questions, the application of pre-constitutional provisions or the supervening unconstitutionality of the provisions, the theory of legal remedies (expiry, continuity and review) and the formal and practical limits of constitutional interpretation, in relation to resolving the legal problems in this case.

B. Admission of the evidence

33. In the case at hand, as in others, the Court admits those documents forwarded by the parties at the proper procedural stage, which have not been disputed or challenged, or their authenticity questioned, only insofar as these are pertinent and useful in determining the facts and their possible legal consequences.[21]

34. Furthermore, the Court considers pertinent the statements of the alleged victims, the witnesses and the expert opinions rendered by affidavit and at the public hearing insofar as these relate specifically to the purpose defined by the President of the Court in the Order requiring them (*supra* paras. 31 and 32). These statements shall be assessed together with the entire body of evidence. Also, in accordance with this Court's case law, the statements rendered by the alleged victims cannot be assessed separately, but as part of the entire

[21] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations.* Judgment of May 14, 2013, para. 53.

body of evidence in the proceedings, since they are useful only insofar as they may provide more information on the alleged violations and their consequences.[22]

35. As to the newspaper articles submitted, this Court has considered that these may be assessed when they refer to well-known public facts or statements by State officials, or when they corroborate aspects related to the case.[23] Thus, the Court decides to admit those newspaper articles that are complete, or at least those whose source and publication date can be verified, and shall assess them according to the body of evidence, the observations of the parties and the rules of sound judgment.

36. Similarly, with respect to some of the documents referred to by the representatives and the Commission by means of their electronic links, the Court has established that if a party provides at least the direct electronic link to a document cited as evidence, and it is possible to access that document, the legal certainty and the procedural balance will not be affected, because its location is immediately available to the Court and to the other parties.[24]

37. Based on the foregoing, the Court admits the expert opinions mentioned, insofar as these relate to the purpose defined, and shall assess these together with the rest of the body of evidence, bearing in mind the observations of the State and the rules of sound judgment.[25]

VII
PROVEN FACTS

38. In this chapter on proven facts the Court will examine: i) the background to the facts; ii) the context in which the facts took place, and iii) the specific facts related to the dismissal of the judges of the Supreme Court of Justice.

A. Background

39. Between 1996 and 2007 seven presidents governed Ecuador. During that period none of them were able to complete their constitutional mandate of four years.[26] Indeed, in 1996, when President Abdalá Bucaram was elected, until 2007, when President Rafael Correa took office, the following served as presidents of Ecuador, in chronological order: Abdalá Bucaram (1996 - 1997), Rosalía Arteaga (February 1997), Fabián Alarcón (February 1997 -August 1998), Jamil Mahuad (August 1998-January 2000), Gustavo Noboa (January 2000 – January 2003), Lucio Gutiérrez (January 2003 – April 2005) and Alfredo Palacio (April 2005 – January 2007).

---

[22] *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 22, para. 43, and *Case of Mendoza et al. v. Argentina*, para. 54.

[23] *Cf. Case of Velasquez Rodríguez v. Honduras. Merits*, para. 146, and *Case of Suárez Peralta v. Ecuador*, para. 33.

[24] *Cf. Case of Escué Zapata v. Colombia. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of the Massacre of Santo Domingo v. Colombia. Preliminary objections, Merits and Reparations*. Judgment of November 30, 2012 Series C No. 259, para. 44.

[25] *Cf. Case of Loayza Tamayo v. Peru*. *Merits*, para. 43, and *Case Mohamed v. Argentina. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 23, 2012 Series C No. 255, para. 37.

[26] *Cf.* Statement of expert witness Ruiz Acosta rendered by affidavit on January 29, 2013 (Merits file, volume III, page 1200).

40. Historically, there have been frequent structural reforms and changes in the composition of Ecuador's High Courts.[27] At certain times the High Courts were intervened by the political powers. According to expert witness Mónica Rodríguez, proposed by the State, "[i]n Ecuador, the independence of the Supreme Court of Justice has been compromised, and the institution has been used as a tool throughout history."[28]

41. The background to this case concerns the dismissal of the Constitutional Tribunal, the Supreme Electoral Tribunal and the Supreme Court of Justice of Ecuador, which occurred in November and December of 2004 (*infra* paras. 64 and 67). These dismissals were carried out by the National Congress. The instant case focuses on the dismissal of the judges of the Supreme Court of Justice on December 8, 2004. In this regard, the Court considers it necessary to describe the processes that preceded these events.

1. The Referendum of April 7, 1997 and the constitutional amendments of July 23, 1997

42. President Abdalá Bucaram was elected on August 10, 1996;[29] however, his government lasted only 180 days, since he was ousted by Congress in February 1997.[30]

43. After Bucaram's removal, Fabián Alarcón Rivera was appointed as Interim President of the Republic,[31] and[32] on April 7, 1997, he called for a popular referendum by means of Executive Decree No. 201.[33] The popular referendum had a political objective: to legitimize the Alarcón government, whose constitutionality had been called into question.[34] The referendum also had two other clear objectives: to legitimize the actions of government bodies and to restructure the country's institutions. The referendum approved changes to the Constitution and, moreover, provided the basis for convening a Constituent Assembly. [35]

44. Some questions in the referendum were aimed at defining certain issues that would be binding for the Assembly and would be included as automatic amendments to the

---

[27] See press article "History of sudden shocks", in the daily newspaper "El Comercio" on July 28, 2011 (File of attachments to the brief of pleadings and motions, volume II, page 2777).

[28] Affidavit rendered by expert witness Rodriguez on January 30, 2013 (Merits file, volume III, page 1241).

[29] *Cf.* Statement before a notary rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1201) and Affidavit rendered by witness Vela Puga on January 31, 2013 (Merits file, volume III, page 1319).

[30] In this regard, the expert witness Ruiz Acosta stated: "Many of the citizens who protested against the composition of the new Court and its ruling annulling the criminal proceedings against Bucaram, but also against former Vice-president Alberto Dahik and former President Gustavo Noboa, had been part of citizens´ mobilization of February 1997 that led to Bucaram's removal by Congress". He added that "[f]rom 1996 until 2007 no Ecuadorian president was able to complete the four-year constitutional term; during that time, 9 presidents held office." Affidavit rendered by expert witness Ruiz Acosta of January 29, 2013 (Merits file, volume III, pages 1200 and 1201) and Affidavit rendered by witness Ayala Mora of January 31, 2013 (Merits file, volume III, page 1283).

[31] *Cf.* Affidavit rendered by witness Ayala Mora on January 31, 2013 (Merits file, volume III, page 1283).

[32] Regarding this point, witness Ayala Mora stated that the referendum was also held with a view to ensuring the judicial independence of the Supreme Court, because for years it had become permeated by the interests of Ecuador's political parties, since appointments were made by Congress. Affidavit rendered by witness Ayala Mora on January 31, 2013 (Merits file, volume III, page 1281).

[33] *Cf.* Executive Decree 201, "Convocation to a Popular Referendum" of April 7, 1997 (File of attachments to the brief of pleadings and motions, volume I, page 2248).

[34] *Cf.* Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1218).

[35] *Cf.* Executive Decree 201, "Convocation to a Popular Referendum" of April 7 1997 (File of attachments to the brief of pleadings and motions, volume I, page 2249).

Constitution, as provided for in the final question.[36] Questions five to thirteen of the referendum were related to the party system and the electoral system, the composition of the legislative branch, the election process for positions of popular representation at local level, the nomination of oversight bodies, the repeal of the mandate of elected officials and issues related to justice. Question 11 asked citizens if they agreed that the Superior Council of the Judiciary should fulfill administrative functions and that its members should be appointed by the Supreme Court of Justice.

45. In particular, question number 10 made reference to judicial independence and the Supreme Court of Justice:

> Do you think it is necessary to modernize the judicial branch, to reform the system for appointing judges of the Supreme Court of Justice, so that they are taken from the judiciary itself; appointments without fixed terms that observe the guidelines of professionalism and the judicial career established by law?[37]

46. The referendum took place on May 25, 1997 and, for the most part, the response to all the questions was affirmative.[38] According to official figures published in the Official Record by the Supreme Electoral Tribunal, question 10 was approved with 1,651(1)62 votes, which represented the backing of 60.73% of voters.[39]

47. On that basis, a constitutional provision established the appointment of Supreme Court justices through the cooptation system, granting them indefinite tenure in their positions.[40] Thus, on July 23, 1997 the National Congress enacted the amendments to the Constitution of Ecuador.[41] Regarding the requirements to be nominated as a judge of the Supreme Court of Justice, the reforms established that:

> Article 8. Article 128 is replaced by the following:
>
> Article 128. - To serve as a judge of the Supreme Court of Justice, the following requirements shall be met:
> a) Be an Ecuadorian by birth;
> b) Exercise the rights of citizenship;
> c) Be older than forty-five years of age;
> d) Hold the title of Juris Doctor;
> e) Exercise with noted probity the profession of attorney, judge or university law professor for a minimum period of twenty years; and,
> f) Comply with other requirements for eligibility established by law.[42]

---

[36] The final question of the Executive Decree stated: Do you think that the National Congress should incorporate the mandates of this referendum as amendments to the Constitution of the Republic, within sixty days as of the date of publication of its official results? Executive Decree 201, "Convocation to a Popular Referendum" of April 7 1997 (File of attachments to brief of pleadings and motions, volume I, page 2249).

[37] *Cf.* Executive Decree 201 which declared the "Convocation to a Popular Referendum" of April 7, 1997 (File of attachments to brief of pleadings and motions, volume I, page 2249).

[38] *Cf.* Resolution on results of the Popular Referendum on June 5, 1997 (File of attachments to the brief of pleadings and motions, volume I, pages 2250 to 2253).

[39] *Cf.* Resolution on results of the Popular Referendum on June 5, 1997 (File of attachments to the brief of pleadings and motions, volume I, pages 2250 to 2253).

[40] *Cf.* Resolution on results of the Popular Referendum the June 5, 1997 (File of attachments to brief of pleadings and motions, volume I, page 2253).

[41] The final provision of the Reform to the Constitution established: "These Constitutional Reforms shall enter into force as of their publication in the Official Record." Constitutional Reforms of July 31, 1997 (File of attachments to the brief of pleadings and motions, volume I, page 2254).

[42] Constitutional amendments of July 31, 1997 (File of attachments to brief of pleadings and motions, volume I, page 2254).

48. Article 9 of the Constitutional reforms established that judges of the Supreme Court of Justice were not subject to fixed terms of office and included other relevant points:

> Article 9. Article 129 is replaced by the following:
>
> Article 129. – The Judges of the Supreme Court of Justice shall not be subject to a limited tenure of office. Their termination shall be on the grounds prescribed by the Constitution and by Law.
>
> When a vacancy arises, for whatever reason, the plenary of the Supreme Court of Justice shall appoint the new judge, by a vote in favor of at least two-thirds of its members, with due consideration of the criteria of professionalism and judicial career as provided for by law.[43]

49. In addition, transitory provisions were included authorizing the National Congress to appoint the judges of the Supreme Court of Justice for one time only and to allow these amendments to enter into force. Indeed, one transitory provision established that:

> SIXTEEN- The National Congress shall appoint, on this occasion, the thirty-one judges of the Supreme Court of Justice, from a list composed at least four and no more than ten candidates proposed.[44]

50. Furthermore, this transitory provision defined in detail the procedure for making appointments, the sectors of society authorized to submit lists of candidates as well as the creation of a Qualifying Committee of candidates, among other procedural aspects.[45]

---

[43] Constitutional amendments of July 31, 1997 (File of attachments to brief of pleadings and motions, volume I, page 2256). *Cf.* Affidavit rendered by Mr. Eduardo Brito Mieles on October 12, 2011 (File of attachments to brief of pleadings and motions, volume I, page 2397).

[44] Constitutional Reforms of July 31, 1997 (File of attachments to brief of pleadings and motions, volume I, page 2257).

[45] In this regard, the transitory provisions stated: "SIXTEEN.- The National Congress shall appoint, on this occasion, the thirty-one judges of the Supreme Court of Justice, from a list composed of at least four and not more than ten candidates proposed by the following nominating bodies of civil society: 1. The former constitutional Presidents of the Republic; 2. The Ecuadorian Episcopal Conference; 3. The former Chief Justices of the Supreme Court of Justice; 4. The National Bar Federation of Ecuador; 5. The human rights associations; 6. The deans of the university law schools and the members of the National Council of Universities and Polytechnic Colleges (CONUEP); 7. The National Association of Newspaper Directors, the Ecuadorian Association of Television Networks and the Ecuadorian Broadcasting Association; 8. The judges of the Superior Courts of Justice and District Tax Courts and Administrative Tribunals and the National Federation of Judicial Employees and Officials; 9. Trade unions, *campesino* organizations and teachers and educators organized in the UNE and FENAPUPE; 10. Indigenous and Afro-Ecuadorian Peoples' organizations of Ecuador; 11. The Consortium of Provincial Councils of Ecuador and the Association of Municipalities of Ecuador; and, 12. The Chambers of Production and Craft Industries.

Any other civil society organization or person may submit their nominations to the Constitutional Committee for Judicial Affairs. The persons or institutions mentioned in this provision shall have eight days, counted from the publication of these amendments to the Constitution, to submit a list of nominees to the National Congress.

The candidates thus nominated shall meet the requirements stipulated in Article 128 of the amended Constitution.

A Qualifying Committee shall be created, which shall be composed of three legislators appointed by the President of the National Congress and by three representatives of civil society chosen by the nominating entities, who shall designate a seventh member, who shall not be a parliamentarian, as chair of the Committee. This Committee shall qualify the candidates who meet the requirements established in Article 128, as amended, of the Constitution, who also satisfy the conditions of probity, suitability, experience and capacity.

To that end, once it has received the list of candidates, the Committee shall arrange for its publication on a single occasion, so as to enable natural and legal persons to present, with documentation and in a confidential manner, objections to the any of the qualified candidates. Within three days counted from the date of the aforementioned publication, the Committee shall submit its report for the consideration of the National Congress, which shall designate the thirty-one judges of the Supreme Court of Justice as follows: a) Twenty-four from the candidates put forward by the 12 nominating bodies and qualified by the Committee; and b) Seven from the candidates proposed by any other civil society organization or person, qualified by the Committee, according to the same criteria established for other candidates. Should any of the nominating bodies or persons fail to submit candidacies within the time limit established in this Transitory Provision, the National Congress shall appoint the judges selecting them from the rest of the nominees. The judges thus appointed shall take office before the Speaker of

2. Appointment of members of the Supreme Court of Justice

51. In accordance with the transitory provisions, a Qualifying Committee[46] was established, comprised of three parliamentarians and three representatives of civil society, chosen by the nominating bodies.[47] These six members of the Qualifying Committee, in turn, designated a seventh member, not a parliamentarian, as chair of the Committee.[48] In application of the transitory provisions, the Qualifying Committee presented its report to the National Congress on October 1, 1997.[49]

52. This report described the proceeding followed for the selection of candidates from among the individuals who met the constitutional requirements.[50] The Qualifying Committee selected 54 candidates, 31 presented by the nominating bodies and 23 nominated by civil society.[51] The proceeding examined the merits and probity of the candidates. As regards their professional merits, career and experience were considered, while to ensure probity, the process included an investigation into their background and any challenges on the part of institutions and citizens.[52]

53. The National Congress was required to select 24 judges from the list of candidates put forward by the nominating bodies and seven judges from the list of candidates proposed by civil society.[53] On October 2, 1997 the National Congress appointed the alleged victims to serve as judges of the Supreme Court of Justice.[54] They took office on October 6, 1997.[55]

---

the National Congress". Constitutional Reforms of July 31, 1997 (File of attachments to the brief of pleadings and motions, volume I, pages 2256 to 2257).

46 *Cf.* Press article entitled "History of sudden shocks" of July 28, 2011 (File of attachments to brief of pleadings and motions, volume II, page 2777).

47 *Cf.* Affidavit rendered by Mr. Troya Jaramillo on September 21, 2011 (File of attachments to the brief of arguments and evidence, volume I, page 2702); Affidavit rendered by Mr. Andrade Ubidia on November 16, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2759), and Affidavit rendered by the witness Vela Puga on January 31, 2013 (Merits file, volume III, page 1325).

48 *Cf.* Affidavit rendered by Mr. Quintana Coello on September 29, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2632), and Affidavit rendered by the witness Vela Puga on January 31, 2013 (Merits file, volume III, page 1325).

49 *Cf.* Report of the Qualifying Committee to the National Congress of October 1, 1997 (File of attachments to the report, volume I, page 105).

50 The procedure was as follows: i) the candidates were first asked to accept their nominations; ii) compliance with the formal requirements established in the Constitution was verified; iii) a press communiqué was issued inviting citizens to comment on or challenge the nominations; iv) the Complaints Commission of the Supreme Court of Justice was asked for information on any offences in judicial functions contained in their case files; information was also requested from the National Council for the Control of Narcotic Drugs and Psychotropic Substances and Interpol; v) a preliminary selection of candidates was made; vi) the Committee then examined any challenges, complaints or objections filed regarding the preliminary selection of candidates; vii) the pre-selected candidates were asked to provide information or documents to clarify any challenges; viii) the Qualifying Committee selected fifty-one of the nominees on the list, and ix) finally the list was submitted to Congress to select the judges from among the nominees. *Cf.* Report of the Qualifying Committee to the National Congress, October 1, 1997 (File of attachments to the report, volume I, pages 106 to 111).

51 *Cf.* Report of the Qualifying Committee to the National Congress, October 1, 1997 (File of attachments to the report, volume I, page 111).

52 *Cf.* Report of the Qualifying Committee to the National Congress, October 1, 1997 (File of attachments to the report, volume I, page 111).

53 *Cf.* Report of the Qualifying Committee to the National Congress, October 1, 1997 (File of attachments to the report, volume I, page 106 and 111).

54 *Cf.* Affidavit rendered by Mr. Quintana Coello on May 14, 2007(File of attachments to the report, volume I, page 119).

3. The Constitution adopted by the National Constituent Assembly in 1998

54. As mentioned previously, the referendum also accepted the creation of a National Constituent Assembly.[56] This Assembly was convened by means of a "Special Law for the Election of Representatives of the National Assembly."[57] The Assembly approved the new Constitution of the Republic of Ecuador, which was published on August 11, 1998.[58]

55. The new Constitution adopted provisions to guarantee judicial independence.[59] First, it established the principle of separation of powers and judicial independence through Article 199.[60] Second, it determined that under public law the public powers could do only what is established in the Constitution[61] and removed the National Congress' jurisdiction to consider judicial matters.[62]

56. Article 129 of the constitutional amendments issued on 23 July, 1997, cited previously, was essentially reproduced in Article 202 of the Constitution adopted by the

---

[55] *Cf.* Affidavit rendered by Mr. Quintana Coello on May 14, 2007 (File of attachments to the report, volume I, page 119).

[56] In his statement, witness Ayala Mora stated: "The Popular Referendum convened a new Constituent Assembly, which operated between 1997 and 1998. A right-wing alliance held the majority in this Assembly […]. It was convened and operated in the context of the rule of law, but once installed, defined itself as "constituent" […] in fact it did not issue a new Constitution, but rather a comprehensive reform, […] which entered into force on August 10, 1998" *Cf.* Statement by witness Ayala Mora on January 31, 2013 (Merits file, volume III, page 1283), and Affidavit rendered by the witness Vela Puga on January 31, 2013 (Merits file, volume III, page 1319).

[57] *Cf.* "Special Law for the Election of Representatives of the National Assembly" of September 10, 1997 (File of attachments to brief of pleadings and motions, volume I, page 2261).

[58] *Cf.* Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3309).

[59] *Cf.* Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3336).

[60] Article 199- The agencies of the judicial branch shall enjoy independence in the exercise of their duties and powers. No function of the State may interfere in matters of their competence. Judges shall be independent in the exercise of their jurisdictional powers, even in relation to the rest of the judicial organs; they shall be subject only to the Constitution and to the law. Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3336).

[61] Article 119- The institutions of the State, its agencies and branches and its public officials shall not exercise powers other than those established by the Constitution and by law, and have the duty to coordinate their actions in order to achieve the common good. Those institutions specified by the Constitution and by law shall enjoy autonomy in their organization and functions. *Cf.* Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3326).

[62] Article 130- The National Congress shall have the following duties and powers:
1. To swear into Office the President and Vice President of the Republic proclaimed elect by the Supreme Electoral Tribunal. To receive their resignations; to dismiss them, following impeachment; to establish their physical or mental incapacity or abandonment of their duties, and to declare them suspended.
[…] 4. To reform the Constitution and interpret it in a generally binding manner.
5. To issue, amend and repeal laws and interpret them in a generally binding manner.
[…] 8. To oversee the actions of the Executive and those of the Supreme Electoral Tribunal and request any information considered necessary from public officials.
9. At the request of at least one-quarter of the members of the National Congress, to proceed to the impeachment of the President and Vice-president of the Republic; of Ministers of State; of the Comptroller General and the Attorney General; of the Ombudsman and of the Prosecutor General; of the superintendents, of members of the Constitutional Court and of the Supreme Electoral Tribunal, during the exercise of their duties and until one year after termination. *Cf.* Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3327).

National Constituent Assembly in 1998.[63] Regarding the appointment and tenure of justices of the Supreme Court of Justice, it provided that they would enjoy indefinite tenure and that the cooptation system would be used to fill vacancies,[64] in the following terms:

> Article 202. The judges of the Supreme Court of Justice shall not be subject to a fixed period in their positions. Their duties shall be terminated for the reasons set forth in the Constitution and in law.
>
> When a vacancy arises, the plenary of the Supreme Court of Justice shall appoint the new judge, with a vote in favor of two-thirds of its members, with due consideration of the criteria of professionalism and judicial career, as provided for by law.
>
> Appointments shall be made, alternately, from professionals who have served in the judiciary, as university professors or in free professional exercise, in that order.

57. As to the dismissal of certain authorities, the Constitution's transitory provisions established that:

> Twenty-five- Officials and members of agencies appointed by the National Congress and the Comptroller General of the State for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003.[65]

58. Transitory Provision 25 was not included in the section of the Constitution concerning the "judiciary", but rather in the section entitled "The National Congress."[66]

4. Operation of the Supreme Court

59. The Supreme Court of Justice was the highest court of the judicial system, with jurisdiction throughout the national territory and the authority to decide on remedies of cassation, review and appeal in cases of immunity. It also had the authority to rule in a general and binding manner in cases where contradictory legal provisions were in force.[67]

60. In exercise of its constitutional[68] and legal[69] authority, the Supreme Court of Justice regulated some aspects of the cooptation procedure to ensure effective participation by civil society organizations. It established that, should a vacancy occur, the President of the Supreme Court of Justice would issue a public appeal calling on civil society and the nominating bodies to submit candidates. A list of twelve public and private institutions would also be drawn up so that these could nominate candidates and submit personal applications. Subsequently, the plenary of the Supreme Court of Justice would appoint a

---

63 *Cf.* Affidavit rendered by expert witness Pásara on January 21, 2013 (Merits file, volume III, page 1275); Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1219), and Affidavit rendered by witness Ayala Mora on January 31, 2013 (Merits file, volume III, page 1283).

64 *Cf.* Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3336), and Affidavit rendered by expert witness Ruiz Acosta of January 29, 2013 (Merits file, volume III, page 1219).

65 Cf. Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3350).

66 *Cf.* Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3350).

67 Article 197, 198 and 200 of the Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, pages 3335 and 3336).

68 *Cf.* Article 202 of the Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3336).

69 *Cf.* Ruling of the Supreme Court of Justice of September 22, 2003 (File of attachments to brief of pleadings and motions, volume I, page 2271).

Committee made up of three judges to examine the documentation and present a report on the suitability of the nominees. Furthermore, it ordered that a list of nominees be published so that these could be challenged by civil society. If this should occur, the person challenged would be afforded an opportunity to defend himself or herself.[70] The Commission would then submit a list of eligible candidates and the plenary would vote for the new judge in a public session. [71]

61. Between 1998 and 2003 five judges were appointed using this cooptation system, namely:[72] Messrs. Gonzalo Zambrano Palacios[73], Ernesto Albán Gómez[74], Hernán Quevedo Terán[75], Arturo Donoso Castellón[76] and Milton Moreno Aguirre[77].

62. On September 22, 2003, the Supreme Court of Justice[78] decided to regulate the procedure for hearing complaints made against judges.[79] First it decided to appoint a Committee to conduct the proceeding, recognized a judge's right to defend himself or herself and granted the Committee the authority to submit a report to the plenary of the Supreme Court, which could dismiss the judge with the vote of two-thirds of its members. [80] At the time of the facts of this case only one such proceeding had been brought against a judge for allegedly having exerted undue influence in the courts of justice.[81] Although the

---

[70] *Cf.* Rules for the application of the cooptation system of September 30, 2003 (File of attachments to brief of pleadings and motions, volume I, pages 2267 to 2070).

[71] *Cf.* Rules for the application of the cooptation system of September 30, 2003 (File of attachments to brief of pleadings and motions, volume I, pages 2269 and 2270).

[72] In his statement Mr. Serrano Puig indicated that these five justices replaced judges who had died while in office, but he also mentioned that three judges who resigned were replaced by assistant judges, according to the Organic Law of the Judiciary. Those judges were Jorge Andrade Lara, Naum Clotary Salinas Montaño and Armando Serrano Puig. Affidavit rendered by Mr. Serrano Puig on January 31, 2013. (Merits file, volume III, page 1299), and Record and Summary Supreme Court of Justice regular session of November 15, 2000 (File of attachments to pleadings and motions, volume I, pages 2292 to 2294).

[73] *Cf.* Affidavit rendered by Mr. Serrano Puig on January 31, 2013. (Merits file, volume III, page 1299).

[74] *Cf.* Record and Summary of Supreme Court of Justice regular session of November 15, 2000 (File of attachments to the brief of pleadings and motions, volume I, page 2293).

[75] *Cf.* Record and Summary of Supreme Court of Justice regular session of November 15, 2000 (File of attachments to the brief of pleadings and motions, volume I, page 2293).

[76] *Cf.* Record and Summary of Supreme Court of Justice regular session of March 29, 2000 (File of attachments to the brief of pleadings and motions, volume I, page 2329).

[77] *Cf.* Record and Summary of Supreme Court of Justice regular session of March 29, 2000 (File of attachments to the brief of pleadings and motions, volume I, page 2329).

[78] In this regard Article 13(1) of the Organic Law of the Judiciary of September 11, 1974 states that the Supreme Court has the power to "Appoint or remove judges of the Superior Courts, and to dismiss judges, officials and employees of the judiciary for gross misconduct or serious incompetence in the fulfillment of their duties or abandonment of the post for more than eight days" "The Supreme Court shall regulate the trial process" (File of attachments to the answer brief, volume I, page 3391).

[79] *Cf.* Decision of the Supreme Court of Justice of September 22, 2003 (File of attachments to brief of pleadings and motions, volume I, page 2279).

[80] *Cf.* Decision of the Supreme Court of Justice of September 22, 2003 (File of attachments to brief of pleadings and motions, volume I, page 2279).

[81] In his statement Mr. Serrano Puig indicated that it was important to mention this case because this judge was publicly questioned and after several discussions within the Supreme Court was asked to resign. He added that "this case confirmed the jurisdiction of the Supreme Court to hear disciplinary matters concerning its own members. Likewise, in order to deal with disciplinary problems, the Supreme Court of Justice issued regulations containing procedures for removing judges of the Supreme Court of Justice itself, which were published in the Official Record". *Cf.* Affidavit rendered by Mr. Serrano Puig on January 31, 2013 (Merits file, volume III, page 1300).

proceeding was initiated, it was not concluded because the accused judge resigned his post.[82]

B. Context

63. The Court shall refer to several background facts which are relevant to an understanding of the scope of the rights involved in this case. The Court emphasizes that the State did not dispute the contextual facts presented by the Commission in its Report on Merits and which were subsequently expanded by the representatives.

1. Dismissal of members of the Constitutional Tribunal and of the Supreme Electoral Tribunal

64. The State did not contest the evidence regarding the fact that on November 9, 2004 the opposition parties in the National Congress were preparing to impeach the President of the Republic, Lucio Gutiérrez, for the crime of embezzlement.[83] At that time, the political party to which the President belonged did not have a majority in Congress. In order to prevent his impeachment, the government managed to secure a parliamentary majority and made political deals with the Ecuadorian Roldosist Party (Partido Roldosista Ecuadoriano-PRE)[84], among others, to dismiss the judges and appoint a "new" Court.[85] The leader of the

---

[82] *Cf.* Record and Summary Supreme Court of Justice regular session of July 23, 2003 (File of attachments to the brief of pleadings and motions, volume I, page 2332).

[83] *Cf.* Affidavit rendered by expert witness Pásara (Merits file, volume III, page 1259); Affidavit rendered by Mr. Alban Gómez (File of attachments to the brief of pleadings and motions, volume I, page 2357); Affidavit rendered by Mr. Quintana Coello on September 29, 2011 (File of attachments to pleadings and motions, volume I, page 2634); Affidavit rendered by Mr. Riofrío Corral on October 11, 2011 (File of attachments to brief of pleadings and motions, volume I, page 2655); Affidavit rendered by Mr. Serrano Puig on October 24, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2686); Affidavit rendered by Mr. Zambrano Palacios on August 19, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2748); Affidavit rendered by Mr. Andrade Ubidia on November 16, 2011 (File of attachments to brief of pleadings and motions, volume I, page 2764), and Affidavit rendered by Mr. Serrano Puig on January 31, 2013. (Merits file, volume III, page 1302).

[84] Regarding the formation of the parliamentary majority and the political deals, expert witness Ruiz Acosta stated that: "the situation at the end of 2004 confronted former President Lucio Gutiérrez, on the one hand, and former President Abdalá Bucaram, and his party, the PRE, on the other. From mid-2003, […] Gutiérrez established a political alliance with the right-wing PSC, which was then the leading force in Congress and had links with numerous judges of the [Supreme Court of Justice] at that time. A year later, during the local authority elections of 2004, the alliance between Gutiérrez and the PSC began to fall apart. At the same time, Gutiérrez established contacts with the self-exiled Bucaram, leader of the PRE, the third political force in Congress and the political enemy of Febres Cordero and the PSC." Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1219). Likewise, the witness Ayala Mora declared that "the government of Lucio Gutiérrez had forged a new majority in the Congress orchestrated by the PRE and began to talk about the reorganization of the Supreme Court." Statement by witness Ayala Mora (Merits file, volume III, page 1286). Press articles of the daily "*El Comercio*" entitled "Gutiérrez mixed up in his statement" of December 11, 2004 (File of attachments to the report, volume III, page 664), "Bucaram with more influence on Gutiérrez" of December 25, 2004 (File of attachments to the report, volume II, page 675), "Bucaram's power is transmitted by telephone" of December 30, 2004 (File of attachments to the report, volume II, page 676), "Faits accomplis" of January 7, 2005 (File of attachments to the report, volume III, page 685), "The United States is concerned about juridical instability and the Court" of January 8, 2005 (File of attachments to the report, volume III, page 686), "Concentration of powers" (File of attachments to the report, volume III, page 687), and press article in the newspaper "*Hoy*" entitled "Commentary of Los Angeles Times" of January 7, 2005 (File of attachments to the report, volume III, page 714).

[85] In this regard, expert witness Ruiz Acosta stated that "in November 2004 former presidents León Febres Cordero, leader of the PSC and Rodrigo Borja leader of the Democratic Left party, along with some deputies of Pachakutik tried to impeach Gutiérrez, but failed. Weeks later, and with the support of the PRE and the PRIAN, President Gutiérrez decided to seek, via Congress, the replacement of the [Supreme Court of Justice] by a new Court (the new Court included judges close to the PRE and Bucaram". Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, pages 1209 and 1219). *Cf.* Affidavit rendered by Mr. Serrano Puig on January 31, 2013 (Merits file, volume III, pages 1305 and 1306). Press report in "*El Comercio*" newspaper

PRE, former President Abdalá Bucaram, was seeking the annulment of several criminal proceedings before the Supreme Court,[86] as a result of which a warrant had been issued for his arrest, prompting him to flee to Panama.[87]

65. On November 23, 2004, President Lucio Gutiérrez announced the government's intention to promote, through Congress, the reorganization of the Constitutional Tribunal, the Supreme Electoral Tribunal and the Supreme Court of Justice.[88] On November 25, 2004 the National Congress adopted a resolution declaring that the full and alternate members of the Constitutional Tribunal had been illegally appointed in 2003 and terminating the appointments of all its full and alternate members,[89] some of whom were subsequently impeached by Congress. In Resolution No. R-25-160 Congress resolved to "declare that the full judges of the Constitutional Tribunal and their deputies were appointed illegally and to

---

entitled "How the fall of the Supreme Court of Justice was engineered" (File of attachments to the report, volume II, page 569). Press report in the daily "*Hoy*" entitled "New majority dismisses members of TSE and of TC" of November 26, 2004 (File of attachments to the report, volume III, page 845). Press reports in "*El Comercio*" newspaper entitled "Between an interim and another new Court" of December 13, 2004 (File of attachments to the report, volume III, page 908), "Majority without a counterweight?" of January 8, 2005 (File of attachments to the report, volume III, page 688), and Press communiqué issued by "Human Rights Watch" entitled "Ecuador Supreme Court purged" of December 17, 2004 (File of attachments to the report, volume III, page 726).

[86] On this point, the report by the United Nations Special Rapporteur stated that "the new Supreme Court of Justice –considered "*de facto*" by large sectors of Ecuadorian society– adopted a decision of enormous political significance: it annulled the proceedings against two former Presidents, Abdalá Bucaram and Gustavo Noboa, and against former Vice-president, Alberto Dahik." Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 524). Likewise, witness Ayala Mora mentioned in his statement that "Ramón Rodríguez Noboa, who was appointed President (of the Supreme Court), was frank enough to admit in an interview on national television that he had accepted the appointment at the kind suggestion of President Gutiérrez. Faced with such public evidence of government participation, he had to resign and was replaced by his deputy, Dr. Gustavo Castro, a figure very close to Abdalá Bucaram, who was quickly acquitted of the charges against him, and returned to the country amid a spectacular media event." Affidavit rendered by witness Ayala Mora on January 31, 2013 (Merits file, volume III, page 1290). The witness Torres stated that "the Supreme Court of Justice was dismissed against express norms, a new Court was appointed and days later the committal orders against prominent politicians were revoked." Affidavit rendered by the witness Torres Torres (Merits file, volume III, page 1334), and Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1220).

[87] In this regard the expert witness Ruiz Acosta explained that the new Court "which replaced the previous Court decided to annul the lawsuits against Bucaram, which allowed him to return to the country on April 2, 2005." Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1221); Affidavit rendered by expert witness Pásara (Merits file, volume III, pages 1259, 1274 and 1275); Statement of witness Ayala Mora (Merits file, volume III, pages 1286 and 1289). Affidavit rendered by Mr. Alban Gómez (File of attachments to brief of pleadings and motions, volume I, page 2357); Press reports in "*El Comercio*" newspaper entitled "Bucaram has greater influence on Gutiérrez", December 25, 2004 (File of attachments to the report, volume III, page 675), "Bucaram's power is transmitted by telephone," December 30, 2004 (File of attachments to the report, volume III, page 676), "United States is concerned about juridical instability and the Court" January 8, 2005 (File of attachments to the report, volume III, page 686), "Majority without counterweight?" January 8, 2005 (File of attachments to the report, volume III, page 688); Press reports in the daily newspaper "*Hoy"* entitled "Los Angeles Times: Commentary," January 7, 2005 (File of attachments to the report, volume III, page 714), and "Sicouret his anti-PSC majorities" December 19, 2004 (File of attachments to the report, volume II, page 548).

[88] In this regard, the expert witness Ruiz Acosta stated that "in mid-2004, […] Gutiérrez established contacts with the self-exiled Bucaram, leader of the PRE, the third political force in Congress and political enemy of Febres Cordero and the PSC. A few months later, with the support of the PRE and the PRIAN (the party of the banana multimillionaire Alvaro Noboa), Gutiérrez volume the decision to push through Congress, a radical restructuring of the Constitutional Court, the Supreme Electoral Tribunal and the replacement of the [Supreme Court of Justice]-permeated by the influence of Febres Cordero." Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1209), and Press report in the daily "*Hoy*", entitled "Government bloc after the TC" of November 24, 2004 (File of attachments to the report, volume II, page 545).

[89] *Cf.* National Congress Resolution issued on November 25, 2004 (File of attachments to the report, volume III, pages 941 a 942).

proceed to appoint them as ordered by the Constitution of the Republic and the law, from the shortlists of three names received in due course by Congress."[90]

66. It also resolved to "declare the termination of the duties of the full judges of the Supreme Electoral Tribunal and their substitutes, on the grounds that they were appointed without observing the provisions of Article 209 of the Constitution of the Republic, as regards the method of their appointment; and to proceed to appoint them in accordance with that constitutional provision and with the electoral results of October 20, 2002. The appointees […] shall remain in their positions until they are legally replaced in January 2007."[91] That same day, the National Congress appointed four full judges and four alternate judges of the Constitutional Tribunal from shortlists of three names submitted by the President of the Republic and the Supreme Court of Justice.[92] It also appointed one full judge and one alternate judge of the Constitutional Tribunal from the shortlist of three names submitted by the mayors and provincial prefects, one full judge and one alternate judge from the shortlist of three names submitted by workers', indigenous and *campesino* organizations, and one full judge and one alternate judge from the shortlist of three names submitted by the production chambers. In addition, two full judges and two alternate judges of the Constitutional Tribunal were appointed directly.[93]

67. On November 26, 2004 the National Congress appointed seven full judges and seven alternate judges of the Supreme Electoral Tribunal.[94]

2. The Constitutional Tribunal's decision on the inadmissibility of amparo actions against decisions of Congress

68. On December 2, 2004 the newly appointed Constitutional Tribunal issued a ruling in response to a request made by the President of the Republic "to prevent trial judges from admitting for processing constitutional *amparo* actions against Resolution 25-160, adopted by the […] National Congress on November 25, 2004."[95] The Constitutional Court resolved:

> To rule that to suspend the effects of a parliamentary resolution, such as 25-160, adopted by the National Congress on November 25, 2004, for an alleged violation of the Constitution, in substance or in form, the only action admissible is the unconstitutionality suit, which must be brought before the Constitutional Court, in line with the Resolution of the Supreme Court of Justice adopted on June 27, 2001 and published in Official Record No. 378 on July 27 of that year; and, that any *amparo* remedy filed in the country's courts in connection with the aforesaid resolution must be rejected outright and ruled inadmissible by the judges, since to do otherwise would be to admit proceedings against express law, which would lead to the corresponding judicial actions.[96]

---

[90] National Congress Resolution issued on November 25, 2004 (File of attachments to the report, volume III, page 941).

[91] National Congress Resolution issued on November 25, 2004 (File of attachments to the report, volume III, page 941).

[92] *Cf.* Resolutions No. 161, 162, 163, 164, 165, 166, 167, 168, 169 of November 25, 2004 (File of attachments to the report, volume I, pages 200 to 202).

[93] *Cf.* Resolutions No. 161, 162, 163, 164, 165, 166, 167, 168, 169 of November 25, 2004 (File of attachments to the report, volume I, pages 200 to 202).

[94] *Cf.* Resolutions No. 170, 171, 172, 173, 174, 175 and 176 of November 26, 2004 (File of attachments to the report, volume I, pages 204 to 206).

[95] *Cf.* Resolution of the Constitutional Court of December 2, 2004 (File of attachments to the report, volume I, pages 208 to 209); Decision of Constitutional Tribunal of December 2, 2004 (File of attachments to the report, volume I, page 198) and Supplement to Official Record No. 477 of December 8, 2004 (File of attachments to the brief of pleadings and motions, volume I, page 2259).

[96] Decision of the Constitutional Tribunal of December 2, 2004 (File of attachments to the report, volume I, page 198); Supplement to Official Record No. 477 of December 8, 2004 (File of attachments to the brief of

69. The Supreme Court's resolution of June 27, 2001 referred to by the Constitutional Tribunal in its decision of December 2, 2004, was a ruling to clarify the guidelines applicable in matters of constitutional *amparo*.[97] The Constitutional Tribunal's decision of December 2, 2004 cites Article 2 a) of the aforesaid resolution of the Supreme Court of Justice, which reads:

> In particular, the *amparo* action is not admissible and shall be rejected outright when brought with respect to:
> a) Regulatory provisions issued by a public authority, such as organic and ordinary laws, decree laws, decrees, ordinances, statutes, regulations and generally binding (*erga omnes*) resolutions, since in order to suspend their effects because of a violation of the Constitution, in substance or in form, an unconstitutionality suit must be brought before the Constitutional Court.[98]

3. Denial of amparo remedies lodged by several dismissed members of the Constitutional Tribunal

70. On December 7, 2004 the Twelfth Civil Court of Pichincha ruled in the *amparo* suit filed by Luis Vicente Rojas Bajaña, one of the dismissed members of the Constitutional Tribunal.[99] This decision "denied the processing of this constitutional remedy," pursuant to the Constitutional Tribunal's ruling of December 2, 2004 "leaving an unconstitutionality suit before the Constitutional Tribunal open for the case."[100]

71. Similarly, on December 13, 2004 the First Civil Court of Pichincha handed down a decision in the *amparo* suit filed by Miguel Angel Camba Campos, one of the members of the Constitutional Tribunal who were dismissed, against the National Congress Resolution No. R-25-160.[101] This ruling stated that it was "public knowledge that the […] National Congress, on Wednesday December 8 of the current year, proceeded with the impeachment of the members of the Constitutional Tribunal […] by a majority of its members, in an action that wa[s] eminently legal and legitimate, since it is provided for in the Constitution, and thus enjoys full legal effect, including the censure caused by the immediate dismissal of the official."[102] It also cited the Constitutional Tribunal's resolution of December 2, 2004, concluding that "based on the content of the preceding 'whereas´ clauses, the *amparo* action w [as] inadmissible and must be rejected outright, without examining the merits of the matter."[103]

---

pleadings and motions, volume I, page 2259), and Resolution of the Constitutional Court of December 2, 2004 (File of attachments to the report, volume I, pages 208 to 209).

97 *Cf.* Official Record No. 378 of July 27, 2001 (File of attachments to the report, volume I, pages 211 and 212), and Resolution of the Constitutional Tribunal of December 2, 2004 (File of attachments to the report, volume I, pages 208 to 209).

98 Official Record No. 378 of July 27, 2001 (File of attachments to the report, volume I, pages 211 and 212); Resolution of the Constitutional Tribunal of December 2, 2004 (File of attachments to the report, volume I, pages 208 a 209), and Decision of the Constitutional Tribunal of December 2, 2004 (File of attachments to the report, volume I, page 198).

99 *Cf.* Decision on *amparo* remedy of December 7, 2004 (File of attachments to the report, volume I, page 215).

100 *Cf.* Decision on *amparo* remedy of December 7, 2004 (File of attachments to the report, volume I, page 215).

101 *Cf.* Decision on *amparo* remedy of December 13, 2004 (File of attachments to the report, volume I, pages 217 to 225).

102 *Cf.* Decision on *amparo* remedy of December 13, 2004 (File of attachments to the report, volume I, page 224).

103 *Cf.* Decision on *amparo* remedy of December 13, 2004 (File of attachments to the report, volume I, page 224).

72. Similarly, on December 14, 2004 the Eleventh Civil Court of Pichincha, rejected the constitutional *amparo* suit filed by Mauro Leonidas Terán Cevallos, a dismissed member of the Constitutional Tribunal.[104]

73. Also on December 15, 2004 the Tenth Civil Court of Pichincha ruled inadmissible the constitutional action of *amparo* brought by Simón Bolívar Zabala Guzmán, a dismissed member of the Constitutional Tribunal.[105] On the same date, the Eighth Civil Court of Pichincha ruled on the *amparo* suit filed by Mr. Freddy Oswaldo Cevallos Bueno, a dismissed judge of the Constitutional Tribunal.[106]

C. Dismissal of the Supreme Court Justices

1. The call for a special session by the President of the Republic and the National Congress's termination resolution

74. On December 5, 2004 the President of the Republic, Lucio Gutiérrez Borbúa, summoned the National Congress to a special session.[107] Citing Articles 133[108] and 171(8)[109] of the Constitution and Article 6[110] of the Organic Law of the Legislative Branch, the call was made in the following terms:

> Sole Article: The Honorable National Congress is summoned to a special session on Wednesday December 8, 2004, at 11:00, to hear and decide on the following matters: 1. Voting on the impeachment of the former members of the Constitutional Court. 2. Analysis of a resolution on the constitutional and legal situation of the judicial branch; and, 3. Voting on the amendment to the Organic Law on Elections concerning the right of minorities to proportional representation in multi-candidate elections.[111]

---

[104] *Cf.* Decision on *amparo* remedy of December 14, 2004 (File of attachments to the report, volume I, page 227).

[105] *Cf.* Decision on *amparo* remedy of December 15, 2004 (File of attachments to the report, volume I, page 229).

[106] *Cf.* Decision on *amparo* remedy of December 15, 2004 (File of attachments to the report, volume VII, page 2144).

[107] The expert witness Torres Torres stated that "the President of the Republic's summons to a special session was openly unconstitutional, since it infringed Articles 133 and 171 (8) of the Constitution in force at that time, which established that the convocation must indicate the specific matters to be examined during a special period of sessions, and that there were no grounds on which [the President of the Republic] could convene a special session of Congress." *Cf.* Statement by expert witness Torres Torres on January 30, 2013. (Merits file, volume III, page 1335).

[108] The article reads as follows: "During recess periods, the President of Congress or the President of the Republic, may convene special sessions of the National Congress, to address exclusively the specific matters indicated in the convocation. The President of the National Congress may also convene such special sessions at the request of two-thirds of its members." Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3328).

[109] The article reads as follows: "The following shall be the powers and duties of the President of the Republic: […] 8. Convene the National Congress for special periods of sessions. The convocation shall indicate the specific matters to be examined during such periods." Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3333).

[110] The article reads as follows: "The President of the National Congress, the President of the Republic or two-thirds of the members of Congress may call for special periods of sessions. Such convocations shall be issued by means of a publication in the leading newspapers of the country, with at least twenty-four hours' notice. When Congress is convened for a special session, it shall abide by the same rules established for its regular periods and it shall not elect new officers." Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 235).

[111] *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 235).

75. The summons did not specify the matters to be discussed in relation to the Supreme Court justices and only made general reference to the fact that that the purpose was to "discuss and decide" on "the legal-constitutional status of the judiciary."[112]

76. On December 8, 2004 the special session of the National Congress opened with 53 legislators.[113] The Congress declared itself to be in permanent regular session.[114] The members of Congress ruled on the first point of the agenda and voted in favor of the motions of censure against some members of the Constitutional Tribunal.[115] Days earlier, several motions of censure had been voted on based on the same facts, but had not led to the dismissal of some members of the Tribunal because a parliamentary majority had not been reached.[116] In this new vote, sufficient votes were obtained to approve the motion of censure against those members.[117]

77. Next, Congress discussed the second point of the agenda, "Analysis of the resolution regarding the legal-constitutional status of the judiciary."[118] On this point some relevant aspects were considered, namely: i) the constitutionality of the convocation; ii) judicial independence; iii) the flaws of the Supreme Court justices and the need to remove them; iv) the scope of Transitory Provision 25 of the 1998 Constitution regarding the supposed limits of the judges' terms in office (January 2003); v) the vote to dismiss the judges, and vi) the constitutional amendment to restore Congress's jurisdiction to impeach members of the Supreme Court of Justice.[119]

78. The resolution approving the judges' dismissal was justified on the grounds of Transitory Provision 25, which established that:

> Twenty-five – Officials and members of agencies appointed by the National Congress and the Comptroller General of the State for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003.[120]

79. During the aforementioned special session two different positions emerged regarding the application of Transitory Provision 25. Several congressmen argued that it implied that the term for which the judges had been appointed had expired, and therefore they should be removed from office.[121] Other lawmakers explained the reasons why they considered that the transitory provision was not applicable to the Supreme Court justices.[122]

---

112 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 234).

113 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 234).

114 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 231 and 237).

115 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 249 to 338).

116 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 250).

117 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 300 and 309).

118 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 338).

119 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 338 to 484).

120 Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3350).

121 For example, Congressman Valle Lozano stated that this provision implied that "the terms of the Supreme Court justices appointed in 1997 expired on January 31, 2003 and, therefore, their duties [had been] extended", for which reason he argued that "it [was] vital that [they] proceed to remove the judges of the Supreme Court [that] night." Likewise, Congressman Villacís Maldonado stated that "Provision 25 of the Constitution […] state[d] clearly, [that] the […] judges of the Court should be at home, as of January 2003." Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 380 and 385).

122 For example, regarding the scope of the transitory provision, Congressman Sandoval Baquerizo stated that "once again, they [sought] to issue another invalid resolution, applying a transitory provision of the Constitution

80. In addition to the debate over the application of the transitory provision, during the session the congressmen presented arguments to justify the decision that would subsequently be taken against the Supreme Court justices, including: i) the alleged politicization of the Court[123]; ii) alleged acts of corruption committed by that Court, and iii) the alleged unsuitability of the judges.[124]

81. Some lawmakers who did not support the resolution stated that there were motives other than those expressed by congressmen who supported the dismissal of the Supreme Court judges.[125] A number of congressmen explained that the purpose of dismissing all the

---

which, as mentioned, and as already stated by some columnists, by constitutionalists, by regular lawyers, from a simple reading […] is not applicable." Similarly, Congressman Lucero Bolaños asserted that "Transitory Provision 25 of the Constitution had been invoked, trying to make [them] believe that this provision cover [ed] and also applie[d] to members of the judiciary", which was not the case, because "Provision 25 concern[ed] officials appointed by Congress, for a four-year period, as of 1998 and the […] Supreme Court justices were not appointed by Congress on that date." For his part, Congressman Posso Salgado stated that this provision was created for officials who completed their mandate in August, which was the same period of the presidential term. Since the Constitution had changed, Transitory Provision 25 extended the mandate of those officials for five months until the presidential changeover, which was in January. Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 247, 365 and 388).

123 At least four congressmen mentioned the alleged politicization of the Supreme Court. Indeed, Congressman Proaño Maya stated on that date that "the country ha[d] realized that the judges now hold the nation's democratic power […] this trend has led to the destruction of institutions, the manipulation of the judiciary, the concentration of power, the replacement of justice with revenge; and the judges, instead of being real judges, are perverse servants of politicians' interests or the interests of the powerful." Therefore, he argued that it was necessary to put an end to the "judicalization of politics and [the] politicization of justice," because people did "not want men in the country to be persecuted by hatred in the name of justice, they no longer [wanted] people in the country to be exiled with pain and tears, because political hatred motivated the judgments against [their] adversaries." For his part Congressman Villacís Maldonado asked "who [would] defend a judiciary that meets with someone who thinks he owns the country." Congressman Posso Salgado further asserted that "the Supreme Court of Justice […] has been […] hijacked for years by a political organization and a political chief in this country." Congressman Erazo Reasco emphasized the "need to ensure that State institutions are not hijacked, do not act under the direction, the influence or the orders of the political parties or of a leader" and in particular, noted that "16 of the 31 [judges] of the Supreme Court [were members] of the Social Christian party." Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 344, 348, 383, 388 and 407).

124 Approximately four congressmen mentioned alleged acts of corruption by judges or their unsuitability. Congressman Almeida Morán stated that "everyone knows that judgments […] are sold, that court rulings are […] bartered." He added that "they want[ed] to establish a caste through cooptation. A caste that [would] continue to appoint its relatives in the future, to appoint the same group of people who cause harm." He added that "in the coming days [he would] hand over the fortunes of all the members of the Supreme Court of Justice, which ha[d] changed enormously; of the country's judges and prosecutors, who have changed enormously and become rich and new rich after three months." Congressman Touma Bacilio stated that "[n]ow that a majority has formed to address the citizens' outcry that justice does not exist in this country, out come the defenders of the State Constitution, out come the defenders of the judges [who] were never capable of denouncing the corruption of a Supreme Court judge, […] and have been accomplices and accessories to that justice that has been administered for 25 years […] and are now the defenders of the corrupt". Similarly, Congressman Villacís Maldonado declared that "the Supreme Court [had] thieving judges, […] mafia judges, […] irresponsible judges." Referring to the debate held, Congressman Villacís Maldonado, who proposed the wording of the resolution to dismiss the judges, declared that "the only difference [was] that some defend the corrupt and others ha[d] a position of fighting against corruption." Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 351, 352, 355, 369, 384 and 446).

125 In this regard, Congressman Quispe Lozano said it was necessary to "rescue justice, but [they were] not going to take away the administration of justice from the hands of León Febres Cordero in order to hand it over to Abdalá Bucaram." Similarly, Congressman Pazmiño Granizo declared that "they [were] killing the few institutions that exist[ed] in Ecuador, just so that Mr. Abdalá Bucaram Ortiz could survive politically [, that] everything [they had] seen in the National Congress [during those] last weeks [, involved] dividing up a great pie […] to save just one man." Furthermore, Congressman Gonzalez Albornoz asked himself whether "they sincerely [believed] that anyone was interested in the civil chamber of the Court, […] the labor chamber [or] the administrative chamber […], the interest is in the Supreme Court of Justice, which controls the criminal chamber [and] Ecuadorians know why, […] it's because of […] politicians who have problems with the law." For his part, Congressman Viteri Jiménez argued that the intention was to have control over the Constitutional Court, because "[w]ithout the Constitutional Court [the President] cannot do anything […], having the Court […] he can do this, [he can] change the courts

members of the Supreme Court of Justice was to appoint new judges in line with the interests of the political majority.[126]

82. Several congressmen also claimed that lists containing the names of individuals who would become the new judges had been circulated by Congress "for the last several days."[127] Another deputy stated that since the previous day, "the positions [of judges] were being sold in […] a hotel.[128] With regard to the proceedings being conducted against former President Abdalá Bucaram, one deputy declared that after "[e]ight years of persecuting a man […] now they want to tell us that justice is changing hands [, so that they] can continue] in [their] permanent struggle, not only to reclaim justice for [their] leader [former President Abdalá Bucaram, but also] to reclaim justice for twelve and a half million Ecuadorians who demand it."[129]

83. That same day, the National Congress issued Resolution No. R-25-181 dismissing all the judges of the Supreme Court of Justice. The resolution's 'whereas' clauses included the following:

> That the current Constitution of the Republic, in force since August 10, 1998, provides in its 25th Transitory Provision that: ´The officials and members of agencies appointed by the National Congress and the Comptroller General of the State for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003´;
>
> That the current judges of the Supreme Court of Justice were appointed by the National Congress under the 16th Transitory Provision of the previous Constitution of the Republic, published in the supplement of the Official Record No. 142 of September 1, 1997, and so are currently under an expired mandate for not having resigned in January 2003;
>
> That the Constitution currently in force does not establish a procedure for electing the thirty-one judges of the Supreme Court of Justice, establishing only in Article 202, the proceeding for appointing a judge when a vacancy arises. Also, the Organic Law of the Judiciary, in Article 12 currently in effect, establishes the National Congress as the nominating authority for judges of the Supreme Court of Justice;
>
> That the State has the duty to guarantee the operation of the democratic system and the administration of justice free of corruption.[130]

84. Based on the foregoing, the National Congress decided:

---

through a resolution" and by controlling the judicial branch could manage "any criminal trial initiated […] into acts of corruption by this government." Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 358, 365, 373, 381, 390 and 391).

126 *Cf.* In this regard, Congressman Gonzalez Albornoz stated that "the interest in the Supreme Court of Justice is in *who* controls the Criminal Chamber. And that […] is not only […] because of politicians who have problems with the law [, but] because the lawsuits against the bankers are in the Criminal Chamber." Likewise, Congressman Guaman Coronel pointed out that "it's not just the changing of thirty-one judges, the handover to another group, this is a power struggle, nothing more." Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 381 and 426). Similarly, the witness Ayala Mora stated that "the list of new judges had been drawn up based on political quotas of the parties and individuals that created the majority, [… d]uring the parliamentary discussions that night, positions on the Court were offered in exchange for votes. I know that. And I also know that there was talk that the new Court was committed to dismantling the proceedings brought against Abdalá Bucaram to allow his return to the country and to political life, something that, in fact, happened. My assertion is borne out by the action taken by the new Court as soon as it was instated." Affidavit rendered by witness Ayala Mora of January 31, 2013 (Merits file, volume III, page 1289).

127 Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 395).

128 Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 425).

129 Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 371).

130 Resolution 181 of December 8, 2004 (File of attachments to the report, volume I, page 206).

> TO TERMINATE the functions of the judges of the Supreme Court of Justice and their respective deputy judges, who failed to resign from office in January 2003, as provided for in Transitory Provision 25 of the current Constitution; and, TO APPOINT in their place, the jurists named below, who shall take the oath of office before the Second Vice President of the National Congress, shall not be subject to fixed terms for the duration of their office, and shall be subject to termination on the grounds prescribed by the Constitution and by law: […]
>
> Within a period not exceeding fifteen days, the National Council of the Judiciary shall be restructured and shall submit, to the National Congress, shortlists of three names for the election of the Minister Prosecutor General of the Nation, the Superior Courts of Justice and the provincial prosecutors.
>
> This resolution shall enter into force immediately, regardless of its publication in the Official Record.[131]

85. The resolution to dismiss all the judges was approved by a total of fifty-two (52) votes in favor and three (3) votes against.[132] Forty (40) congressmen present in the chamber decided "not to vote."[133]

86. That same resolution also appointed the new judges of the Supreme Court of Justice. The new appointees included four judges who formed part of the former Court, namely, Messrs. Vergara Acosta, Guerrero Armijos, Jaramillo Arízaga and Bermeo Castillo.[134]Judge Bermeo Castillo did not accept this new appointment.[135]

87. Immediately after adopting the resolution, and without being included in the agenda, a motion for constitutional reform was presented so that Congress would regain its jurisdiction to impeach members of the Supreme Court of Justice.[136]Said motion was approved with thirty-four votes in favor.[137] The Congress discussed the third and last point of the agenda, concerning the Organic Law of Elections.[138] The session ended at 00h 40 minutes.[139]

88. Following the issuance of this Resolution, the National Government "admitted that the new Supreme Court justices would discharge their duties on a temporary basis, until the

---

131 Resolution 181 of December 8, 2004 (File of attachments to the report, volume I, page 206).

132 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, pages 338 to 484); Press report "Congress restructures the Court" on December 9, 2004 (File of attachments to the answer brief, volume I, page 3179); Press report in the daily *"El Universo*" entitled "Constitutional matters" of December 26, 2004 (File of attachments to the report, volume III, page 724), and Press report in the daily "*El Comercio*" entitled "Majority dismisses the Court" (File of attachments to the report, volume II, page 557).

133 Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 455 to 464).

134 Resolution no. R-25-181 of December 8, 2004 (File of attachments to the report, volume I, page 206). These judges were selected by the National Congress on October 2, 1997 from a list drawn up by the Qualifying Committee on October 1, 1997 (File of attachments to the report, volume I, page 105).

135 Mr. Bermeo Castillo explained that he had declined the new appointment because he considered that "the Constitution ha[d] been […] repeatedly and reiteratedly violated by Congress, […] which had granted itself absolutely non-existent powers, such as appointing a Supreme Court, after having dismissed, in an arbitrary manner, the previous one." Statement of Mr. Bermeo Castillo on November 14, 2011 (File of attachments to the brief of pleadings and motions, volume I, pages 2369 and 2370), and press report entitled "Bermeo resigns and denounces Parliament" from "*El Comercio*" newspaper, December 14, 2004 (File of attachments to the Merits Report, volume II, page 558).

136 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 465).

137 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 476).

138 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 476).

139 *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 289).

Legislature had discussed and decided on the mechanism for nominating the judges of a new Supreme Court of Justice."[140]

89. The judges found out about their dismissal in several ways: some through the press, others through television news broadcasts and others through rumors circulating in the Court.[141] The dismissed Supreme Court justices refused to leave their offices, considering that the National Congress resolution had no "legal validity whatsoever." Consequently, on December 9, 2004, the National Police proceeded to remove the President of the Supreme Court of Justice and some judges who accompanied him from the Palace of Justice.[142] Meanwhile, other judges and employees[143] were prevented from entering the building. That same day the President of the Supreme Court of Justice, Hugo Quintana Coello, was rushed to the emergency room of the Metropolitan Hospital suffering from the effects of the tear gas used and from a hypertensive crisis.[144] Following the police operation, the judges appointed by the National Congress were instated on December 8, 2004.[145]

---

[140] Resolution 181 November of December 8, 2004 (File of attachments to the report, volume I, page 206).

[141] *Cf.* Affidavit rendered by Mr. Velasco Dávila on November 9, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2729); Affidavit rendered by Mr. Troya Jaramillo on September 21, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2705); Affidavit rendered by Mr. Salinas Montaño of November 14, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2670); Affidavit rendered by Mr. Lescano Fiallo on October 26, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2615); Affidavit rendered by Mr. Alban Gómez on October 7, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2358); Affidavit rendered by Mr. Bermeo Castillo on November 10, 2011. (File of attachments to the brief of pleadings and motions, volume I, page 2369); Affidavit rendered by Mr. Galarza Paz on October 27, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2589); Affidavit rendered by Mr. Quevedo Terán on September 29, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2624); Affidavit rendered by Mr. Quintana Coello on September 29, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2635), and Affidavit rendered by Mr. Riofrío Corral on October 11, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2658).

[142] *Cf.* Affidavit rendered by Mr. Zambrano Palacios on August 19, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2749); Affidavit rendered by Mr. Velasco Dávila on November 9, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2730); Affidavit rendered by Mr. Troya Jaramillo on September 21, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2705); Affidavit rendered by Mr. Quintana Coello on May 14, 2007(File of attachments to the report, volume I, page 121); Affidavit rendered by Mr. Alban Gómez on October 7, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2359); Affidavit rendered by Mr. Galarza Paz on October 27, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2590), and Press report entitled "Chaotic changeover in the Court" (File of attachments to the report, volume III, page 861).

[143] *Cf.* Affidavit rendered by Mr. Serrano Puig on January 31, 2013. (Merits file, volume III, page 1300); Affidavit rendered by Mr. Andrade Ubidia on November 16, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2766); Affidavit rendered by Mr. Quevedo Terán on September 29, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2625); Affidavit rendered by Mr. Brito Mieles on October 12, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2401); Affidavit rendered by Mr. Alban Gómez on October 7, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2358); Affidavit rendered by Mr. Lescano Fiallo on October 26, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2614); Affidavit rendered by Mr. Quintana Coello on September 29, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2636), and Affidavit rendered by Mr. Serrano Puig on October 24, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2685).

[144] *Cf.* Affidavit rendered by Mr. Serrano Puig on January 31, 2013. (Merits file, volume III, page 1305).

[145] *Cf.* Affidavit rendered by Mr. Andrade Ubidia on November 16, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2768); Affidavit rendered by Mr. Zambrano Palacios on August 19, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2750); Affidavit rendered by Mr. Villacis Gómez on October 12, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2737); Affidavit rendered by Mr. Serrano Puig on October 24, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2690); Affidavit rendered by Mr. Brito Mieles on October 12, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2400), and Affidavit rendered by Mr. Quevedo Terán on September 29, 2011 (File of attachments to the brief of pleadings and motions, volume I, page 2624).

90. On December 14, 2004, nineteen of the alleged victims lodged a complaint with the Court of Honor of the Pichincha Bar Association,[146] calling on the Pichincha Bar Association to prosecute and punish those lawyers who had accepted appointments as new judges of the Supreme Court, by suspending their exercise of the profession.[147] On March 29, 2005 the Court of Honor of the Pichincha Bar Association stated that "although […] it was[s] not competent to assess and judge the legislative actions of the National Congress, in order to determine the existence or otherwise of the alleged violations, it [was] necessary to analyze whether the Legislative Branch was legally empowered to dismiss the applicants and to appoint, by means of a resolution, the respondents as judges of the Supreme Court."[148] On this point, the Court of Honor of the Pichincha Bar Association decided to sanction the lawyers who had accepted the position and had taken office.[149]

2. Events following the dismissals at Ecuador's High Courts

91. The dismissal of members of the Supreme Electoral Tribunal, the Constitutional Court and the Supreme Court of Justice, triggered a political and social crisis marked by institutional instability.[150] In January 2005 a wave of protests began against the national government, which was considered to have acted in violation of the Constitution and the Rule of Law.[151]

92. Once installed, the new Supreme Court of Justice adopted a number of decisions with major political impact.[152] Among those decisions were the annulments of the criminal proceedings against former Presidents Abdalá Bucaram and Gustavo Noboa, and against former Vice-president Alberto Dahik.[153]

---

[146] In this regard, the representatives explained that "[t]he Courts of Honor belong to the bar associations and both are subject to private law. Their operation is governed by the Lawyers' Federation Law and they rule on the professional conduct of a member of the Association. These courts can impose sanctions ranging from a verbal reprimand to temporary loss of membership rights" *Cf.* Ruling of the Court of Honor of the Pichincha Bar Association March 29, 2005 (File of attachments to the report, volume II, page 497).

[147] *Cf.* Ruling of the Court of Honor of the Pichincha Bar Association March 29, 2005 (File of attachments to the report, volume II, page 497).

[148] *Cf.* Ruling of the Court of Honor of the Pichincha Bar Association March 29, 2005 (File of attachments to the report, volume II, page 503).

[149] *Cf.* Ruling of the Court of Honor of the Pichincha Bar Association March 29, 2005 (File of attachments to the report, volume II, page 506).

[150] *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525), and Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1221).

[151] Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 5249); Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1220); Press reports in "*El Universo*" newspaper entitled "Monsignor Luna Tobar firm on street protests" on January 5, 2005 (File of attachments to the report, volume III, page 731), "Civic Convergence for Democracy established yesterday" on January 5, 2005 (File of attachments to the report, volume III, page 732), "Civic Convergence demands constitutional order" on January 7, 2005 (File of attachments to the report, volume III, page 735), and press reports in "*El Comercio*" newspaper entitled "Quito: marches and repression" (File of attachments to the report, volume VII, page 2095), and "Protests outside the Court heat up" on January 31, 2005 (File of attachments to the report, volume VII, page 2096).

[152] *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525), and Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1229).

[153] *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 524), and Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1221).

93. On April 2, 2005 former President Bucaram,[154] who was being criminally prosecuted for illegal enrichment and mismanagement of public funds, returned to Ecuador, a fact that intensified the public protests against the government.[155] According to the observations of the United Nations Rapporteur on the independence of judges and lawyers during his visit to Ecuador on July 11-15, 2005, these decisions aggravated "the social and political tensions in the country, and the crisis spread to all the main institutions."[156]

94. In that context, on April 15, 2005 the President of the Republic, Lucio Gutiérrez, issued Executive Decree No. 2752, dismissing the Supreme Court of Justice elected on December 8, 2004.[157] The grounds cited in the Decree included the following: "The National Congress has to date not resolved the dismissal of the current Supreme Court of Justice [appointed on December 8, 2004], which is creating severe national unrest […] it is therefore vital to obey the pronouncements of the citizens of Quito and of the Republic, rejecting the operations of the current Supreme Court of Justice."[158] Consequently, the President of the Republic decreed:

> Article 2. - Given the express mandate and sovereign will of the Ecuadorian people, and in compliance with the State's duty to recognize and ensure the right to legal security enshrined in Article 23 section 26 of the Constitution of the Republic, the judges of the current Supreme Court of Justice, appointed by means of Resolution 25-181 of December 8, 2004, are hereby dismissed from office.[159]

95. The same Executive Decree also declared a state of emergency in the city of Quito.[160] The following day, April 16, 2005, the President of the Republic issued Executive Decree No. 2754, stating that "the cause of domestic unrest and turmoil in the city of Quito created by the crisis in the Supreme Court of Justice has been overcome" and, consequently, declaring "an end to the state of emergency."[161]

96. At the same time, on April 17, 2005, Congress annulled the resolution of December 8, 2004, regarding the appointment of the new Supreme Court of Justice.[162] However, it did not order the reinstatement of the justices who had been dismissed from office.[163]

97. All this increased the "rising wave of tension and violence, particularly in the capital", as a result of which on April 20, 2005, Congress declared that President Lucio Gutiérrez had

---

154 The expert witness Ruiz Acosta reported that Bucaram returned to the country on April 2, 2005. Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1221).

155 *Cf.* Statement rendered by witness Ayala Mora on January 31, 2013 (Merits file, volume III, page 1290), and Affidavit rendered by expert witness Ruiz Acosta on January 29, 2013 (Merits file, volume III, page 1221).

156 *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525).

157 *Cf.* Executive Decree 2752 of April 15, 2005 (File of attachments to the report, volume II, page 495).

158 Executive Decree 2752 of April 15, 2005 (File of attachments to the report, volume II, page 494).

159 *Cf.* Executive Decree 2752 of April 15, 2005 (File of attachments to the report, volume II, page 495).

160 *Cf.* Executive Decree 2752 of April 15, 2005 (File of attachments to the report, volume II, page 495).

161 *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525), and Executive Decree 2754 of April 16, 2005 (File of attachments to the report, volume II, page 495).

162 *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525).

163 *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525).

abandoned his constitutional duties.[164] Pursuant to the constitutional order of succession, Vice President Alfredo Palacio took office as President of the Republic.[165]

98. On April 26, 2005, Congress adopted an amendment to the Organic Law of the Judicial Branch.[166] The new Organic Law established an *ad hoc* mechanism for overseeing the process of assessing and appointing the new justices of the Supreme Court and their deputies.[167] This *ad hoc* mechanism entailed the creation of a Qualifying Committee "to compensate for the impossibility of implementing the constitutional clause dealing with the principle of cooptation because of the non-existence of the agency empowered to carry it out"[168] - in other words, the Supreme Court of Justice itself.

99. As a result of this situation, Ecuador remained without a Supreme Court of Justice for approximately seven months.[169]

100. On November 30, 2007 a National Constituent Assembly was convened for the purpose of drafting the new Constitution of the Republic of Ecuador. The National Constituent Assembly, [170]known as "Montecristi Assembly," confirmed the judges of the 2005 Court in their positions.

101. The new Constitution entered into force on October 20, 2008. [171] It incorporates international human rights instruments as part of the Ecuadorian legal system, granting them constitutional rank.[172]

---

[164] *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, and page 525).

[165] *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525), and statement rendered by witness Ayala Mora on January 31, 2013 (Merits file, volume III, page 1286).

[166] *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525).

[167] *Cf.* Report of the Special Rapporteur on the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525).

[168] Report of the Special Rapporteur regarding the independence of judges and lawyers of August 31, 2005 (File of attachments to the report, volume II, page 525).

[169] *Cf.* Affidavit rendered by Mr. Quintana Coello of May 14, 2007 (File of attachments to the report, volume I, page 119). In this regard, Mr. Donoso Castellón, stated: "[…] those are the facts that took place and that's why I know that the Court could not last [.] Ecuador was without a Supreme Court for seven months and, as I mentioned before, Congress tried in some way to restore the constitutional order." Statement rendered by Mr. Donoso Castellón at the public hearing before the Inter-American Court.

[170] In this regard, expert witness Trujillo stated that "the Assembly of 2008 [...] was the result of a popular referendum approved by 81% […], the Constituent Assembly of 2008, was open to society, with 1632 proposals submitted in writing, the Assembly received 70,000 proposals, there [were] three citizens' oversight committees, all this reflected the participation of groups traditionally excluded from Ecuadorian society and, unlike the 1998 Assembly, the draft participatory constitution was submitted to a referendum and approved by 64% of the Ecuadorian population. I believe that the process described shows that between 2007 and 2008 Ecuador began a process to re-found the State, characterized by the following elements: expanding the mechanisms for participation in public administration, implementing rights became the central objective of the Ecuadorian State, participatory distribution of the State's powers so that these would not remain solely with our country's established elites, an active role in the construction of the new State for new social actors who have been structurally excluded, the displacement of old regional elites and the inclusion of new social groups in public administration." Statement rendered by expert witness Trujillo Vásquez at the public hearing before the Inter-American Court.

[171] The Final Provision of the Constitution of the Republic of Ecuador states that "this Constitution […] shall enter into force on the day of its publication in the Official Record." Official Record No. 449 October 20, 2008 (File of attachments to the answer brief, volume I, page 3568).

102. Article 182 of the 2008 Constitution created the National Court of Justice, comprised of twenty-one (21) judges appointed for a nine-year term of office, after which they could not be reelected.[173] The duties of the National Court of Justice included "[t]o hear appeals for cassation, review and others provided for by law", "[t]o develop the system of case law precedents based on triple reiteration rulings", "[t]o hear cases that are filed against public servants who benefit from immunity" and "[to] submit bills concerning the system to administer justice."[174] It is also important to emphasize the provision contained in Article 187 of that Constitution, which states the following:

> "Article 187. - The public servants of the judiciary shall be entitled to remain in their posts as long as there are no legal grounds for dismissing them; they shall be subject to individual and periodic evaluation of their performance, in line with technical parameters drawn up by the Judiciary Council and subject to social control. Those who do not comply with minimum requirements shall be dismissed."[175]

103. As a transitory measure, the Constitution established that any proceedings being heard by members of the old Supreme Court of Justice would be transferred to, and ruled on, by the National Court of Justice.[176] Furthermore, it reduced the number of judges of the newly named National Court of Justice from 31 to 21 members.

VIII
JUDICIAL GUARANTEES, PRINCIPLE OF LEGALITY, POLITICAL RIGHTS, DUTY TO ADOPT PROVISIONS OF DOMESTIC LAW, EQUALITY BEFORE THE LAW AND JUDICIAL PROTECTION

104. In this chapter, the Court will examine the arguments presented by the parties and the Commission, and will develop the legal considerations pertinent to this case. Initially it shall refer to A) the arguments of the Commission and of the parties in order to B) initiate considerations regarding judicial independence, the right to be heard, jurisdiction and political rights (1). Subsequently the Court will elaborate on its considerations regarding judicial protection (2) and the right to equality (3).

A. Arguments of the Commission and of the parties

1. Arguments on judicial independence, jurisdiction and political rights

105. The Commission stressed that "at the time of the facts […], although the Constitution stipulated the duration - indefinite - of a Supreme Court justice's mandate and established the system to be used to fill vacancies, there were no legal regulations dealing with those

---

[172] "The rights and guarantees established in the Constitution and in international human rights instruments shall be applied directly and immediately." Article 182 of the Constitution of the Republic of Ecuador 2008 (File of attachments to the answer brief, volume I, page 3526).

[173] Article 182 of the Constitution of the Republic of Ecuador 2008 (File of attachments to the answer brief, volume I, page 3526).

[174] Article 184 of the Constitution of the Republic of Ecuador 2008 (File of attachments to the answer brief, volume I, page 3526).

[175] Article 187 of the Constitution of the Republic of Ecuador 2008 (File of attachments to the answer brief, volume I, page 3527).

[176] Transitory Provision 8 of the Constitution of the Republic of Ecuador (File of attachments to the answer brief, volume I, page 3563).

systems or with the substantive and procedural disciplinary regime applicable to justices of the Supreme Court." It added that "in addition fueling doubts about the independence of the Judiciary, the absence of clear rules on the grounds and procedures for removing judges from office c[ould] lead to arbitrary abuses of power, with direct repercussions for the rights to due process and freedom from *ex post facto* laws." According to the Commission, "there was no legal or constitutional basis which granted Congress jurisdiction to dismiss or impeach the judges," but it did not comment on the violation of Article 23 of the Convention, given that it was not included in the admissibility report issued in this case.

106. Regarding the independence of the National Congress in resolving to dismiss the justices of the Supreme Court, the Commission argued that the applicable procedures must be clearly established by law, something that did not occur in this case, and therefore it may be "inferred that the National Congress did not act with the necessary guarantees of independence in terminating the [alleged] victims".

107. The representatives argued that "[t]he National Congress interfer[ed], without constitutional jurisdiction, in the operation of the judiciary and of the Supreme Court." They noted that "the dismissal of the judges before completion of their constitutional term, and by decision of an incompetent body, constituted [a] violation of judicial independence." As to the possible violation of Article 23(1) (c) of the Convention, the representatives added that the "Constitution in force at the time of the facts, recognize [d] that every citizen in Ecuador ha[d] the right to hold public positions and public office", that such a role should be understood as "tenure in public office" and that persons should not be "arbitrarily dismissed from their positions." They concluded that a judge's exercise of public office was "a right of judges, but at the same time a guarantee that they [could] discharge their duties with independence, which guarantees the right to judicial independence".

108. The representatives also held that "the National Congress did not have jurisdiction to examine [a] matter related to the judiciary," given that the "[c]ompetent tribunal, according to the provisions established in the Ecuadorian legal system, was the Supreme Court of Justice itself." They added that in this case, the "National Congress, by ruling on the rights of judges without constitutional jurisdiction, became an *ad hoc* tribunal", thereby violating their right to be brought before a competent tribunal.

109. The representatives further argued that "after Congress had assum[ed] the role of an *ad hoc* judge, it had an obligation to guarantee a person's right to be [judged by] an independent court." Therefore, they argued, the "National Congress c[ould] hardly guarantee independence, being a political body by nature [and] even less so in this case, when it responds to the interests of the government and of parliamentary majorities."

110. The State argued that there was no violation of Article 23 of the Convention because two of the former judges who were removed "held high positions after their dismissal [,] in the first case, as President of the National Court of Justice (former Supreme Court of Justice), and in the second as a judge of the Electoral Contentious Court." It argued that "none of the six judges of the Court of 97 ha[d] been denied opportunities for participation and, as convincing evidence [,] many of the former judges of the Court of 1997 participated in the current process to appoint the National Court. Moreover, in its final arguments, the State pointed out that according to Transitory Provision 25, the former judges "should have ceased their functions in 2003" and that "[t]he National Congress [had] complied with this mandatory constitutional provision on December 8, 2004".

111. In relation to the National Congress's guarantee of independence, the State argued that the judges' dismissal "wa[s] a situation, a legal reality confirmed by the expiry of the judges' term of office", that "the determining fact [in their dismissal] was the passage of

time" and that, therefore, "it is not clear that members of Congress had a direct interest in the resolution, since the dismissal was prompted by […] a legal fact verified with the expiry of the judges' term of office."

2. Arguments regarding the nature of the decision to dismiss the judges

112. The Commission pointed out that "[r]esolutions of this kind, issued in the absence of a precise legal framework, foster doubts about the goals they pursue, and it is reasonable to consider the possibility that a kind of sanction was being imposed on the judicial officials in reprisal for the manner in which they exercised their judicial duties." It added that "there are a number of elements or indications from which it is reasonable to infer that the dismissals were aimed at sanctioning the conduct or performance of the Supreme Court justices." It argued that "the provision invoked by the National Congress [...] was not applicable" to the alleged victims.

113. For their part, the representatives argued that "[t]he process was punitive because during the session and the debate on December 8, Congress used arguments related to the exercise of public office by Ecuador's highest court." They argued that "[t]he provision applied by the National Congress sought to give the appearance of not being a punitive process, but rather the application of a provision that [was] not observed, equating the judges to other public or state official with a fixed term and designated by Congress". They argued that "[t]he rule invoked by the National Congress to dismiss the [Supreme Court] justices was arbitrary and was not applicable to them."

114. In its acknowledgment made at the public hearing in this case, the State accepted that the decision taken by Congress "could have been understood as an *ad-hoc* proceeding of a punitive nature." Despite its acquiescence at the public hearing, in its final written arguments the State argued that "the judges appointed in 1997 were never covered by [Article 202 of the 1998 Constitution, since] their appointment preceded it and followed other political and juridical rules." Likewise, the State argued that "the judges' dismissal by the National Congress […] cannot be confused with an action of a punitive nature, which restricted the exercise of fundamental rights." In this regard, it added that said decision "[i]nvolved implementing a provision that existed within the Ecuadorian legal system, which the alleged victims and the general public knew about, and which had to be observed without this implying the application of a sanction for those who held that position." The State further argued that "the National Congress [was] authorized under Article 130, paragraph 4 of the 1998 Constitution [to] interpret the Constitution," which it had done when analyzing the scope of Transitory Provision 25 and declaring the judges' dismissal from office. Finally, in its final written arguments, the State emphasized that "in this case […] the discussion is over the application of a constitutional provision that is not of a disciplinary nature."

3. Arguments regarding the right to be heard and right of defense

115. The Commission considered that "the resolution [on dismissal] was adopted by Congress on December 8, 2004, and there is no information whatsoever to indicate that the [alleged] victims were granted any possibility of defending themselves." The Commission pointed out that the State itself acknowledged that "it was not necessary to notify the Supreme Court justices of the procedure or to grant the right of defense." It added that in proceedings to remove judges from office it is necessary to apply "the guarantees of due process contemplated in Articles 8(1), 8(2) and 9 of the American Convention." In its final written observations, the Commission emphasized that, as regards the right of defense, "[the judges´] participation in the process and the procedural opportunities to conduct their defense were nil, which wa[s] incompatible with Article 8(2) of the American Convention."

116. According to the representatives, since the alleged victims were "not notified that decisions were being made regarding their rights and legal status in the judiciary, they had no opportunity to participate in the proceeding, be heard, exercise their right to defend themselves or influence the decision on this matter." They added that the "procedure established by the Constitution in force at the time contemplated an impeachment proceeding, which [would] include some guarantees for the defense. However, the National Congress did not even use this proceeding to determine the judges' rights. Congress conducted its own proceeding, consisting of a parliamentary resolution, which required a simple majority." Therefore, they argued that "serious accusations were made against the judges, which were considered as grounds for their dismissal, and the judges were unable to contribute with their facts, refute these assertions, be heard and conduct their defense," and consequently Article 8 of the Convention had been violated. The representatives emphasized that "the judges heard what was happening at this session on the radio, were never summoned because the convocation supposedly concerned constitutional matters, and they never knew that their rights were being discussed." In their final written arguments, the representatives alleged that Article 8(2) of the Convention was violated in this case because the "impeachment proceeding [was not followed, since] the judges were not previously notified of the charges that would be made against them in Congress, and were not given an ample opportunity to be heard, because they were not granted the time or place to defend themselves and present evidence, because no reasons were given, because there were no remedies to challenge the decision and because no other mechanisms were available."

117. The State argued that "no formal notification was given, but instead the action was publicized, as confirm[ed] in the live broadcast of the Special Sessions by several national media organizations."

4. Arguments regarding the obligation to state reasons

118. The Commission made no reference to this argument.

119. The representatives argued that "[n]o evidence was offered during the session, only rhetorical arguments and assertions without any evidentiary support." They added that the "debates which took place in Congress on the day of the resolution, of [December] 8, 2004, [we]re not reflected in Resolution N. 25-181." In this regard, they noted that "the judges were dismissed for reasons not provided for by law and not stated in the resolution, except for the mention of 'acts of corruption' in the whereas clauses." During the public hearing, the representatives emphasized that, in accordance with "the standards referred to in the case of Chocrón, for example, […] the Resolution must contain […] evidence, must take into account the arguments, and the parties must be heard" but that in this case "there was nothing [since it was] a resolution containing a transitory provision, which was irrelevant and, moreover, was not applicable."

120. The State did not present arguments on this point.

5. Arguments regarding the alleged lack of impartiality of the National Congress

121. As to the guarantee of impartiality, the Commission considered that this case "involves a series of elements that give rise to reasonable doubt regarding the impartiality of the National Congress," for the following reasons: i) "the National Congress's evidently arbitrary interpretation of Transitory Provision 25", and ii) "the National Congress's failure to exercise its supposed competence to terminate the functions of the [Supreme Court]

justices over the space of two years, and the activation of that supposed competence in a political context marked by pronounced tension with the judiciary".

122. The representatives argued that "[s]ince the motivation was political and not legal, given that the lawmakers who constituted the *ad hoc* tribunal had preconceived opinions, which responded to the interests of the President and of several political parties at the time" there was a violation of the principle of impartiality to which the alleged victims were entitled. Furthermore, the representatives argued that the National Congress was not impartial "because it knew the outcome even before the start of the special session of Congress."

123. For its part, the State argued that from the facts "there is no indication that members of Congress ha[d] a direct interest in the resolution[,] since the dismissal was prompted by a legal fact verifiable in the expiry of the judges' term for exercising their duties" and that "it was prompted by an objective criterion which was not only contemplated in the Constitution, in Transitory Provision 25, but was confirmed on December 8, 2004, at the special session of Congress when it examine the legality of the judicial officials' positions."

6. Arguments regarding the right to appeal the decision

124. The Commission did not refer to this point.

125. The representatives argued that "the Constitution in force at the time did not contemplate any remedies to challenge actions by the National Congress." They added that "[t]he violation of the right to appeal occur [red] '*de iure and de facto"*, because: i) "the Constitution did not provide for a mechanism to ensure that the resolution, in its procedure and substance, did not entail a violation of rights", and ii) "the resolution could not effectively be appealed before another body." Therefore, they considered that by "not having remedies available" it "violated the right to appeal decisions that violate human rights."

126. The State did not offer arguments on this point.

7. Arguments regarding the principle of legality (freedom from ex post facto laws)

127. The Commission argued that i) "at the time when the Supreme Court justices were appointed […] and dismissed […], no regulations governing the constitutionally established systems for terminations and vacancies were in place"; ii) "neither were there any regulations in place for the disciplinary system applicable to members of the Court" and iii) the alleged victims "were denied prior knowledge of the grounds for which they could be removed from office, the competent authority for doing so, and the applicable procedure." It argued that "[at] the time the functions of the alleged victims were terminated, other than the constitutional duty requiring Congress to establish a legal framework, according to the information available, those provisions had not yet passed into law. Nor were there any regulations covering the Supreme Court's disciplinary system, the grounds for the removal of judges, the procedure to be followed, or the competent authority for doing so." In this regard, it argued that "an *ad hoc* mechanism - provided for neither in the Constitution nor in law – was created to terminate the functions of all the Supreme Court justices on the grounds that their mandates had expired. That was in spite of the fact that […] their appointment was for an indefinite period, subject to grounds for removal to be determined by law." Finally, the Commission argued that "[i]n the absence of a comprehensive punitive system, […] any proceeding followed in those circumstances [would] *per se* have violated Article 9 of the

Convention." Therefore, it concluded that all the foregoing, together with "the clear lack of legal and constitutional grounds for the National Congress's interpretation of Transitory Provision 25 of the 1998 Constitution, [implied] that the State of Ecuador [had] violated the right enshrined in Article 9 of the American Convention in conjunction with Article 2 thereof."

128. According to the representatives, "[i]n Ecuador, at the time of the judges' dismissal by Congress, there was no law specifying the grounds for removing judges of the Supreme Court of Justice", which would violate "one of the rules of the principle of legality." Indeed, the representatives argued that under Article 202 of the Constitution in force at that time, "the competent authority for appointing and dismissing judges wa[s] the [Supreme Court of Justice] itself." They pointed out that "[t]he Supreme Court's own interpretation of this provision was that the plenary of the [Supreme Court of Justice], being the nominating body, reserved the right to revoke that appointment by means of a disciplinary procedure." Thus, on October 2, 2003 the Supreme Court published the document entitled "Jurisdiction of the Supreme Court to hear complaints submitted against its member judges", which "was the only constitutional provision in force at the time of the events." Consequently, according to the representatives, the proceeding was a punitive "*ad hoc* trial", in no way contemplated in the Ecuadorian legal system. The representatives concluded that "[t]he Ecuadorian State violated Article 9 of the Convention by failing to establish the legal grounds for dismissing a judge and a proceeding with all the guarantees of due process."

129. In its answer brief, the State argued that "Resolution 25-181, declaring the termination of the judges, was neither a judgment nor a sanction stemming from an accusation against the judges, but was merely complying with a constitutional provision which must be observed and which established legal effects that were already known to the alleged victims." Subsequently, in acknowledging during the public hearing that Article 9 of the Convention had been violated, the State explained that because "the law did not contain specific grounds for removing judges from office, the National Congress's resolution could have been understood as an *ad-hoc* proceeding of a punitive nature."

8. Arguments regarding Article 2 of the Convention

130. The Commission argued that a link exists between Article 25 and Article 2 of the American Convention, given that the latter establishes "the general duty of States to adapt their domestic legislation to the provisions of this Convention to guarantee the rights enshrined therein, established in Article 2, including such legislative or other measures as may be necessary to give effect to those rights or freedoms enshrined therein, as well as the adoption of measures to suppress provisions and practices of any nature violate the guarantees contemplated in the Convention."

131. The representatives argued that Article 2 of the Convention was violated because "Ecuador had not issued a law [that established] the grounds for the dismissal of judges." They also argued that although "Ecuador has undertaken a profound legal reform in issuing the 2008 Constitution and the Organic Code of the Judiciary," currently there are some "provisions that could undermine judicial independence." The foregoing, in consideration that "a representative appointed by the President of the Republic who heads the Council of the Judiciary and this body has the power to administratively sanction judges, including justices of the current National Court of Justice, which jeopardizes the principle of independence and impartiality of justice." The representatives added that "the State violated Article 2 of the Convention by failing to establish legal or other measures to prevent a repetition of the violations committed against the judges of the [Supreme Court of Justice] in 2004."

132. The State argued that "the Ecuadorian State has a regulatory system with a legal framework for the administration of justice, the appointment and removal of judges and the disciplinary system of the judiciary." It added that "[i]n relation to the possibility of removing judges of the Supreme Court of Justice, it clearly establishes the body responsible for conducting this process, having regard to the criteria of hierarchy and responsibility." The State added that currently "there is a public policy for the protection of human rights and the re-engineering of the administration of justice, which is first glimpsed in the 1998 Constitution, [the] Organic Law of the Council [of the] Judiciary, [the] Law of Constitutional Control and which is consolidated, reaffirmed and developed in the Montecristi Constitution of 2008, in the Organic Code of the Judiciary and in the Organic Law of Jurisdictional Guarantees and Constitutional Control." As to the representatives' allegations that problems existed in the current legislation, the State said it "formally reject[ed] such assertions, since they [we]re based on legal speculations and not on specific, provable and measurable facts, given that the comprehensive process of judicial reform undertaken by the National Council of the Judiciary of Transition ha[d] not concluded and therefore potential situations [could] be judged *a priori*."

9. Arguments on judicial protection

133. As to the alleged violation of Article 25 of the American Convention, the Commission reiterated that "as held by the Court's constant jurisprudence, a remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective." The Commission considered that "the Constitutional Tribunal's ruling of December 2, 2004 [establishing that only the remedy of an unconstitutionality suit was appropriate to suspend the effects of a parliamentary resolution] was an impediment to the Supreme Court justices' filing for *amparo* relief against the resolution whereby their functions were terminated."

134. The Commission added that "even on the assumption that an unconstitutionality suit could be considered as a suitable and effective remedy for challenging the [alleged] victims' dismissal, it would have fallen to the Constitutional Tribunal to rule on any such filing." In this regard, the Commission "consider[ed] that given the way in which they [the new members of the Constitutional Tribunal responsible for processing a possible unconstitutionality suit] were appointed, without a legal or constitutional basis, and without clear rules governing their tenure, the Constitutional Tribunal as it stood in December 2004 did not afford adequate guarantees of independence." The Commission added that it was "logical to infer that the Constitutional Tribunal so composed [… would have] a direct interest in rejecting any action or remedy concerning the dismissals at the Supreme Court of Justice […], since a favorable decision (against it) would mean that its own appointment was invalid." Consequently, the Commission stressed that "in such circumstances, there were no guarantees of impartiality in the resolution of a possible unconstitutionality suit." The Commission therefore considered that "i) the victims were arbitrarily and unreasonably prevented from filing *amparo* remedies against the National Congress's dismissal resolution; and ii) the remedy indicated by the Constitutional Tribunal - the unconstitutionality suit- was not suitable for challenging the particular effects of that resolution and, in any event, it was an illusory remedy in light of the absence of independence and impartiality on the part of the authority that would have resolved it."

135. The representatives pointed out that the *amparo* remedy "was the remedy offered by the [Ecuadorian] legal system to protect rights," and emphasized that "in this case, the constitutional action of *amparo* was the most appropriate way to remedy the violation of the former judges' human rights." The representatives added that "(1) *amparo* remedies were systematically denied to the [Constitutional Tribunal] judges who were in a similar situation, (2) the judges were threatened if they ruled in favor of *amparo* suits, (3) the President of the Republic asked the [Constitutional Tribunal] to issue a general resolution

denying the *amparo* remedies, (4) the judges were neither independent nor impartial, (5) an interpretative ruling by the [Supreme Court of Justice] was applied regarding the scope of the *amparo* that denied its application to resolutions of the National Congress."

136. In this regard, the representatives argued that the resolution "negat[ed] the efficacy of the *amparo* and in turn order[ed] the judges to reject *amparos* whenever these concern[ed] violations of rights stemming from parliamentary actions." They added that "it was very easy to predict the failure of any constitutional suit given that the body that ultimately heard the appeal of the *amparo* remedies was precisely the [Constitutional Tribunal], comprised of judges who were absolutely dependent on the government."

137. As to the action of unconstitutionality to which the judges had access, the representatives argued that "for the purposes of this case, it was not sufficient for the remedy of constitutional *amparo* to exist in the Constitution or for the Constitutional Tribunal to h[ave] indicated that the unconstitutionality suit was an appropriate means to challenge the decision of Congress"; those remedies also had to be "effective." The representatives insisted that "the unconstitutionality suit was not effective for two reasons: (1) access and (2) result". In relation to the first reason, the representatives argued that "the action could only be presented on the initiative of certain State institutions, among them the [Supreme Court of Justice], and with the support of 1,000 people making use of their political rights, […] which ma[de] it difficult to access the remedy." Regarding the result, the representatives argued that "according to the cited constitutional norms, the purpose of the action [was] to determine whether an administrative norm or action was consistent, in form and substance, with the Constitution" and that "the action of unconstitutionality [did] not offer possibilities of reparation for a right violated, because according to the Ecuadorian system in force at that time, that was the purpose of the *amparo*." Accordingly, the representatives concluded that "the judges […] did not have access to a simple and prompt remedy for the protection of their human rights or to an accessible and effective remedy."

138. The State accepted the violation of this Article of the Convention.

10. Arguments on equality

139. Regarding the alleged violation of Article 24 of the American Convention, the Commission "concluded" that the facts alleged "did not amount to a possible violation of the rights enshrined in Article 24 […] of the American Convention".

140. The representatives noted that Ecuador "discriminated against the former judges on two occasions: (i) when it dismissed one group of former judges from office and not the other; and, (ii) when it le[ft] the former judges without access to the constitutional guarantee of *amparo*." As to the first alleged act of discrimination, the representatives argued that "the National Congress treated the two groups of judges differently," since "one was a group that the government considered corrupt, inept, and unsuitable for the exercise of its duties, and another group, which was sympathetic to the government, was considered suitable to continue to exercise its duties." They added that "the parliamentary resolution in which [Congress] dismissed the judges, appointed four of said judges, despite the fact that one of the grounds for dismissal was the supposed expiry of a term applicable to all the former judges." The reason for such discrimination was apparently "the parliamentary majority's perception that the judges were politicized." As to the second alleged cause of discrimination, the representatives argued that the "Constitutional Tribunal, at the request of the President of the Republic, made a distinction between two types of citizens - the former judges and rest of the Ecuadorians," that this differentiation occurred "for political

reasons" and that the result of such differentiation was to "annul the right to judicial protection."

141. The representatives argued that the discrimination practiced by the State in both cases was not "reasonable", given that such differences in treatment would not have complied "with the parameters of the judicial guarantees which, as [had been] analyzed, were viol[ated] in an obvious and systematic manner in this case." They added that there was "no […] objective justification for having dismissed the 28 judges from office or for having denied them the right to judicial protection" and that "the National Congress' resolution was a completely discriminatory act inasmuch as it was a unique, arbitrary resolution that left a group of people unprotected, in this case the judges, and violated their human rights."

142. The State acknowledged the violation of this Article of the Convention.

B. Considerations of the Court

1. Judicial independence, right to be heard, jurisdiction and political rights

143. In this section, the Court deems it appropriate, first, to refer to the main standards regarding the principle of judicial independence. Second, it will analyze the possible effects on the judicial guarantees of the alleged victims. Third, it will explain the specificities of the institutional aspect of judicial independence in the circumstances of this case.

1(1). General standards on judicial independence

144. In its case law, the Court has indicated that the scope of judicial guarantees and effective judicial protection for judges must be examined in relation to the standards on judicial independence. In the case of *Reverón Trujillo v. Venezuela*, the Court emphasized that judges, unlike other public officials, enjoy specific guarantees due to the independence required of the judiciary, which the Court has understood as "essential for the exercise of the judiciary."[177] The Court has reiterated that one of the main objectives of the separation of public powers is to guarantee the independence of judges.[178] The purpose of protection is to ensure that the judicial system in general, and its members in particular, are not subject to possible undue restrictions in the exercise their duties by bodies outside the Judiciary, or even by judges who exercise functions of review or appeal.[179] In line with the case law of this Court and of the European Court of Human Rights, and in accordance with the United Nations Basic Principles on the Independence of the Judiciary (hereinafter "Basic Principles"[180]), the following guarantees are derived from judicial independence: an

---

[177] *Case of Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 30, 2009. Series C No. 197, para. 67, citing *Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107, para. 171, and *Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs.* Judgment of November 22, 2005. Series C No. 135, para. 145.

[178] *Cf. Case of the Constitutional Court v. Peru*, para. 73, and *Case Atala Riffo and Daughters v. Chile. Merits, Reparations and Costs.* Judgment of February 24, 2012. Series C No. 239, para. 186.

[179] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 55, and *Case Atala Riffo and Daughters v. Chile*, para. 186.

[180] United Nations Basic Principles regarding the independence of the judiciary adopted by the Seventh Congress of the United Nations on Prevention of Crime and Treatment of the Offender, held in Milan, Italy, from August 26- September 6, 1985, and confirmed by the Assembly General in Resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985.

appropriate process of appointment,[181] guaranteed tenure[182] and guarantees against external pressures.[183]

145. Regarding the scope of security of tenure relevant to this case, the Basic Principles establish that "[t]he term of office of judges […] shall be adequately secured by law" [184] and that "[j]udges, whether appointed or elected, shall have guaranteed tenure until the mandatory retirement age or the expiry of the term of office, where such exists."[185] Moreover, the Human Rights Committee has stated that judges may be dismissed only on grounds of serious misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the Constitution or the law.[186] This Court has accepted these principles and has stated that the authority responsible for the process of removing a judge must act independently and impartially in the procedure established for that purpose and must allow for the exercise of the right to defense.[187] This is so because the free removal of judges raises the objective doubt of the observer regarding the judges' real possibilities of ruling on specific disputes without fear of reprisals.[188]

146. As to the guarantees against external pressures, the Basic Principles require that judges shall decide a matter 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."[189] Moreover, these Principles establish that "[t]here shall not be any inappropriate or unwarranted interference with the judicial process."[190]

147. Nevertheless, judges do not have absolute guarantees of tenure in their positions. International human rights law accepts that judges may be dismissed for conduct that is clearly unacceptable. In General Comment No. 32, the Human Rights Committee has established that judges may be dismissed only for reasons of serious misconduct or

---

181 *Cf. Case of the Constitutional Court v. Peru*, para. 75, and *Case Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2011. Series C No. 227, para. 98. See also European Court of Human Rights, Case of *Campbell and Fell v. United Kingdom,* Judgment of June 28, 1984, para. 78; European Court of Human Rights, *Case of Langborger v. Sweden,* Judgment of January 22, 1989, para. 32, and Principle 10 of the United Nations Basic Principles.

182 *Cf. Case of the Constitutional Court v. Peru*, para. 75, and *Case Chocrón Chocrón v. Venezuela*, para. 98. See also Principle 12 of the United Nations Basic Principles.

183 *Cf. Case of the Constitutional Court v. Peru*, para. 75, and *Case Chocrón Chocrón v. Venezuela*, para. 98. See also Principles 2, 3 and 4 of the United Nations Basic Principles.

184 Principle 11 of the United Nations Basic Principles.

185 Principle 12 of the United Nations Basic Principles.

186 *Cf.* Human Rights Committee, General Comment No. 32, Article 14: Right to Equality before Tribunals and Courts and to a Fair Trial, CCPR/C/GC/32, August 23, 2007, para. 20. In the same General Comment the Committee also states that "The dismissal of judges by the executive, for example 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" (para. 20). Similarly, the Basic Principles establish that judges "shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties" and that "[a]ll disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct." Principles 18 and 19 of the United Nations Basic Principles.

187 *Cf. Case of the Constitutional Court v. Peru*, para. 74, and *Case Chocrón Chocrón v. Venezuela*, para. 99.

188 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 44, and *Case Chocrón Chocrón v. Venezuela*, para. 99. See also Principles 2, 3 and 4 of the United Nations Basic Principles.

189 Principle 2 of the United Nations Basic Principles.

190 Principle 4 of the United Nations Basic Principles.

incompetence.[191] Similarly, the Basic Principles state the following on disciplinary measures, suspension and removal:

> "17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
>
> 18. Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties."[192]

148. In addition, other standards draw a distinction between the sanctions applicable, emphasizing that the guarantee of immovability implies that dismissal is the result of serious misconduct, while other sanctions may be considered in the event of negligence or incompetence. The Council of Europe's Recommendations on the Independence, Efficiency and Role of Judges[193] specify the following:

> "Principle I. General Principles on the Independence of Judges [...]
> 2. [...] a. i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law; [...]
>
> Principle VI – Failure to carry out responsibilities and disciplinary offences
> 1. Where judges fail to carry out their duties in an efficient and proper manner or in the event of disciplinary offences, all necessary measures which do not prejudice judicial independence should be taken. Depending on the constitutional principles and the legal provisions and traditions of each state, such measures may include, for instance:
> a. withdrawal of cases from the judge;
> b. moving the judge to other judicial tasks within the court;
> c. economic sanctions such as a temporary reduction in salary;
> d. suspension.
> 2. Appointed judges may not be permanently removed from office without valid reasons until mandatory retirement. Such reasons, which should be defined in precise terms by the law, could apply in countries where the judge is elected for a certain period, or may relate to incapacity to perform judicial functions, the commission of criminal offences or serious infringements of disciplinary rules.
> 3. Where measures under paragraphs 1 and 2 of this article need to be taken, States should consider setting up, by law, a special competent body, whose task is to apply any disciplinary sanctions and measures, where these are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or one which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that the judges in question are granted at least all the due process requirements of the Convention, for instance that the case should be heard within a reasonable time and that they should have a right to answer any charges."

149. For its part, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa include the specific prohibition to remove judges merely because their rulings have been overturned. Indeed, these principles and guidelines establish that "judicial officers [...] shall not be removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher court."[194]

---

[191] *Cf.* Human Rights Committee, General Comment No. 32, Article 14: Right to Equality before Tribunals and Courts and to a Fair Trial, CCPR/C/GC/32, August 23, 2007, para. 20. See also Human Rights Committee, Communication No. 1376/2005, Soratha Bandaranayake v. Sri Lanka, CCPR/C/93/D/1376/2005, para. 7.3.

[192] Principles 17 and 18 of the United Nations Basic Principles.

[193] Recommendation No. R (94) 12 of the Committee of Ministers of the Member States on the Independence, Efficiency and Role of Judges (Adopted by the Committee of Ministers on October 13, 1994 at the 518th meeting of the Ministers' Deputies).

[194] Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted as part of the report on activities of the African Commission at the Second Summit and Meeting of Heads of State of the African Union, held in Maputo on July 4 -12 2003, Principle A, paragraph 4, letter n (2).

150. Furthermore, regarding the protection afforded by Article 23(1) (c) of the American Convention[195] in the cases of *Apitz Barbera et al., and Reverón Trujillo*, this Court specified that Article 23(1) (c) does not establish the right to participate in government, but to do so "under general conditions of equality." This means that respect for and guarantee of this right are fulfilled when there are "clear procedures and objective criteria for appointment, promotion, suspension and dismissal" and that "persons are not subject to discrimination" in the exercise of this right.[196] In this respect, the Court has pointed out that equality of opportunities in access to and tenure in office guarantee freedom from all interference or political pressure.[197]

151. Likewise, the Court has stated that a judge's guarantee of tenure is related to the right to remain in public office, under general conditions of equality.[198] Indeed, in the case of *Reverón Trujillo* it established that "access in equal conditions would constitute an insufficient guarantee if it were not accompanied by the effective protection of the continuance in what is accessed."[199]

152. For its part, in cases of arbitrary dismissal of Judges[200] the Human Rights Committee has considered that failure to observe the basic requirements of due process violates the right to due process enshrined in Article 14[201] of the International Covenant on Civil and

---

[195] Article 23(1) states 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."

[196] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 206, and *Case of Reverón Trujillo v. Venezuela*, para. 138. See also Human Rights Committee, General Comment No. 25, Article 25: Participation in Public Affairs and the Right to Vote, CCPR/C/21/Rev. 1/Add. 7, July 12, 1996, para. 23.

[197] *Cf. Case Chocrón Chocrón v. Venezuela*, para. 135. See also Human Rights Committee, General Comment No. 32, Article 14: Right to Equality before Tribunals and Courts and to a Fair Trial, CCPR/C/GC/32, of August 23, 2007, para. 19.

[198] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 43, and *Case of Chocrón Chocrón v. Venezuela*, para. 135. See also Human Rights Committee, Communication No. 814/1998, *Mikhail Ivanovich Pastukhov v. Belarus*, CCPR/C/78/D/814/1998, para. 7.3; Communication No. 933/2000, *Adrien Mundyo Busyo, Thomas Osthudi Wongodi, René Sibu Matubuka et al. v. Democratic Republic of Congo*, CCPR/C/78/D/933/2000, para. 5.2.

[199] *Case of Reverón Trujillo v. Venezuela*, para. 138, and *Case Chocrón Chocrón v. Venezuela*, para. 135. Similarly, the Human Rights Committee, in the case *Mikhail Ivanovich Pastukhov v. Belarus*, declared that "the author's dismissal from his position as a judge of the Constitutional Court, several years before the expiry of the term for which he had been appointed, constituted an attack on the independence of the judiciary and failed to respect the author's right to have access, on general terms of equality, to public service in his country." *Cf.* Human Rights Committee, Communication No. 814/1998, *Mikhail Ivanovich Pastukhov v. Belarus*, CCPR/C/78/D/814/1998, paras. 7.3. Thus, there has been a violation of Article 25 (c) of the Covenant, read in conjunction with Article 14, paragraph 1, providing for the independence of the judiciary").

[200] In the case *Soratha Bandaranayake v. Sri Lanka*, where the Committee concluded that the arbitrary dismissal of a judge could be construed as the violation of the right to have access, under general conditions of equality, to the public service of his country in conjunction with the right to due process and, in particular, in conjunction with the independence of the judiciary. Human Rights Committee, Communication No. 1376/2005, *Soratha Bandaranayake v. Sri Lanka*, CCPR/C/93/D/1376/2005, para. 7.3. ("Dismissal of a judge in violation of Article 25 (c) of the Covenant, may amount to a violation of this guarantee, read in conjunction with Article 14, paragraph 1 providing for the independence of the judiciary").

[201] Article 14(1) of the International Covenant on Civil and Political Rights establishes: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court, in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public, except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

Political Rights (the counterpart of Article 8[202] of the American Convention), in conjunction with the right to have access under general conditions of equality to public office in the country, as provided for under Article 25(c)[203] International Covenant on Civil and Political Rights (the counterpart of Article 23(1)(c) of the American Convention).[204]

153. The foregoing serves to clarify some aspects of the Court's jurisprudence. Indeed, in the case *of Reverón Trujillo v. Venezuela*, the Court concluded that the right to be heard by an independent tribunal, enshrined in Article 8(1) of the Convention, only implied that a citizen has a right to be judged by an independent judge.[205] However, it is important to point out that judicial independence should not only be analyzed in relation to justiciable matters, given that the judge must have a series of guarantees that allow for judicial independence. The Court considers it pertinent to specify that the violation of the guarantee of judicial independence, as it relates to a judge's tenure and stability in his position, must be examined in light of the conventional rights of a judge who is affected by a State decision that arbitrarily affects the term of his appointment. In that sense, the institutional guarantee of judicial independence is directly related to a judge's right to remain in his post, as a consequence of the guarantee of tenure in office.

154. Finally, the Court has emphasized that the State must guarantee the independent exercise of the judiciary, both in its institutional aspect, that is, in terms of the judicial branch as a system, and in its individual aspect, that is, in relation to a particular individual judge.[206] The Court deems it pertinent to point out that the objective dimension is related to essential aspects for the Rule of Law, such as the principle of separation of powers, and the important role played by the judiciary in a democracy. Consequently, this objective dimension transcends the figure of the judge and collectively affects society as a whole. Likewise, there is a direct connection between the objective dimension of judicial independence and the right of judges to have access to and remain in public service, under general conditions of equality, as an expression of their guaranteed tenure.

155. Bearing in mind the aforementioned standards, the Court considers that: i) respect for judicial guarantees implies respect for judicial independence; ii) the scope of judicial independence translates into a judge's subjective right to be dismissed from his position exclusively for the reasons permitted, either by means of a process that complies with judicial guarantees or because the term or period of his mandate has expired, and iii) when a judge's tenure is affected in an arbitrary manner, the right to judicial independence

---

[202] Article 8(1) of the American Convention (Right of a Fair Trial) establishes that:

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

[203] Article 25 of the International Covenant on Civil and Political Rights states: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2, and without unreasonable restrictions,: […] c) To have access, on general terms of equality, to public service in his country."

[204] The Human Rights Committee concluded that "the dismissal procedure […] did not respect the requirements of basic procedural fairness and failed to ensure that the author benefited from the necessary guarantees to which he was entitled in his capacity as a judge, thus constituting an attack on the independence of the judiciary. For this reason the Committee concludes that the author's rights under Article 25 (c) in conjunction with Article 14, paragraph 1, have been violated" Human Rights Committee, Communication No. 1376/2005, *Soratha Bandaranayake v. Sri Lanka*, CCPR/C/93/D/1376/2005, para. 7.2.).

[205] *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 148.

[206] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 55, and *Case of Reverón Trujillo v. Venezuela*, para. 67.

enshrined in Article 8(1) of the American Convention is violated, in conjunction with the right to access and remain in public office, on general terms of equality, established in Article 23(1)(c) of the American Convention.

1.2. Alleged violation of the right to judicial guarantees (fair trial) of the judges in this case

156. Having defined the general standards on judicial independence, the Court will now proceed to determine whether the resolution adopted by Congress in which it declared the dismissal of the judges, constituted an arbitrary action that violated the alleged victims' right to a fair trial. In this regard, Article 8(1) of the American Convention 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.

157. To determine whether or not some of these guarantees were violated in this case, the Court considers it necessary to examine: i) Congress's jurisdiction to dismiss the judges; ii) the application of Transitory Provision 25, and iii) whether the judges were heard.

1.2.1. Congress's jurisdiction to dismiss the judges

158. Under Article 8(1) of the Convention, decisions affecting the rights of persons must be adopted by a competent authority, in accordance with domestic law. In this case, the judges' dismissal implied a decision on their rights which resulted in their immediate removal from office, for which reason the judicial guarantees established in Article 8(1) of the American Convention are applicable. Accordingly, the Court shall proceed to determine whether or not Congress had jurisdiction to dismiss the judges.

159. In the instant case, the representatives and the Commission have argued that Congress did not have the authority to investigate, try or punish the judges, and therefore it arrogated to itself a power that did not belong to it. Indeed, one of the amendments made to the 1998 Constitution, specifically Article 130 thereof, removed the National Congress's authority to impeach justices of the Supreme Court (*supra* para. 55). The National Congress's lack of authority to impeach the Supreme Court justices was so clearly established, that after having taken the decision to dismiss them through the application of Transitory Provision 25, the congressmen immediately, and without it being on the agenda, presented a motion for constitutional reform so that Congress would again have jurisdiction to impeach the Supreme Court of Justice[207], which implied a constitutional amendment. This motion was approved by thirty-four votes in favor.[208]

160. Furthermore, given that Congress could not impeach the Supreme Court justices in the event that they might commit some disciplinary infraction, on September 22, 2003 the Supreme Court decided to regulate the procedure for hearing complaints submitted against judges (*supra* para. 62). The Supreme Court, bearing in mind Articles 120 and 199 of the Constitution, which established that no public servant or official would be exempt from responsibilities and the independence of the judicial bodies (*supra* para. 62), decided to regulate, via the Resolution of September 22, 2003, the proceeding for denouncing, trying and punishing judges. In fact, Article 1 of that Resolution stated that:

---

[207] *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 465).

[208] *Cf.* Record 24-001 of December 8, 2004 (File of attachments to the report, volume II, page 476).

> "The Supreme Court of Justice has jurisdiction to hear complaints submitted against the judges that comprise it, for the commission of the infractions contemplated in paragraph one of Article 13 of the Organic Law of Judiciary and to rule thereon."[209]

161. Furthermore, in that decision, the Supreme Court ruled that a Committee would be appointed to conduct the procedure, recognized the judge's right to defend himself, granted the Commission the power to present a report before the plenary of the Supreme Court and to decide by two-thirds of the votes regarding the judge's dismissal (*supra* para. 62). According to the information contained in the case file, only one investigation was carried out using this procedure, involving a judge who was accused of having exerted undue influence in the courts of justice. However, although the process was initiated, it was not completed because the judge resigned from his post before the proceeding had concluded (*supra* para. 62).

162. In accordance with the foregoing, and bearing in mind the State's acknowledgment that Congress had created an *ad-hoc* mechanism (*supra* para. 13), it is possible to conclude that Congress was not authorized to dismiss the Supreme Court justices, given that the new Constitution had removed its power to do so and, furthermore, a proceeding already existed which stipulated the process and grounds on which a judge could be dismissed. Therefore, it is evident that Congress was not the competent authority to decide on the dismissal of the Supreme Court judges. In order to determine the scope of the violations in this case, the Court will proceed to analyze the *ad-hoc* mechanism used by Congress to dismiss the judges.

1.2.2. Application of Transitory Provision 25

163. If Transitory Provision 25 had been applicable to the judges, it would have complied with one of the permitted reasons for removing judges from office, namely that they had completed their term or period of office (*supra* paras. 145 to 148). In its final arguments the State, despite its acknowledgement that a punitive *ad-hoc* mechanism had been used against the judges, insisted that this standard applied to the judges and justified Congress's option to dismiss them. Thus, the Court deems it necessary to rule on this dispute.

164. Transitory Provision 25 of the Political Constitution of Ecuador, which was in force from August 10, 1998, established that (*supra* para. 57):

> "Officials and members of agencies appointed by the National Congress, and the Comptroller General of the State appointed for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003."

165. Based on this provision, the three factual assumptions for considering that an official should have remained in office until January 2003, are the following: i) he must have been appointed by Congress or by the Comptroller General; ii) he must have been appointed "from August 10, 1998", and iii) he must have been appointed for a four-year period.

166. As regards the application of that provision, in the first place, the Congress designated the justices of the Supreme Court on that single occasion; thereafter, the appointment was to be made using the cooptation system (*supra* paras. 49 and 56). In second place, the transitory provision stated that it was applicable to officials who had been appointed "from August 10, 1998". The Court notes that the judges were appointed by Congress on October 2, 1997 and took office on October 6, 1997 (*supra* para. 53). In other

[209] *Cf.* Official Record No. 182 of October 2, 2003 containing the Resolution of the Supreme Court of Justice of September 24, 2003 (File of attachments to brief of pleadings and motions, volume I, page 2279).

words, they were appointed prior to August 10, 1998, a fact that supposedly warranted the application of that provision. Third, the transitory provision stated that it was applicable to officials appointed for a fixed term of four years. The Court finds that both the Constitution in force at the time of the facts, and the constitutional amendments made previously, determined that the term of the Supreme Court justices was indefinite, since they stated that "[t]he judges of the Supreme Court of Justice [would not be] subject to a fixed period in relation to their tenure in office [and would be suspended from] their duties for the reasons established by the Constitution and by law."[210] Thus, it was clear that the Supreme Court justices were not subject to a fixed term of four years in office.

167. Bearing in mind the foregoing, it is clear to the Court that Transitory Provision 25 could not provide grounds to support the decision to remove the judges from office, and therefore did not fulfill one of the conditions permitted for removing judges from office, i.e. that they had completed their term or period of office, according to the standards on judicial independence established by this Court.

1.2.3. Opportunity for the judges to be heard

168. Although it has already been stated that the National Congress did not have jurisdiction to dismiss the Supreme Court judges from office (*supra* para. 162), bearing in mind that the State acknowledged this point and that it is one of the guarantees established in Article 8(1) of the Convention, the Court shall proceed to analyze it. The Court has elaborated on the right to a hearing enshrined in Article 8(1) of the Convention, in the general sense of understanding that every person has the right to a hearing by a competent court or state body responsible for determining their rights and obligations.[211] Given the State's acquiescence, and based on the evidence contained in the case file, it is fully proven that the judges were removed from their positions without having had an opportunity to appear before Congress to respond to the charges leveled against them or to challenge the reasons for which they were removed from office. Furthermore, the Court stresses that the judges learned of their dismissal in several ways, and none of them received formal notification from Congress regarding the matter to be discussed at the special session on December 8, 2004. Instead, the judges found out about the hearing and the decision to dismiss them via the media or through rumors (*supra* para. 89).

169. Given that the judges were not notified about the special session to be held by Congress and, even less, about the motion that would be presented to remove them from office, the judges were not present, were not heard and were unable to exercise any means of defense, such as offering arguments or evidence in their favor.

1.3. Institutional facet of judicial independence, separation of powers and democracy

170. The Court has made some clarifications regarding the institutional aspect and objective dimension of judicial independence (*supra* paras. 150 to 155). However, in the circumstances of this case, which differs from previous cases that concern the arbitrary dismissal of individual judges, it is essential to examine in greater detail to what extent the mass dismissal of judges, particularly of High Courts, constitutes not only an attack against judicial independence but also against the democratic order.

---

[210] Article 202 of the Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3336).

[211] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, para. 74, 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. 140.

171. The Court stresses that the 1998 Constitution protected judicial independence as an institutional aspect of the judiciary (*supra* para. 55). Indeed, Article 199 stated that "the organs of the judiciary shall exercise their duties and powers independently. No function of the State shall interfere in matters pertaining to these." Likewise, the Constitution stipulated that "judges shall exercise their jurisdictional authority independently, even from other judicial bodies."

172. This constitutional provision, as well as the popular referendum held in Ecuador on this matter (*supra* para. 55), which decided that Congress should no longer have the authority to impeach the Supreme Court justices, demonstrated an interest in safeguarding, in the best way possible, the separation of powers and judicial independence.

173. In this case, the Court considers it necessary to analyze the context in which the judges' dismissal from office occurred, since this is useful in understanding the reasons or motives that prompted that decision. Taking into account the motive or purpose of a particular action by state authorities is relevant to the legal analysis of a case, inasmuch as a motivation or purpose that differs from the provision granting powers to the state authorities to act, may demonstrate whether the action may be considered arbitrary.[212] Accordingly, the Court begins from the premise that the actions of state authorities are presumed to be conducted according to law. For this reason, an irregular action by the state authorities must be proven, in order to rebut that presumption of good faith.[213]

174. From the facts established in Chapter VII of this Judgment, the Court emphasizes that these indicate that at the time when the judges were dismissed, Ecuador was going through a period of political instability, stemming from the removal of several Presidents and the amendment, on several occasions, of the Constitution in response to the political crisis. Moreover, the alliance between the government and the political party led by former President Bucaram suggests possible motives or purposes for wishing to remove the Supreme Court justices, particularly, the interest in annulling the criminal proceedings conducted by the Supreme Court against former President Bucaram.

175. Furthermore, the Court points out that within a period of 14 days, not only was Supreme Court dismissed, but also the Electoral Tribunal and the Constitutional Tribunal, something that constitutes a totally unacceptable and untimely action. All these facts undermine judicial independence. This allows the Court to conclude, at least, that at that time there was a climate of institutional instability in Ecuador which affected important

---

[212] In this regard, the European Court took into account the real purpose or motive shown by the state authorities in exercising their duties, to determine whether or not there was a violation of the European Convention of Human Rights. For example, in the *Case Gusinskiy v. Russia*, the European Court considered that the victim's detention, authorized by Article 5(1) (c) of the European Convention, was applied not only to make him appear before the competent judicial authority, considering that there were reasonable indications that a crime had been committed, but also to force him to sell his company to the State. In the *Case Cebotari v. Moldavia* the Court ruled that Article 18 of the European Convention was violated given that the government failed to convince the Court that there was reasonable suspicion to consider that the petitioner had committed a crime. The Court concluded that the true reason for the petitioner's arrest and criminal trial was to pressure him and thereby prevent his company "Offer Plus" from filing suit before the Court. Finally, in the *Case Lutsenko v. Ukraine* the European Court ruled that the deprivation of liberty of the petitioner, authorized by Article 5.1 (c), was applied not only to make him appear before the competent court, because there was reasonable evidence that he had committed a crime, but also for other reasons related to the Public Prosecutor's attempt to accuse the petitioner for publicly expressing his opposition to the charges against him. *Cf.* ECHR, *Case of Gusinskiy v. Russia*, Judgment May 19, 2004, paras. 71 to 78; Case *Cebotari v. Moldavia*, Judgment of February 13, 2008, paras. 46 to 53, and *Case Lutsenko v. Ukraine*, Judgment of July 3, 2012, paras. 100 to 110.

[213] The Inter-American Court has established that "direct evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered in reaching a decision. Circumstantial evidence, indicia and presumptions may be considered, so long as they lead to conclusions consistent with the facts." *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 130.

State institutions. Likewise, the judges were prevented from filing an *amparo* remedy to challenge any decisions that Congress might take against them (*infra* para. 194).

176. From the events that took place and from the statements made by congressmen at the time, it is possible to reach several conclusions. First, it is clear that the reasons for which the transitory provision was not applicable to the Supreme Court justices were explained in detail by several congressmen. Second, although the motion to dismiss the judges did not come from the Presidency until the evening, is clear that most congressmen knew, from the outset of the discussion, of the intention to take that decision. In third place, the accusations of alleged acts of corruption or the alleged politicization of the judges were presented in a broad and generic manner. In fourth place, the Court notes that some congressmen mentioned that their dismissal was allegedly motivated by the intention to have the criminal proceedings against former President Bucaram closed, as indeed happened after the new Supreme Court took office (*supra* paras. 81 and 92). Finally, the Court emphasizes that although the agenda indicated that a discussion on the judiciary would take place (*supra* para. 74), the only decision taken in that regard was to dismiss the judges.

177. Bearing in mind the foregoing, the resolution by means of which the judges were dismissed was the result of a political alliance that was intended to create a Supreme Court sympathetic to the political majority existing at that time and to impede criminal proceedings against the acting president and a former president. The Court has confirmed that Congress's resolution was not adopted by virtue of an exclusive assessment of specific factual evidence in order to ensure full compliance with the existing legislation, but that it pursued a completely different objective, related to an abuse of power. An example of this is that the summons to the session of Congress did not mention the imminent possibility of dismissing the judges (*supra* para. 74). Thus, the Court emphasizes that these elements support the affirmation that a mass and arbitrary dismissal of judges is unacceptable given its negative impact on judicial independence in its institutional aspect.

178. The Court considers that, in the circumstances of this case, the arbitrary dismissal of the entire Supreme Court constituted an attack on judicial independence, disrupted the democratic order and the Rule of Law and implied that there was no real separation of powers at that time. Furthermore, it implied the destabilization both of the judiciary and of the country in general (*supra* paras. 91, 94 and 97) which, amid a deepening political crisis, was left without a Supreme Court for seven months (*supra* para. 99), with the negative effects that this entailed for the protection of citizens' rights.

179. The Court points out that under Article 3 of the Inter-American Democratic Charter, "[e]ssential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the Rule of Law […] and the separation and independence of the branches of government." The dismissal of all the members of the Supreme Court of Justice implied the destabilization of the democratic order existing in Ecuador at the time, because a rupture occurred in the separation and independence of the branches of government when an attack was made on Ecuador's three high courts at that time. This Court emphasizes that the separation of powers is closely associated, not only with the consolidation of the democratic system, but also seeks to preserve the freedoms and human rights of citizens.

1.4. Conclusion on judicial guarantees and political rights

180. The Court concludes that in this case the Supreme Court justices were dismissed by means of a resolution of the National Congress, which lacked the proper jurisdiction to do so (*supra* para. 162), through the erroneous and arbitrary application of a legal provision

(*supra* para. 167) and without being granted the right to be heard (*supra* para. 169); therefore, the State violated Article 8(1) in conjunction with Article 1(1) of the American Convention, to the detriment of the 27 victims in this case, because they were dismissed from office by an incompetent body that did not grant them an opportunity to be heard. Furthermore, the Court declares the violation of Article 8(1) in conjunction with Article 23(1)(c) and Article 1(1) of the American Convention, given the arbitrary effects on the tenure in office of the judiciary and the consequent effects on judicial independence, to the detriment of the 27 victims in this case.

*

181. Having determined that the body that carried out the process was not competent, it is unnecessary to examine the other guarantees established in Article 8(1) of the Convention.[214] Therefore, the Court will not examine the arguments presented by the Commission and the representatives regarding the alleged violation of other judicial guarantees. Similarly, given the effects on the separation of powers and the arbitrary nature of the action by Congress, the Court considers it unnecessary to analyze in detail the arguments of the parties as to whether or not the decision to dismiss the judges was an action of a punitive nature, and therefore it will not examine its alleged effects on Article 8(2) of the Convention, or other aspects related to the possible scope that the principle of legality (Article 9 of the Convention) might have had in this case.

182. The State also argued that the representatives had been mistaken in claiming that the violation of Article 1(1)[215] of the Convention occurred as "an automatic effect […] because of the mere allegation of a violation of articles of the [American Convention]", since in order to "demonstrate non-compliance with international obligations it [was] essential to present legal arguments, and not mere descriptions of the facts." In this sense, the State argued that "it [was] necessary to understand the successive amendment processes that have occurred in the State", since "not doing so would also limit the regulatory and protective aspect that is clearly appreciated in Article 1(1) of the Convention." The State argued that this "showed that at different historical and political moments subsequent to the dismissal, the State, within each sphere of power (legislative, executive and judicial), made effective efforts to restore the political and constitutional order, and these facts were confirmed in 2005." Based on the foregoing considerations, the State asked the Court not to declare the violation of Article 1(1) of the American Convention.

183. In this regard, the Court recalls its constant jurisprudence since the case of *Velásquez Rodríguez*, according to which Article 1(1) of the American Convention "specifies the obligation assumed by the States Parties in relation to each of the rights protected. Each claim alleging that one of those rights has been infringed necessarily implies that Article

---

[214] In other cases related to military criminal jurisdiction, the Court has stated that it is not necessary to rule on other arguments concerning the independence or impartiality of a judge, together with other guarantees, once the conclusion has been reached that he was not competent. *Cf. 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. 201; *Case Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 31, 2010. Series C No. 216, para. 161; *Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 30, 2010. Series C No. 215, para. 177; *Case Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 20, 2009. Series C No. 207, para. 124, and *Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 115.

[215] Article 1(1) of the American Convention (Obligation to Respect Rights) establishes 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.

1(1) of the Convention has also been violated."[216] Article 1(1) of the American Convention, a general provision whose content applies to all treaty provisions, requires States Parties to respect and guarantee the full and free exercise of the rights and freedoms enshrined therein "without any discrimination" and considers that, regardless of its origin or the form it may take, any treatment that may be considered discriminatory in relation to the exercise of any of the rights enshrined in the Convention is *per se* incompatible with that instrument.[217] Thus, the declaration of the violation of rights enshrined in the Convention (*supra* para. 180) implies that the general obligation to respect and protect rights contained in Article 1(1) of the American Convention was also violated.

184. Finally the representatives and the Commission alleged the violation of Article 2 of the Convention[218] based on two arguments, namely: i) that at the time of the events of this case no law existed establishing the grounds upon which Supreme Court justices could be removed from office, and ii) that the regulations in force at the time in Ecuador were not consistent with the principle of judicial independence and therefore situations such as the one seen in this case could be repeated. As to the first argument, this Court has already confirmed that at the time of the facts the Supreme Court itself was responsible for hearing and processing complaints presented against judges, and that the grounds and a proceeding for this purpose existed (*supra* para. 62 and 160); therefore, on this aspect there is no violation of Article 2 of the Convention. Secondly, the representatives did not provide sufficient evidence to link the alleged failings of the current regulations with the violations declared in this case, for which reason the Court stresses that it is not is possible to conduct an analysis *in abstracto* of provisions that are not related to, or did not have some impact on, the violations declared in this Judgment. Therefore, the Court concludes that Article 2 of the American Convention was not violated.

2. Judicial protection

185. The Court has stated that "Article 25(1) of the Convention establishes the obligation of States Parties to guarantee, to all persons under their jurisdiction, an effective judicial remedy against acts that violate their fundamental rights. Such effectiveness implies that, in addition to the formal existence of such remedies, these must provide results or responses to violations of rights contemplated in the Convention, in the Constitution or in the laws.[219]" Article 25(1) of the Convention[220] guarantees the right to a simple, prompt and effective recourse before a competent court or tribunal. The Court recalls its constant jurisprudence which requires a remedy to be adequate and effective.[221] As to the effectiveness of the

---

216 *Case of Velásquez Rodríguez v. Honduras*. Merits, para. 162.

217 *Cf. Proposed Amendments to the Naturalization Provision of Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53.

218 Article 2 of the American Convention (Duty to adopt domestic legal effects) provides 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."

219 *Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2012. Series C No. 246, para. 345.

220 Article 25(1) of the American Convention (Judicial Protection) provides that: 1. Everyone has the right to a 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 the laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

221 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 63, and *Case Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 5, 2011, Series C No. 228, para. 91.

remedy, the Court has established that for an effective remedy to exist, it is not sufficient that it be provided for by the Constitution or in law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy that is illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.[222] This may occur, for example, when the ineffectiveness of a remedy has been demonstrated in practice, because there are no means to execute it or because of any other situation that implies the denial of justice.[223] Thus, the process should be aimed at implementing the protection of the right recognized in the judicial ruling through the proper application of said ruling.[224]

186. The Court has pointed out that, under the terms of Article 25 of the Convention, it is possible to identify two specific obligations of the State. The first is to regulate and ensure the proper application of effective remedies before the competent authorities, which protect all persons under its jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations. The second is to guarantee the means to enforce the respective remedies and final decisions issued by such competent authorities,[225] so as to effectively protect the rights declared or recognized. The right established in Article 25 is closely linked to the general obligation in Article 1(1) of the Convention, inasmuch as it assigns duties of protection to the States Parties through their domestic legislation.[226] Thus, the State not only has a duty to design and embody in legislation an effective remedy, but also to ensure the proper application of said remedy by its judicial authorities.[227]

187. The Court notes that Ecuador expressly acknowledged its violation of Article 25 of the American Convention during the public hearing in the following terms:

> Ecuador acknowledges [the] right to a simple, prompt and effective remedy, in Article 25 of the Convention, inasmuch as in the case of the former judges the State did not provide an appropriate and effective legal remedy against the National Congress's Resolution of 2004 which could determine whether a human rights violation had occurred.

188. In this case, the Court has accepted the acknowledgement of international responsibility under the terms expressly established by the State. Without prejudice to the foregoing, it is necessary to define the scope of this acquiescence and, within that framework, rule on the remaining disputes, including whether or not the State violated Article 25 by failing to comply with its obligation to offer, to all persons subject to its jurisdiction, an effective legal remedy against acts that violated their fundamental rights.

---

[222] *Cf. Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 7, para. 137, and *Case of García and Family v. Guatemala. Merits Reparations and Costs.* Judgment of November 29, 2012. Series C No. 258, para. 142.

[223] *Cf. Case Las Palmeras v. Colombia. Reparations and Costs.* Judgment of November 26, 2002. Series C No. 96, para. 58, and *Case of Forneron and daughter v. Argentina. Merits, Reparations and Costs*. Judgment of April 27, 2012. Series C No. 242, para. 107.

[224] *Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction*, para. 73, and *Case of Furlan and Family v. Argentina*, para. 345.

[225] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of Mohamed v. Argentina*, para. 83.

[226] *Cf. Case Castillo Paez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, para. 83, and *Case of the Xakmok Kasek Indigenous Community. v. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010. Series C No. 214, para. 141.

[227] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 237, and *Case of the Xakmok Kasek Indigenous Community. v. Paraguay*, para. 141.

189. In this regard, on December 2, 2004 the recently appointed Constitutional Tribunal issued a ruling in response to a request by the President of the Republic, in which it ruled that "to suspend the effects of a parliamentary resolution, including 25-160, adopted by the […] National Congress, of November 25, 2004, for the alleged violation of the Constitution, in substance or in form, the only appropriate action is the action of unconstitutionality which should be brought before the Constitutional Tribunal" (*supra* para. 68). This implied that if judges were to receive an *amparo* remedy against the decision requiring the dismissal of members of the Constitutional Tribunal or similar legislative acts, they should "reject it outright and rule it inadmissible, since to do otherwise would be to admit proceedings against express law, which would lead to the corresponding judicial actions" (*supra* para. 68).

190. Indeed, the members of the Constitutional Tribunal filed five *amparo* remedies challenging the legality of the decision to dismiss them and, in all five cases, the *amparos* were rejected outright (*supra* paras. 70 to 73). The reason offered by the appeal judges was the decision taken by the new Constitutional Tribunal (*supra* paras. 70 to 73). In this regard, the Court points out that the decision of the new Constitutional Tribunal preceded the decision to dismiss the Supreme Court justices and that the filing and denial of the *amparo* remedies occurred days after the dismissal. Although the Constitutional Tribunal's ruling was issued prior to the dismissal of the victims in this case and in relation to the dismissal of members of the Constitutional Tribunal, the fact is that, finally, the new Constitutional Tribunal limited the admissibility of *amparo* remedies to challenge parliamentary resolutions in general.

191. Furthermore, the Court stresses that the only remedy used by the Supreme Court justices was a complaint filed before the Court of Honor of the Pichincha Bar Association against the lawyers who accepted appointments to the new Supreme Court (*supra* para. 90). However, said Court of Honor, according to the representatives, is not a judicial body and is governed by civil law (*supra* para. 90).

192. In view of the foregoing, the alleged victims had at their disposal, by express mandate of the new Constitutional Court, the action of unconstitutionality. In relation to this action, it should be emphasized that, according to the Constitution of the Republic of Ecuador in force at that time, filing such an action required either that it be supported by the signatures of 1,000 people in "enjoyment of their political rights,"[228] or that it receive support through a favorable report of the Ombudsman.[229] It should also be noted that the purpose of said action was to consider whether a provision or an administrative act complied with the Constitution,[230] in form and in substance, but did not offer the possibility

---

[228] Article 277.5 of the Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3346).

[229] *Cf.* Article 277 of the 1998 Constitution of the Republic of Ecuador – actions of unconstitutionality may be brought by: 1. the President of the Republic, in the cases specified in subparagraph 1 of Art. 276. 2. The National Congress, with the prior decision by a majority of its members, in the cases specified in subparagraphs 1 and 2 of the same Article. 3. The Supreme Court of Justice, with the prior decision of the Full Court, in the cases specified in subparagraphs 1 and 2 of the same Article. 4. Provincial councils or municipal councils, in the cases specified in subparagraph 2 of the same Article. 5. One thousand citizens in the enjoyment of their political rights, or any person with prior approval of the Ombudsman on its admissibility, in the cases mentioned in subparagraphs 1 and 2 of the same Article. Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3346).

[230] *Cf.* Article 276 of the 1998 Constitution of the Republic of Ecuador - The Constitutional Court shall have the authority to: 1. Examine and rule on actions of unconstitutionality, in substance or in form, brought with respect to organic and ordinary laws, decree-laws, decrees, ordinances; statutes, regulations and resolutions, issued by State institutions, and to suspend their effects totally or partially. 2. Examine and rule on the unconstitutionality of the administrative actions of any public authority. A declaration of unconstitutionality implies the annulment of the act,

of repairing a right that had been violated, an objective that the *amparo* remedy,[231] to which the alleged victims did not have access, did have.

193. It should also be stressed that the analysis of the remedy of unconstitutionality would have fallen to the newly installed Constitutional Tribunal, whose composition did not afford sufficient guarantees of impartiality, particularly considering that the new members of that Tribunal had a direct interest in an eventual unfavorable ruling on any action or remedy related to the dismissal of the Supreme Court of Justice or of the previous Constitutional Tribunal, given that a favorable decision would automatically invalidate the appointment of the new members of the Tribunal.

194. Bearing in mind the State's acquiescence, as well as the facts proven, the Court considers that under the specific assumptions of this case it has been demonstrated that the judges were prevented from making use of the *amparo* remedy and that the unconstitutionality suit was neither appropriate nor effective to protect the violated rights of the Supreme Court judges. Therefore, the Court concludes that the State violated Article 25(1), in conjunction with Article 1(1) of the American Convention.

3. Equal protection

195. The Court points out that the State of Ecuador partially acknowledged the violation of Article 24 of the American Convention.[232] In particular, the State of Ecuador expressly declared the following:

> "Ecuador accepts [… the] right to equal protection before the law [of] Article 24 of the Convention given that **the former judges did not have access to the action of constitutional amparo against the resolution of the National Congress unlike the rest of the population** which has always had a broad right to action" (Emphasis added).

196. Thus, the State acknowledged the violation of Article 24 of the Convention, but solely and exclusively in relation to one of the two facts upon which the possible violation of Article 24 is based, that is, the denial of access to the action of constitutional *amparo*. On this point, the Court notes that the relevant issue has already been established upon concluding that preventing the judges of the Supreme Court from making use of the *amparo* remedy constituted a violation of the right to judicial protection.

197. Also, having determined that the judges' dismissal was an arbitrary measure contrary to the American Convention, it is not appropriate to consider whether the

---

notwithstanding that the administrative body may adopt the measures necessary to ensure observance of the constitutional provisions. Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3346). In this regard, Mr. Quintana Coello stated that "given the lack of independence and impartiality shown by the Constitutional Tribunal […] we did not lodge any appeal, and also because the unconstitutionality suit serves to declare that the provision or administrative act is contrary to the Constitution, but it is not designed to repair human rights violations." Affidavit rendered by Mr. Quintana Coello on May 14, 2007 (File of attachments to the Merits Report, volume I, page 120).

[231] *Cf.* Article 95 of the 1998 Constitution of the Republic of Ecuador- Any person, acting in their own right or as the legitimate representative of a group, may bring an action of *amparo* before the judicial body designated by law. Such an action, which shall be processed in a preferential and summary manner, shall require the adoption of urgent measures designed to stop or prevent the commission, or immediately remedy the consequences of, an unlawful act or omission by a public authority, which violates or could violate any right enshrined in the Constitution or in an international treaty or agreement in force, and which, imminently, threatens to cause grave damage. Constitution of the Republic of Ecuador of August 11, 1998 (File of attachments to the answer brief, volume I, page 3323).

[232] Article 24 of the Convention (Right to Equal Protection) stipulates that: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

appointment of the new judges amounted to an arbitrary and unequal treatment of the judges who were dismissed and not reelected. Furthermore, there is no evidence to suggest that that the re-appointment of some of the judges was due to political motives or affinity with the Government.[233]

198. In consideration of the foregoing, this Court considers that Article 24 of the Convention was not violated in this case.

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

199. Based on the provisions of Article 63(1) of the American Convention,[234] the Court has held that any violation of an international obligation that has caused damage creates a duty to make adequate reparation[235] and that this provision, based on a general concept of law, constitutes one of the fundamental principles of contemporary International Law on State responsibility.[236]

200. Reparation of the damage caused by a violation of an international obligation requires, wherever possible, full restitution (*restitutio in integrum*), which implies restoring the previous situation. If this is not feasible, as in most cases involving human rights violations, the Court will decide on measures to guarantee the infringed rights and to repair the consequences of the violations.[237] Accordingly, the Court has considered the need to grant various measures of reparation, so as to provide full redress for the damage caused; therefore, in addition to pecuniary compensation, measures of restitution, satisfaction and guarantees of non-repetition are of special relevance given the damage caused.[238]

201. This Court has established that reparations must have a causal link with the facts of the case, the violations declared, the damages verified and the measures requested to repair the respective damages. Therefore, the Court shall adhere to that concurrence in order to rule appropriately and according to law.[239]

202. In accordance with the foregoing considerations on the merits and the violations of the American Convention declared in the previous chapter, the Court shall proceed to analyze the arguments and recommendations presented by the Commission, the claims of

---

[233] Similarly see *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 200, and *Case of Mejía Idrovo v. Ecuador*, para. 122.

[234] Article 63(1) of the American Convention establishes that "[i]f the Court finds that there has been a violation of a right or freedom protected by this 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."

[235] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Suárez Peralta v. Ecuador*, para. 161.

[236] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 25, and *Case of Suárez Peralta v. Ecuador*, para. 161.

[237] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 26, and *Case Mendoza et al. v. Argentina*, para. 307.

[238] *Cf. Case of Velásquez Rodríguez v. Honduras,* para. 25, and *Case Mendoza et al. v. Argentina*, para. 307.

[239] *Cf. Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case Mendoza et al. v. Argentina*, para. 306.

the representatives, as well as the arguments of the State, in light of the criteria established in the Court's jurisprudence regarding the nature and scope of the obligation to provide reparation,[240] with a view to ordering measures aimed at repairing the damage caused to the victims.

A. Injured party

203. The Court reiterates that, under the terms of Article 63(1) of the American Convention, injured parties are those who have been declared victims of the violation of a right recognized therein. Therefore , this Court considers the following persons as "injured party": Alfonso Ernesto Albán Gómez, Jorge Aurelio Andrade Lara, José Santiago Andrade Ubidia, José Julio Benítez Astudillo, Armando Bermeo Castillo, Eduardo Enrique Brito Mieles, Nicolás Castro Patiño, Lucio Teodoro Coello Vázquez, Alfredo Roberto Contreras Villavicencio, Arturo Javier Donoso Castellón, Galo Miguel Galarza Paz, Luis Alberto Heredia Moreno, Estuardo Agustín Hurtado Larrea, Ángel Ignacio Lescano Fiallo, Teófilo Milton Moreno Aguirre, Galo Alonso Pico Mantilla, Hernán Gonzalo Quevedo Terán, Hugo Eduardo Quintana Coello, Jorge Enrique Ramírez Álvarez, Carlos Javier Riofrío Corral, Naum Clotary Salinas Montaño, Armando José Ramón Serrano Puig, Ignacio José Vicente Troya Jaramillo, Alberto Rodrigo Varea Avilés, Jaime Gonzalo Velasco Dávila, Miguel Elías Villacís Gómez and Gonzalo Augusto Zambrano Palacios, who as such shall be considered beneficiaries of the reparations ordered by this Court.

204. Furthermore, the Court notes that the representatives of the victims requested that, given the deaths of two former judges at the time when the contentious case was brought before the Court, their successors be considered as injured party. Specifically, they mentioned the case of Milton Moreno Aguirre and requested that his wife, María Ruth Silva Alava, and his daughters, María Ruth Moreno Silva and Ana Isabel Moreno Silva, be considered as injured party.[241] In the case of Estuardo Agustín Hurtado Larrea, they requested that his wife, Letty Mariana Vásquez Grijalva, and his daughters and son, Tulia María Ximena Hurtado Vásquez, Letty Alexandra Hurtado Vásquez and Diego Estuardo Hurtado Vásquez, also be included.[242] The Court recalls that only those persons who have been declared victims can be considered as injured party, for which reason the Court must deny the representatives' request. Notwithstanding the foregoing, the reparations ordered in this Judgment to the successors of Messrs. Moreno Aguirre and Hurtado Larrea shall be made as specified in the chapter concerning the method of compliance (*infra* para. 277).

205. The Court shall also determine the measures designed to repair non-pecuniary damages and shall order measures of public scope or repercussion.[243] In international jurisprudence, and particularly in the Court's case law, it has been repeatedly established

---

[240] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, paras. 25 to 27, and *Case of Suárez Peralta v. Ecuador*, para. 161.

[241] *Cf.* "Special power of attorney granted by Mrs. María Ruth Silva Alava, widow of Moreno, and the engineers Ana Isabel Moreno Silva and María Ruth Moreno Silva to Doctor Hugo Quintana Coello", Twelfth Notary of the Canton of Guayaquil issued on October 4, 2011 (File of attachments to the brief of pleadings and motions, volume II, pages 3087 to 3090).

[242] *Cf.* "Special power of attorney granted by Letty Mariana Vásquez Grijalva, Letty Alexandra Hurtado Vásquez, Tulia María Ximena Hurtado Vásquez and Diego Estuardo Hurtado Vásquez", Thirty-ninth Notary of the Canton of Quito issued on October 5, 2011 (File of attachments to the brief of pleadings and motions, volume II, pages 2963 to 2967).

[243] *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, and *Case Artavia Murillo and other ("In Vitro Fertilization") v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 28, 2012. Series C No. 257, para. 323.

that the Judgment constitutes *per se* a form of reparation.[244] However, considering the circumstances of the case *sub judice*, and having regard to the effects on the victims, as well as the non-material and non-pecuniary consequences arising from the violations of the Convention declared to their detriment, the Court deems it appropriate to order measures of satisfaction, restitution and guarantees of non-repetition.

B. Measures of satisfaction, restitution and guarantees of non-repetition

1. Measures of satisfaction: publication of the Judgment

Arguments of the Commission and of the parties

206. As measures of satisfaction the representatives requested that "[t]he Ecuadorian State […] publicly acknowledge its international responsibility by publishing the main paragraphs of the Judgment on Merits in the newspapers with the widest national circulation [and], given that some judges live in Guayaquil, Cuenca and Quito [they requested] their publication in the national newspapers with widest local circulation, namely in the daily newspapers *El Universal* in Guayaquil, *El Comercio* in Quito and *El Mercurio* in Cuenca." They also requested that "the Judgment [be] published in the Official Record" and that it be made "available on the official web sites of the Judiciary, the Attorney General's Office and the Constitutional Court."

207. Regarding the request to publish the most important sections of the Judgment in three national newspapers, the State argued that this request is beyond the scope of the Inter-American Court, and that if the State should be ordered to issue a publication it would be published in the Official Record and in a newspaper with national circulation.

Considerations of the Court

208. The Court orders, as it has on previous occasions, that the State publish, within a period of six months as of notification of this Judgment: a) the official summary of the Judgment delivered by the Court, once only in the Official Gazette of Ecuador; b) the official summary of this Judgment issued by the Court, once only, in a newspaper with wide national circulation and c) make available the entire Judgment for one year, on the Judiciary's official web site.

2. Measures of compensation

Arguments of the Commission and of the Parties

209. The Commission requested that the Court "[r]einstate the victims, if they so wish, in the judiciary in a position similar to the one they had held, with the same salary, social benefits and rank that they would have today, had they not been dismissed. If for well-founded reasons reinstatement is not possible, the State shall pay reasonable compensation to the victims or their successors." During the public hearing, the Commission stated that "precisely recognizing the legal and institutional difficulties in providing possible redress in a case of this nature, it formulated the recommendation in alternative terms, either reinstatement in their positions or else alternative compensation; however it is important to clarify that such alternative compensation is specifically the alternative to reinstatement and does not replace the possible compensation for pecuniary or non-pecuniary damages."

---

[244] *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Mendoza et al. v. Argentina*, para. 355.

210. The representatives initially requested that the State reinstate the former judges in the situation prior to the violation of their rights, that is, that it reinstate them in positions similar to those they held, with the same salary, social benefits and rank comparable to that they would hold today had they not been dismissed. If reinstatement was not possible, they requested compensation of at least US$ 60,000.00 for each of the victims or their legitimate heirs.

211. Subsequently, the representatives stated at the public hearing that they "wish [ed] to say on behalf of the victims, and after having consulted them, that they expressly renounce their reinstatement in their positions." Then, in their final written arguments the representatives stated that the victims considered that the appropriate way to compensate a dismissed judge was to reinstate him or her in office. Now, some victims considered that they had a legitimate right to be reinstated and that, if this was not possible, they should be paid the appropriate compensation. However another group of victims considered that in the current situation in Ecuador, reinstatement would be an impossible measure of reparation to fulfill, and therefore requested that the respective compensation be applied. The victims who renounced their right to reinstatement argued that the State had established four Supreme Courts since their dismissal, the last one through a public contest; this would imply nullifying the last contest, which was promoted by the Government itself, something that would be impossible in practice. Furthermore, they argued that the 2008 Constitution introduced reforms related to the administration of justice in 2010, with different rules for access to and tenure in office. This group of victims argued that "in the fragile situation of the Judiciary and in the current political situation, ordering the reinstatement of the victims as a measure of reparation could call into question the institutionality of the Judiciary, which has recently sworn in the judges of the last National Court of Justice." They further argued that ordering their reinstatement could imply a process of re-victimization before public opinion, added to which many of them have serious health problems. However, they emphasized that renouncing the claim to be reinstated did not imply renouncing their claim for compensation.

212. The State argued that "the restructuring process in the Judiciary […] is directly related to the current impossibility of complying with this recommendation", since reinstating the judges would imply dismissing those who comprise the National Court of Justice, thereby incurring in "a situation of illegal dismissal of the judges and therefore, [failing to comply with] the third recommendation of Report 65/11 [of the Inter-American Commission], regarding the guarantees of tenure in office for the judiciary, [and furthermore,] of violating constitutional principles." As to the reinstatement of the victims, the State argued that on August 24, 2011 the National Council of the Judiciary of Transition issued a call for applications to the position of judge of the National Court of Justice and that the best scores were taken into account based on principles of impartiality and justice.

Considerations of the Court

213. This Court has determined that the victims' dismissal resulted from a decision that infringed judicial guarantees, judicial independence, tenure in office and judicial protection (*supra* paras. 180 and 194). The Court takes into account the fact that the guarantee of tenure or stability in office for any judge, whether permanent or temporary, must provide for the reinstatement of a judge who has been arbitrarily removed from his position.[245]

[245] Similarly, in the Case of Apitz *Barbera et al. v. Venezuela* the Court established that "taking into consideration that the irremovability of judges, whether they be temporary or permanent, must ensure that those who were arbitrarily removed from their position as judges be reinstated therein, the Court considers that as a reparation measure the State must reinstate the victims, if they so wish, in a position in the Judiciary in which they have the same rank, salary and related social benefits as they had prior to their removal." *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 246.

214. The Court is mindful of the constitutional change that occurred in 2008 in Ecuador, as well as the subsequent restructuring of the Supreme Court, which implied major changes on substantive matters such as the number of members of the National Court of Justice, which is smaller than that of the Supreme Court of Justice. The Court notes that several judges took these circumstances into account when renouncing their claim to be reinstated. The Court stresses that the victims' representatives did not specify which of the 27 judges had expressly renounced reinstatement and requested only pecuniary reparation, given the impossibility of being reinstated. The Court also emphasizes that the cases in which it ordered the reinstatement of judges in their posts involved judges who served in lower courts,[246] whereas in this case the Supreme Court justices could only be appointed to another High Court of the Judiciary, which made their reinstatement difficult or impossible. Consequently, the Court considers that, in the new constitutional context, and given the difficulties of designating the judges in the same position, or in one of similar rank, as well as the new regulations protecting the tenure of judicial officials, their reinstatement would not be possible.

215. Nevertheless, the Court recalls its jurisprudence,[247] according to which compensation is ordered in those cases where it is not possible to reinstate a judge who has been arbitrarily removed from his position. Therefore, the Court sets the amount of US$ 60,000.00 (sixty thousand dollars of the United States of America) as a measure of compensation for each victim. This amount must be paid within a maximum term of one year as of notification of this Judgment.

3. Guarantees of non-repetition: amendment of domestic legislation

Arguments of the Commission and of the parties

216. The Commission requested that the Court order the State to "[a]dopt measures of non-repetition, including the measures necessary to ensure that the relevant domestic regulations and practice adhere to clear principles and offer guarantees in the appointment, tenure and removal of Judges, in line with the standards established in the American Convention."

217. As guarantees of non-repetition the representatives requested a "formal guarantee of judicial independence in accordance with the standards of the Convention," considering that "the provisions established in the current Constitution and in the Organic Code of the Judiciary must be applied, without restriction, and implemented in the judicial service." They argued that despite far-reaching judicial reforms, "there are still provisions that could undermine judicial independence, and these have to do with the transitory provisions of the Judiciary Service, which have been further modified by a popular referendum held in 2011. According to the representatives, these "norms and reforms have neither been able to guarantee the stability required by the Judiciary, nor the necessary independence", since the representative of the Judiciary Council is elected by the President of the Republic and it is he who has the authority to sanction the judges of the National Court of Justice.

---

[246] For example, in the *Case of Chocrón Chocrón v. Venezuela*, the victim was a judge at the Court of First Instance of the Caracas Metropolitan Area Criminal Judicial Circuit when she was dismissed. In the *Case of Reverón Trujillo v. Venezuela*, the victim was also a judge at the Court of First Instance of the Caracas Metropolitan Area Criminal Judicial Circuit. For their part, the judges in the Case of Apitz *v. Venezuela* served at the First Court of Administrative Disputes. *Cf. Case Chocrón Chocrón v. Venezuela*, para. 78; *Case of Reverón Trujillo v. Venezuela*, para. 49, and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, para. 2.

[247] *Cf. Case of Apitz Barbera et al. ("First Court of Contentious Administrative") v. Venezuela*, para. 246, and *Case of Chocrón Chocrón v. Venezuela*, para. 154.

218. The State held that "the new Organic Code of the Judiciary, in effect since 2009, established procedures for removing and sanctioning judges of the National Court of Justice." Therefore, these new regulations should be considered as a measure of non-repetition and a sign of the progress achieved since the 2008 Constitution. Despite the foregoing, the State indicated that the Commission did not take this into account and submitted the case to the Court. The State emphasized that "[a] simple reading of the Organic Code shows the inclusion of principles regarding tenure in office for members of the judiciary, the establishment of processes for the selection, appointment, tenure and removal from office of members of the judiciary and the incorporation of rights to which such persons are entitled." The State also pointed out that the process of judicial reform has not concluded, and therefore it cannot be judged *a priori*. The State added that "the guarantee of non-repetition is fully complied with since domestic law is adapted to international standards and provides appropriate legal mechanisms."

Considerations of the Court

219. From the arguments presented by the Commission and the representatives, the Court notes that there were disputes over the provisions currently in force in Ecuador concerning the selection, appointment and tenure of judges in the Judicial Branch and the influence that this might have on judicial independence. In this regard, Article 90 of the Organic Code of the Judiciary, in force since March 9, 2009, contemplates the right of judicial officials to "tenure in their positions or public office", and stipulates that they "shall not be removed, suspended or dismissed in the exercise of their duties, but only according to law."[248] With regard to advances on the question of entry into public office, the State cited Articles 52 to 66 of the Organic Code of the Judiciary regarding the process for the selection of officials.

220. Regarding the removal of officials, the Organic Code of the Judiciary contains articles referring to prohibitions and minor, serious and very serious infractions. Likewise, the Court notes that disciplinary action may be taken officially or in response to a complaint or accusation, and that a complaint may be filed by "[t]he President of the Republic, the President of the National Assembly; the President of the Council for Citizen Participation and Social Control; the Comptroller General of the State; the Attorney General of the State; the President of the Judiciary Council and its members; senior authorities of the autonomous bodies; judges and assistant judges of the National Court of Justice; and judges of the provincial courts, criminal courts and courts of first instance; the Commander General and department chiefs of the National Police; and the Internal Auditor."[249]

221. In this respect, the Court recalls that Article 2 of the Convention requires the States Party to adopt, in accordance with constitutional procedures and the provisions of the Convention, the legislative or other measures necessary to make effective the rights and freedoms protected by the Convention.[250] In other words, the States not only have a positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights enshrined therein, but must also avoid enacting laws that preclude the free

---

[248] *Cf.* Article 90 of the Organic Code of the Judiciary. Official Record Supplement 544 of March 9, 2009 (File of attachments to the answer brief, volume I, page 3585).

[249] *Cf.* Article 113 of the Organic Code of the Judiciary. Official Record Supplement 544 of March 9, 2009 (File of attachments to the Answer brief, volume I, page 3590).

[250] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C No. 39, para. 68, and *Case Mendoza et al. v. Argentina*, para. 323.

exercise of those rights, and prevent the annulment or amendment of laws that protect them.[251]

222. In this case, the central issue - and this is what the Court has focused on– was the examination of alleged human rights violations stemming from the decision taken by the National Congress on December 8, 2004. The Court did not examine the compatibility of a specific provision with the American Convention, since that was not the subject of this case. Moreover, the representatives did not provide sufficient elements to demonstrate that the violations arose from a problem stemming directly from the text of the laws, and consequently it is not possible to order an amendment of provisions that are not directly related to the violations declared in this case. Therefore, in the circumstances of this case, it is not pertinent to order the adoption, amendment or adaptation of specific provisions of domestic law.

C. Compensation for pecuniary and non-pecuniary damages

1. Pecuniary damage

Arguments of the Commission and the parties

223. The Commission asked the Court to order the State to "[p]ay the victims the professional wages and/or social benefits they failed to receive from the time of their dismissal up until the moment when they are reinstated or else until the alternative indemnification described in the previous recommendation is paid."

224. The representatives requested that the State be ordered to pay "monetary compensation for damages based on the amount of the salaries that the judges did not receive and the time elapsed since the violation was committed until effective compliance with the Judgment. In the case of the judges, this implies the salary (salary plus social benefits) that they did not receive due to their dismissal." The calculation of this compensation would be "based on the judges' salary history, on the number of years that have elapsed since their dismissal and up until the issuance of the Judgment."

225. The representatives indicated that the calculation of back wages should take into account the salaries that the victims did not receive until the effective implementation of the Judgment. They considered that calculating the amount up until the issuance of the 2008 Constitution, was a proposal that limited the victims' rights, since the State had offered friendly settlements on three occasions, which were never made effective, suggesting that this was a strategy to delay the process. Furthermore, the representatives pointed out that, if the State had acknowledged its violation in a timely manner, the period for calculating the compensation might have been shorter and the former judges might even have been reinstated in time. The representatives argued that, even assuming that after the issuance of the 2008 Constitution the victims in this case had become Judges of the National Court of Justice of transition, and had been in office until 2012, their rights would not have disappeared under the 2008 Constitution, as the State affirmed.

226. The representatives also argued that the State cannot change its adopted position for its own benefit, and should therefore accept that it had already acknowledged the amounts owed by issuing certificates of settlement to the victims as an offer of payment and that the amount due was calculated up to 2011, the date on which said document was issued. The victims' representatives consider that these documents have major significance in terms of

[251] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Mendoza et al. v. Argentina*, para. 323.

the principle of *estoppel,* since the certificates were issued during the execution phase, not the negotiation phase, and the amounts were calculated up until August 2011. The State thereby adopted a position within the process, which it cannot change for its own benefit since this is prohibited under international law.

227. Moreover, the representatives requested that the compensation be paid to each of the judges or their successors, regardless of whether or not they had held public office, arguing that upon calculating the settlement, the State did not take this factor into account. The representatives also pointed out that the payment of unpaid wages to the victims is a form of reparation, and therefore no distinction should be made between those who tried to survive by finding work in the private sector, and those who worked in the public sector, since this would be a discriminatory measure. The representatives stressed that the State was using this as a new argument regarding the issue of reparations and that it had never put forward any document during the evidence phase that could justify this position. The representatives further argued that the former judges who "again obtained public positions did so on their own merits and not because of any acknowledgement of a violation of their rights […] since the fact that some had returned to public life did not mean that all enjoyed that privilege and, as Dr. Arturo Donoso stated, they had to make a living and if that meant returning to public life they had to do so, but the return to public life has nothing to do with the violation of rights and with acknowledgement of that violation, in relation to temporality."

228. As to the request for payment of unpaid salaries, the State asked the Court to take into consideration that "the settlement report is neither binding nor referential." The State considered that, as a result of its partial acquiescence, the pecuniary reparations should not be higher than the amount the judges would have received had they continued in their positions, in accordance with the 1998 Constitution, i.e. until October 20, 2008, since the rights acquired under the 1998 Constitution were fulfilled in 2008. The State based this argument on the legitimacy of and change to a new constitutional order. It also argued that the monetary sum should be in line with the amounts previously set by the Court, otherwise there would be two major effects: it would discriminate against those persons who had previously had recourse to the Inter-American System and would affect the general interest since the monies paid would come from public funds. The State indicated that, in good faith and based on accounting documents, it established the amounts the former judges should receive, amounts equivalent to the salaries that they did not receive according to the constitutional structure of 1998.

229. The State pointed out that, upon making the calculation, the Court should keep in mind those judges who held public office after their dismissal. The State indicated that Judges Velasco, Troya and Donoso held public office after their dismissal.

Considerations of the Court

230. In its case law the Court has developed the concept of pecuniary damage and has established that this implies "loss or detriment to the victims' income, the expenditures made due to the facts and the consequences of a pecuniary nature which have a causal nexus with the facts of the case."[252]

231. Based on the arguments put forward by the parties, the Court deems it necessary to define the criteria that will be taken into account in setting the amounts corresponding to pecuniary damage. To that end the Court will proceed to: i) establish the pecuniary damage

[252] *Cf. Case of Bamaca Velasquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Suárez Peralta v. Ecuador*, para. 212.

caused to the victims; ii) determine whether the amounts should be calculated up to 2008 or else until the publication of this Judgment; iii) settle the dispute raised by the State regarding the judges who held public office after their dismissal, and iv) establish the criteria and set the amounts corresponding to each victim in this case.

1(1). Pecuniary damage

232. The Court emphasizes that the violations declared in this Judgment are related to the principle of judicial independence and its implications for due process whereby, as a result of their arbitrary dismissal, the judges suffered financial loss, since they no longer earned income from their work as members of the Judiciary. They had a right to this income, given that none had acted in a manner that constituted grounds for dismissal, which gave them the legitimate expectation of continuing to earn a salary based on the position they held. This led them to take on financial commitments which they had the legitimate expectation of being able to meet, unless they were dismissed for reasons attributable to their own actions. In this regard, Mr. Arturo Donoso stated at the public hearing that he:

> "[joined] the [Supreme] Court knowing that [his] duties were for life [, and therefore] ma[de] a life plan according to the earnings he expect[ed] to obtain from his work […] and obviously [he] acquire[d] some financial commitments for a very sad reason – [his] third child suffered from an unknown congenital disease […] for which there is no treatment, […] and Quito, the capital of Ecuador, is a city 2819 meters above sea level and it is impossible for a person with that disease to live at that altitude. In order to prolong [his child's] life and improve his basic conditions, a basic human right, […he] and [his] wife acquire[d] a mortgage to buy a small house by the sea [and they] became indebted for that."[253]

233. Mr. Donoso, in turn, testified on the situation of several of his colleagues. Indeed, he stated that:

> "Dr. Milton Moreno Aguirre developed cancer shortly after he was dismissed in that way. He did not have the financial means to manage and in order to cover his treatment his wife had to sell her only property in the city of Guayaquil and subsequently he died. Dr. Miguel Villacís […] was ousted in an unconstitutional, unlawful and unspeakable manner when he only had another six months to work before retirement and he lost all his retirement benefits and had to live on the meager earnings he was able to obtain, after having been a professional judge, [he had to] learn to litigate and live on the small income that he had."[254]

234. Similarly, Mr. Bermeo Castillo explained that from the time of his dismissal he had only been able to obtain contracts for occasional services, which created constant financial uncertainty.[255] Mr. Brito Mieles stated that since his dismissal his professional activity had diminished with a progressive loss of work.[256] Mr. Ramírez Alvarez explained that he had not exercised his profession for seven years, and therefore starting over implied a difficult situation since he had to reopen his office and acquire clients.[257] Mr. Riofrío Corral explained that he had to submit an application for retirement to obtain a monthly pension set at US$ 220, because he had not paid contributions for the required time or reached the required

---

253 Declaration rendered by Mr. Donoso Castellón before the Inter-American Court in the public hearing held in this case.

254 Statement rendered by Mr. Donoso Castellón before the Inter-American Court in the public hearing held in this case.

255 *Cf.* Affidavit rendered by Armando Bermeo Castillo (File of attachments to brief of pleadings and motions, volume I, page 2372).

256 *Cf.* Affidavit rendered by Eduardo Enrique Brito Mieles (File of attachments to brief of pleadings and motions, volume I, page 2403).

257 *Cf.* Affidavit rendered by Jorge Enrique Ramírez Álvarez (File of attachments to brief of pleadings and motions, volume I, page 2648).

age.[258] He added that he was forced to reopen his office which had been closed for more than eight years and that it had been difficult to regain clients. Mr. Salinas Montaño explained that his income had been reduced to nearly zero, and that he survived on funds from the sale of a property and loans from family and friends,[259] since it had been impossible for him to approach financial institutions because of his age and income.

235. The Court considers that there are sufficient elements to conclude that the victims suffered losses and no longer received an income, causing them pecuniary damage which must be repaired.

1.2. Determining the time span for the calculation

236. The representatives of the victims and the State requested that the judges' unpaid salaries be calculated based on different dates. The State requested that the salaries be calculated up to October 2008, the date on which Ecuador's new Constitution took effect. The representatives, for their part, requested that the calculation be made up to the date of the issuance of this Judgment. In view of this dispute, the Court shall rule on the arguments put forward by the parties to establish the calculation.

237. On November 30, 2007 a National Constituent Assembly was convened for the purpose of drafting a new Constitution for the Republic of Ecuador. This Constitution entered into force on October 20, 2008, following its publication in the Official Record of Ecuador.[260]

238. According to the information provided in the case file, the National Court of Justice, created through Article 182 of the 2008 Constitution, consists of 21 judges, elected for a term of nine years, after which they cannot be reelected.[261] As a transitory measure, the Constitution established that any process being examined by members of the former Supreme Court of Justice would be transferred to and decided by the National Court of Justice.[262]

239. According to the constitutional provisions concerning the institutional transition, the term of the 31 judges of the Supreme Court of Justice would end 10 days after the results of the referendum had been proclaimed. In this sense, a constitutional change occurred that substantially changed the previous Supreme Court of Justice, since its functions were modified, together with the number of judges that comprise the current National Court of Justice. Bearing in mind the foregoing, given the constitutional changes in 2008 it is not possible to affirm that the judges who formed part of the Supreme Court of Justice would have continued in their positions had they not been dismissed. The election of the 21 new judges of the National Court of Justice, based on a constitutional amendment backed by a referendum, is a random circumstance that directly affects rights and expectations.

---

[258] *Cf.* Affidavit rendered by Carlos Javier Riofrío Corral (File of attachments to the brief of pleadings and motions, volume I, page 2661).

[259] *Cf.* Affidavit rendered by Naum Clotary Salinas Montaño (File of attachments to the brief of pleadings and motions, volume I, page 2676).

[260] The Final Provision of the Constitution of the Republic of Ecuador of 2008 states: "[t]his Constitution […] shall enter into force on the day of its publication in the Official Record". Official Record no. 449 October 20, 2008 (File of attachments to the answer brief, volume I, page 3568).

[261] *Cf.* Article 182, 2008 Constitution of the Republic of Ecuador (File of attachments to the answer brief, volume I, page 3526).

[262] *Cf.* Transitory Provision 8 of the Constitution of the Republic of Ecuador (File of attachments to the answer brief, volume I, page 3563).

Accordingly, the judges' compensation for loss of earnings should be calculated up to October 2008, when the new constitutional order came into effect.

1.3. Judges who allegedly held other positions in public office

240. As to the point that some judges held positions in the public sector after their dismissal, this Court recalls that the payment of back wages is a measure of reparation for their untimely loss of employment and their legitimate expectation of continuing to receive these earnings. In this case, the former judges had the legitimate expectation of receiving salaries for life provided they did not act in a manner that constituted grounds for dismissal, which may have led them to take on greater financial commitments and life expectations than they might otherwise have had (*supra* paras. 232 to 235). In this regard, the State pointed out that some of the judges had held public office after their dismissal, which should have been taken into account when calculating their compensation. In particular, the State mentioned that Messrs. Donoso, Troya and Velasco had held other positions within the public administration.[263] On this matter, the Court questioned the State about the applicable domestic regulations related to the prohibition to receive two salaries as a public official and expressly asked the State to provide evidence in order to determine which of the judges would have held other posts. On this point, the Court notes that, although the State referred to the positions that these judges apparently held after their dismissal from the Supreme Court, the fact is that the State did not provide evidence concerning the positions they held, the period for which they did so, or the amount of the salaries that Messrs. Velasco, Troya and Donoso would have obtained in the exercise of those positions. Therefore, the Court considers it necessary to set a period of three months, as of notification of this Judgment, for the State to establish and forward to this Court the exact amount allegedly received by judges Donoso, Troya and Velasco for holding other public positions, so that said amount may be deducted from the compensation that will subsequently be set after the victims have been heard and in the context of monitoring compliance with this Judgment (*infra* paras. 148, 149 and 251). If the State should fail to provide this information within the established period, the amount for pecuniary damages for Judges Donoso, Troya and Velasco shall be deemed to be that specified in this Judgment (*supra* paras. 148, 149 and *infra* para. 251).

1.4. Criteria and determination of the amount

241. In this case the victims' representatives provided as documentary evidence a "Certificate of Income" for the 27 Judges, issued by the Council of the Judiciary of Transition in 2011, and a "Certificate of Settlement" from the same year which was provided to the victims as an offer of payment in an effort to comply with the recommendations of the Inter-American Commission on Human Rights. The State did not question these documents, but argued that they were not binding. In this regard, the Court emphasizes that the State, in its final written arguments, offered to attach to the file a Certificate of Settlement up until 2008 for each of the judges. However, this document was never submitted to this Court. In order to calculate the compensation, this Court shall take into account the two documents forwarded to this proceeding, namely, the former judges' certificates of income and the certificates of settlement for those judges in possession of that document. However,

[263] At the public hearing the State indicated that "after he was dismissed from the Court, Arturo Donoso subsequently held positions, such as on the electoral tribunal and not only joined the electoral authority but presided the highest court on electoral matters, which was part of the contentious electoral tribunal; subsequently he worked in the Attorney General's Office of the State, as advisor to the Attorney General and adviser to the Supreme Court of Justice. Dr. Vicente Troya was President of the National Court of Justice, Dr. Jaime Velazco was president of the Supreme Court of Justice. Several other colleagues of Dr. Arturo Donoso also held important positions within higher education institutions, which they still hold today."

regarding Messrs. Alberto Rodrigo Varea Avilés and Ignacio José Vicente Troya Jaramillo, the Court emphasizes that no certificate of settlement was provided for these two judges.

242. The Court also emphasizes that the representatives, in addition to the certificates and settlements mentioned previously, presented a calculation they had prepared of the amount owed to each judge. The calculation was based on the amount of the salary earned by each of the judges, certified by the State, and multiplied by the months elapsed since they were removed from office. Below, the Court presents the figure calculated by the representatives of the former judges, in order to identify each of the amounts in order to calculate the indemnity.

243. The representatives requested a payment of US$ 759,458.78[264] (seven hundred and fifty-nine thousand four hundred and fifty-eight dollars and seventy-eight cents), basing this claim on a calculation that takes into account the total incomes of 17 judges in 2004.[265] This figure is a monthly average and was multiplied by the number of months that the judges had not been paid up to November 2011, that is, 83 months. The representatives requested that the following 17 Judges be compensated with the aforementioned sum: Alfonso Ernesto Albán Gómez, José Santiago Andrade Ubidia, José Julio Benítez Astudillo, Eduardo Enrique Brito Mieles, Nicolás Castro Patiño, Lucio Teodoro Coello Vázquez, Galo Miguel Galarza Paz, Luis Alberto Heredia Moreno, Ángel Ignacio Lescano Fiallo, Galo Alonso Pico Mantilla, Hernán Gonzalo Quevedo Terán, Jorge Enrique Ramírez Álvarez, Ignacio José Vicente Troya Jaramillo, Alberto Rodrigo Varea Avilés, Jaime Gonzalo Velasco Dávila, Miguel Elías Villacís Gómez and Gonzalo Augusto Zambrano Palacios.

244. For the 10 remaining judges, the representatives calculated and requested payment of the following amounts:

a) For Mr. Jorge Aurelio Andrade Lara a payment of US$ 751,853.08[266] (seven hundred and fifty-one thousand, eight hundred fifty-three dollars and eight cents).

---

[264] *Cf.* Brief of pleadings, motions and evidence - Table in the section on compensation for pecuniary damage (Merits file, volume I, pages 236, 237 and 238).

[265] *Cf.* Transition Council of the Judiciary, Official letter of August 26, 2011, to Mr. Alfonso Ernesto Alban Gómez (File of attachments to the brief of pleadings and motions, volume II, page 2781); Official letter of August 26, 2011 to Mr. José Santiago Andrade Ubidia (File of attachments to the brief of pleadings and motions, volume II page 2786); Official letter of July 28, 2011 to Mr. José Julio Benítez Astudillo (File of attachments to the brief of pleadings and motions, volume II page 2789); Official letter of September 16, 2011 to Mr. Eduardo Brito Mieles (File of attachments to the brief of pleadings and motions, volume II page 2864); Official letter of September 2, 2011 to Mr. Nicolas Castro Patiño (File of attachments to the brief of pleadings and motions, volume II page 2793); Official letter of July 29, 2011 to Mr. Lucio Coello Vásquez (File of attachments to the brief of pleadings and motions, volume II page 2795); Official letter of September 12, 2011, to Mr. Galo Miguel Galarza Paz (File of attachments to the brief of pleadings and motions, volume II page 2801); Official letter of September 12, 2011, to Mr. Luis Heredia Moreno (File of attachments to the brief of pleadings and motions, volume II page 2804); Official letter of September 16, 2011 to Mr. Angel Lescano Fiallo (File of attachments to the brief of pleadings and motions, volume II page 2811); Official letter of September 12, 2011, to Mr. Galo Pico Mantilla (File of attachments to the brief of pleadings and motions, volume II page 2818); Official letter of July 29, 2011 to Mr. Hernán Quevedo Terán (File of attachments to the brief of pleadings and motions, volume II page 2821); Official letter of September 12, 2011 to Mr. Jorge Ramírez Álvarez (File of attachments to the brief of pleadings and motions, volume II page 2831); Official letter of August 26, to Mr. Troya Jaramillo (File of attachments to the brief of solicitudes and evidence volume II page 2843); Official letter of September 16, 2011 to Mr. Rodrigo Varea Avilés (File of attachments to the brief of pleadings and motions, volume II page 2846); Official letter of September 12, 2011 to Mr. Jaime Velasco Dávila (File of attachments to the brief of pleadings and motions, volume II page 2849); Official letter of September 12, 2011, to Mr. Miguel Villacis Gómez (File of attachments to the brief of pleadings and motions, volume II page 2852), and Official letter of September 16, 2011 to Mr. Gonzalo Zambrano Palacios (File of attachments to the brief of pleadings and motions, volume II page 2855).

[266] *Cf.* Brief of pleadings and motions (Merits file, volume I, page 236).

b) For Mr. Armando Bermeo Castillo a payment of US$ 767,300.14[267] (seven hundred and sixty-seven thousand, three hundred dollars and fourteen cents).
c) For Mr. Alfredo Roberto Contreras Villavicencio a payment of US$ 662,560.57[268] (six hundred and sixty-two thousand five hundred and sixty dollars and fifty-seven cents).
d) For Mr. Arturo Javier Donoso Castellón a payment of US$ 558,173.62[269] (five hundred and fifty-eight thousand, one hundred and seventy-three dollars and sixty-two cents).
e) For Mr. Estuardo Agustín Hurtado Larrea a payment of US$ 594,756.88[270] (five hundred and ninety-four thousand seven hundred fifty-six dollars and eighty-eight cents).
f) For Mr. Teófilo Milton Moreno Aguirre a payment of US$ 242,929.02[271] (two hundred and forty-two thousand, nine hundred and twenty-nine dollars and two cents).
g) For Mr. Hugo Eduardo Quintana Coello a payment of US$ 820,145.13[272](eight hundred and twenty thousand, one hundred and forty-five dollars and thirteen cents).
h) For Mr. Carlos Javier Riofrío Corral a payment of US$ 718,405.53[273] (seven hundred and eighteen thousand four hundred and five dollars and fifty-three cents).
i) For Mr. Armando José Ramón Serrano Puig a payment of US$ 633,854.47[274] (six hundred and thirty-three thousand eight hundred and fifty-four dollars and forty-seven cents).
j) For Mr. Naum Clotary Salinas Montaño a payment of US$ 754,280.83[275] (six hundred and fifty-four thousand two hundred and eighty dollars and eighty-three cents).

245. It should be noted that the method used by the representatives to calculate the compensation for the 10 remaining judges is the same as that used for the other 17 judges, in other words, taking a monthly average of each judge's income multiplied by the number of months during which they were not paid, up until November 2011, which is 83 months. The difference in the amounts lies mainly in the fact not all the judges received the same salary and that some had larger seniority premiums.

246. Based on the foregoing, the Court emphasizes that the amounts calculated by the representatives differ from those shown in the "Certificates of Settlement." Furthermore, the Court takes into account that the representatives made the calculation up to 2011 and this Court has already established that said calculation shall be made up until October 20, 2008 (*supra* para. 239). The Court also understands that the amount requested by the representatives is based on the total income that the judges would have earned up to November 2011, based on the last salary they each received in 2004, without taking into account expenditures, such as personal contributions to the IESS, income tax and any adjustments for payroll contributions to the IESS, which could have occurred during the unremunerated years. For its part, the Certificate of Settlement takes into account the

267 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 236).

268 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 236).

269 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 236).

270 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 237).

271 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 237).

272 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 237).

273 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 236).

274 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 237).

275 *Cf.* Brief of pleadings and motions (Merits file, volume I, page 237).

income and any expenses incurred during the unpaid years, and takes into consideration the total income per year which, as time passes between 2005 and 2011, decreases by a percentage of approximately 50%.[276]

247. The Court makes the calculation based on the evidence provided, and the request by the victims' representatives that upon setting the amount to be paid to each of the judges, this should be no less than the amount stated on the Certificate of Settlement prepared by the State in compliance with Report 50 of the Commission, and in the documentary evidence included in the file regarding the income of each of the judges, the settlement made by the State and the time elapsed since their dismissal and up until October 20, 2008. The certificates of settlement contain calculations made annually. Since it is appropriate to make the calculation up to October 20, 2008 (*supra* para. 239), the Court shall determine the amount payable up to said date using the rule of three, bearing in mind the amount allocated for 2008 and which would really correspond until October 20 of that same year. Given that 2008 was a leap year, the calculation would correspond to 294 days out of 366 days (i.e. from January 1, 2008 to October 20, 2008) with respect the judges who have a certificate of settlement.

248. Accordingly, the Court sets the sum of US$ 409,985.61 (four hundred and nine thousand, nine hundred and eighty-five dollars of the United States of America and sixty-one cents)[277] for pecuniary damage for loss of earnings plus social benefits not received until 2008, in favor of each of the following 19 victims, namely Alfonso Ernesto Albán Gomes, José Santiago Andrade Ubidia, José Julio Benítez Astudillo, Eduardo Enrique Brito Mieles, Nicolás Castro Patiño, Lucio Teodoro Coello Vázquez, Galo Miguel Galarza Paz, Luis Alberto Heredia Moreno, Ángel Ignacio Lescano Fiallo, Galo Alonso Pico Mantilla, Hernán Gonzalo Quevedo Terán, Jorge Enrique Ramírez Álvarez, Jaime Gonzalo Velasco Dávila, Miguel Elías Villacís Gómez, Gonzalo Augusto Zambrano Palacios, Jorge Aurelio Andrade Lara, Armando Bermeo Castillo, Naum Clotary Salinas Montaño and Estuardo Agustín Hurtado Larrea, based on the total overall sum stated on the Certificates of Settlement for the years 2005, 2006, 2007 and 2008 (until October 20).

249. As noted previously, not all the judges received the same salary (*supra* para. 245), for which reason the amounts set for pecuniary damages differ. Thus, the Court sets the following amounts for pecuniary damage, calculated on the basis of the total overall sum provided in the Certificates of Settlement for the years 2005, 2006, 2007 and 2008 (until October 20):

a) For Judge Arturo Javier Donoso Castellón, the Court sets the sum of US$ 334,608.38 (three hundred and thirty-four thousand six hundred and eight dollars of the United States of America and thirty-eight cents);
b) For Judge Armando José Ramón Serrano Puig, the Court sets the sum of US$ 371,261.73 (three hundred and seventy-one thousand, two hundred and sixty-one dollars of the United States of America and seventy-three cents)
c) For Judge Hugo Quintana Coello, the Court sets the sum of US$ 442,056.39 (four hundred and forty-two thousand and fifty-six dollars of the United States of America and thirty-nine cents), and

[276] The decrease, according to the representatives of the alleged victims, may be based on the fact that in 2008 the Legislative Commission decreed that no public official could earn more than the President of the Republic. *Cf.* Final written arguments of the representatives (Merits file, volume IV, page 1912).

[277] This sum was the total settlement to be received by the 19 Judges according to the Certificates of Settlement prepared by the Transition Council of the Judiciary on August 29, 2011, until 2008

d) For Judge Carlos Javier Riofrío Corral, the Court sets the sum of US$ 395,151.24 (three hundred and ninety-five thousand, one hundred and fifty-one dollars of the United States of America with twenty-four cents).
e) Regarding Judge Alfredo Roberto Contreras Villavicencio, the Court sets the sum of US$ 369,251.36 (three hundred and sixty-nine thousand two hundred fifty and one dollars of the United States of America and thirty-six cents).

250. In relation to Judge Teófilo Milton Moreno Aguirre, the Court emphasizes that Mr. Moreno Aguirre died on March 23, 2007, and therefore the calculation of the unpaid salaries must only be made up until that date. Accordingly, and bearing in mind the respective portion of the annual income for 2007 contemplated in the Certificate of Settlement for the period from January 1, 2007 to March 23, 2007 (83 days), the Court sets the sum of US$ 252,401.64 (two hundred and fifty-two thousand, four hundred and one dollars of the United States of America and sixty-four cents), for pecuniary damages based on the overall sum given in the certificates of settlement for the years 2005, 2006 and 2007 (until March 23, 2007).

251. The Court also points out that although no "Certificate of Settlement" is provided for Messrs. Varea Avilés and Troya Jaramillo, the Income Certificate provided as evidence shows that they earned US$ 109,801.27 dollars in 2004, which is exactly the same salary received by the 19 judges mentioned previously. Therefore, it is possible to equate their compensation with that of the 19 judges (*supra* para. 248) and they are therefore entitled to receive the same sum as the other victims. Therefore, with respect to the judges Alberto Rodrigo Varea Avilés and Ignacio José Vicente Troya Jaramillo, the Court sets the sum of US$ 409,985.61 (four hundred and nine thousand, nine hundred and eighty-five dollars of the United States of America and sixty-one cents) each for pecuniary damage.

252. The State shall pay the compensation for pecuniary damages specified in this Judgment in three equal installments,[278] on March 30 of each year, as follows: the first payment, on March 30, 2014, the second payment on March 30, 2015 and the third payment on March 30, 2016. If the State should fail to comply with the payment of the corresponding quota on the dates specified in this Judgment, it shall pay interest on that quota, based on simple bank interest rate on arrears in Ecuador, until the effective date of payment.

2. Non-pecuniary damages

Arguments of the parties

253. The representatives argued that the judges' dismissal caused common suffering, given that being appointed as judges of the Supreme Court of Justice in Ecuador was considered as "the realization of their professional career." They pointed out that, in order to assess the moral damage to the judges in terms of work, family and social aspects, it would be necessary to analyze the national context in order to quantify this damage, especially when the right to honor is violated. They considered that the amount for moral damage could not be less than US$ 500,000.00.

254. The victims' representatives considered that the Court, upon determining the scope of the measures of reparation, should recognize the damage caused to the judges' life plans by the State. They argued that "the life project of a [Supreme Court] judge included a

[278] Similarly, *Case of Salvador Chiriboga v. Ecuador. Reparations and Costs*. Judgment of March 3, 2011 Series C No. 222, paras. 102 and 103.

certain expectation of ending his days as a judge, since there was no legal term for the exercise of his duties."

255. The State argued that the sum of USD $500,000.00 "exceeds the […] amount that the Court has established in equity." Furthermore, it argued that the sworn statements which sought to demonstrate non-pecuniary damage "[w]ere not a suitable instrument" for establishing the facts they sought to prove, since they "cannot be compare[d] and [are] inadequate from an accounting and technical point of view [,] inasmuch as these sworn statements do not include asset calculations cross-referenced with tax statements, property titles, appraisals, receipts or other accounting documents that could attest to the possible damage caused." Regarding the alleged injurious comments made against the former judges, the State indicated that domestic law contemplates procedures to obtain redress for such damage, and that the victims could have approached the media organizations that made the statements to request the right to reply to the comments made. The State held that it had no involvement in those actions.

256. Given the "ambiguity of the arguments and the absence of criteria for determining non-pecuniary damages", the State requested that the financial compensation be rejected and that "in the event of a judgment being issued […], and having regard to the right to equality [, the] Court [should bear in mind the amounts set in other cases." The State argued that the amount established by the Court should not exceed ten thousand dollars. Finally, it argued that "the life project of each of the dismissed judges who completed the term for which they were appointed […] was never […] limit[ed] by the State [and] in the event of a conviction, [the State] would design measures of satisfaction and non-repetition that would provide comprehensive reparation."

Considerations of the Court

257. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this "may include the suffering and anguish caused to the direct victims and their families, the harm done to values of great significance to the individual, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family."[279] Since it is not possible to assign a precise monetary value to non-pecuniary damage, it may only be subject to compensation for the purpose of providing comprehensive reparation to the victim, through payment of a sum of money or the provision of goods or services of appreciable cash value, which the Court determines in the reasonable exercise of its judicial authority and on the basis of equity.[280]

258. The Court reiterates that such indemnities are of a compensatory character, and that their nature and amount depend on the damage caused; therefore, they are not supposed to enrich or impoverish the victims or their heirs.[281]

259. In this case the Commission did not request compensation for non-pecuniary damage. The Court has held that non-pecuniary damage is evident, since it is part of human

---

[279] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*, para. 84, and *Case Mendoza et al. v. Argentina*, para. 350.

[280] *Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs.* Judgment of December 3, 2001. Series C No. 88, para. 53, and *Case of Vélez Loor v. Panama. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2010 Series C No. 218, para. 310.

[281] *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. 79, and *Case Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, para. 362.

nature that any person whose human rights are violated experiences suffering.[282] However, such suffering need not necessarily be repaired with money. Depending on the specific case, adequate reparation may simply be the issuing of a Sentence in which the State is convicted by this Court.[283]

260. The victims in this case described in different ways how the dismissal allegedly affected them. For example, Mr. Albán Gómez stated that "[t]he numerous expressions of support [he] subsequently received at least served to mitigate the harsh negative effects that the dismissal had on [his] reputation, especially as a university professor[, and that] the dismissal seriously affected [his] family, also a victim of the abuse suffered."[284] Similarly, Mr. Bermeo Castillo stated that "the moral damage [he] suffered was the result of the abuse and mistreatment occasioned by the […] National Congress[, which caused [him] uncertainty, shame, fear, insecurity, low spirits, and undermined [his] self-esteem, situations which he has been unable to overcome completely, even with the passing of the years."[285] Mr. Brito Mieles explained that "[s]ince then, because of the severe emotional impact and moral damage experience[d] because of that unexpected and unlawful dismissal, [his] health deteriorated to the point [where he] suffered cardiac problems and serious gastrointestinal disorders, depression, insomnia and a decrease in [his] professional activities with a lack of sufficient income and progressive loss of work need to cover the high costs of [his] medical treatment, [his] subsistence and that of his family."[286] Mr. Castro Patiño explained that he was "diagnosed with an articular blockage of the lumbo-sacral […] and cervical-thoracic joints [, his] blood pressure was affected […he] ma[de] several visits to doctors specializing in neurology, general clinical medicine and cardiology to counteract or overcome any problems related to [his] health and caused by the stress experienced, especially in December 2004 and a few months afterwards."[287] Mr. Quevedo Terán explained that "[t]he dismissal from office was completely unexpected; it not only caused financial instability, but also emotional and psychological impact because of the enormous worry of having lost [his] job and the monthly income that was indispensable to cover [his] family expenses, which not only impacted [him], but undoubtedly affected [his] wife and children."[288] Likewise, Mr. Riofrío Corral stated that "[t]he news […] embarrassed [him] and [he had] never felt more ashamed or humiliated [and] f[ell] into a depressive state which lasted a long time […] with psychological symptoms typical of severe depression, such as: anguish, anxiety, sadness, despair, feelings of worthlessness and mistrust, isolation, irritability and other psychological disorders, as well as physical effects such as insomnia, tiredness and diminished levels of activity."[289] Mr. Serrano Puig stated that the preceding events and the "dismissal, caused [him] anguish, anxiety, insomnia, […] for a long time

---

[282] *Cf. Case of Reverón Trujillo v. Venezuela*, para. 176, and *Case of the Massacres of El Mozote and nearby areas v. El Salvador.* Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 383.

[283] *Cf. Case of Fermín Ramírez v. Guatemala. Merits, Reparations and Costs.* Judgment June 20, 2005. Series C No. 126, para. 130, and *Case of Reverón Trujillo v. Venezuela*, para. 176.

[284] Affidavit rendered by Alfonso Ernesto Alban Gómez (File of attachments to the brief of pleadings and motions, volume I, page 2360).

[285] Affidavit rendered by Armando Bermeo Castillo (File of attachments to the brief of pleadings and motions, volume I, page 2372).

[286] Affidavit rendered by Eduardo Enrique Brito Mieles (File of attachments to the brief of pleadings and motions, volume I, page 2403).

[287] Affidavit rendered by Nicolas Castro Patiño (File of attachments to the brief of pleadings and motions, volume I, page 2422).

[288] Affidavit rendered by Hernán Gonzalo Quevedo Terán (File of attachments to the brief of pleadings and motions, volume I, page 2626).

[289] Affidavit rendered by Carlos Javier Riofrío Corral (File of attachments to the brief of pleadings and motions, volume I, page 2662).

afterwards, to the point of having to seek assistance […] from doctors specializing in general or internal medicine, gastroenterology, neurology, pain medicine and others."[290] For his part, Mr. Andrade Ubidia stated that "[f]or a long time [he] was withdrawn, felt a deep sense of despair, failure and suffered extreme anxiety over the future, both personal and in relation to the country."[291] Finally, Mr. Varea Áviles stated that "undoubtedly the coarse and violent humiliation [he] suffered did not allow [him] to prepare the honorable retirement that a person like [him], who had dedicated [his] whole life to the exercise of the Judiciary, deserved, given that 'from one day to the next' [he] found [himself] at home and not knowing what to do."[292]

261. From the foregoing statements, it is clear that their dismissal from office and the manner in which this occurred, caused the judges moral damage, reflected in symptoms such as the depression suffered by some, or feelings of shame and instability. The Court also considers that the judges suffered moral damage by being unable to carry out their duties as judges of the judicial branch and, in return for their work, receive a salary that would allow them and their families to enjoy a lifestyle similar to the one they had before their dismissal. Furthermore, the Court takes into account that the situation experienced by the 27 judges had a direct effect on their state of mind, given their financial expectations. Nevertheless, the Court emphasizes that in this case the only evidence provided of non-pecuniary damage was the victims' statements. In weighing up all the factors in order to determine the amount due for non-pecuniary damage, the Court also takes into account its jurisprudence on this matter. Accordingly, the Court establishes, in equity, the sum of US$ 5,000.00 (five thousand dollars of the United States of America) for each of the victims and grants a period of one year for payment.

262. Bearing in mind the reparations ordered previously, it is not necessary to refer to the arguments presented by the representatives related to the alleged effects on the judges' life project.

D. Other measures of reparation

Arguments of the parties

263. The representatives requested that "the persons involved in violating the rights of the victims in this case" be investigated and punished. According to the representatives, this would include "the President of the Republic at that time, Lucio Gutiérrez, for having summoned the special period of sessions [and each and every one of the congressmen who voted for the [dismissal] resolution" and "the judges of the Constitutional Tribunal" who prevented the filing of *amparo* remedies against the dismissal. They therefore requested that "the Judgment issued by the Court be notified to the Public Prosecutor and that there should be a process to recover the payment made by the State in respect of the reparations ordered." The representatives also called for an investigation of those who denied the *amparo* remedies, threatened the judges and made it impossible for them to apply measures of domestic law. They requested that the Court order the process to recover the payment from those responsible as part of the Judgment, so that the State could be

[290] Affidavit rendered by Armando Serrano Puig (File of attachments to the brief of pleadings and motions, volume I, page 2692).

[291] Affidavit rendered by José Santiago Andrade Ubidia (File of attachments to the brief of pleadings and motions, volume I, pages 2769 and 2770).

[292] Affidavit rendered by Alberto Rodrigo Varea Aviles (File of attachments to the brief of pleadings and motions, volume I, page 2717).

reimbursed for the amounts paid and responsibility assigned to those who had violated the Constitution.

264. Another measure requested by the representatives was the "removal of the photo of Guillermo Castro Dager, the former President of the new Supreme Court of Justice" from the gallery of Presidents of the Supreme Court of Justice. Finally, they requested that a plaque bearing the victims' names be placed in a visible place in the building of the National Court of Justice, in acknowledgement of their struggle in defense of the institutions and democracy.

265. As to the request to investigate those allegedly responsible, the State argued that if the State should be convicted it would conduct "the investigations necessary to establish the responsibility of the institutions" and that "in the event of a possible declaration of a violation of rights, the Ecuadorian legal system contemplates a procedure for recovering a payment made."

Considerations of the Court

266. As regards the other measures of reparation requested, the Court considers that the delivery of this Judgment and the reparations ordered in this chapter are sufficient and adequate to redress the violations suffered by the victims and does not consider it necessary to order those measures.[293]

E. Costs and expenses

Arguments of the parties

267. The representatives stated that "[t]he victims ha[d] incurred numerous expenses in the proceedings before the domestic authorities, in obtaining evidence for this case, as well as many other expenses during the proceedings before the [Inter-American Commission] and the Court. These included the amounts spent to attend the hearings on admissibility, the hearing on merits, mail expenses, copying of documents, transportation and board and lodging." The representatives indicated that "[because they did] not have all the vouchers, [they asked] the Court to consider in equity the reimbursement of US $50,000 dollars for costs and expenses incurred in the domestic and international courts."

268. Subsequently, in their brief of final arguments the representatives indicated that "[t]aking into account the new configuration of the process before the Inter-American Court, the victims' representatives [had] to cover all travel expenses and payments of expert witnesses before the Inter-American Commission, [which] implied very high costs." The representatives also stated that "at the time when the [brief of pleadings and motions] was presented [they] only [had] the vouchers for litigation before the [Inter-American Commission] (travel to Washington, postal costs, expert opinion before the [Commission]); however the most significant expenditure [was their] appearance before the Inter-American Court of Human Rights." In their brief of final arguments the representatives explained that "after the oral stage of the proceeding, [they] provided [the Court] with details and justifications for the expenses incurred up to the date of the hearing, which totaled USD $43,797.59.[294] If these are added to the costs which [they must] incur for the

---

[293] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 359, and *Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica*, para. 344.

[294] As to the evidence regarding the financial expenditures made and submitted as attachments to the brief of final arguments of the representatives, the Court found that the receipts submitted were related to expenses for

implementation of the Judgment, [they] consider[ed] that the sum of USD $50,000 [was] appropriate."

269. For its part, the State indicated that "[the] claim [of the representatives] exceeds the standards established by the Court, for which reason it challenge [d] the representatives' request […] and ask[ed] the Court [to] set the amount, based on the documentation, and, if this [was] not possible, to conduct an analysis of cases" In this regard, the State pointed out "that [in] the case law of the [I]nter-American [S]ystem such high sums of money for costs and expenses have not been paid, without the necessary evidence" and concluded by asking "[the Inter-American Court] to set, in equity, as a maximum amount for costs and expenses, the sum of 10,000 dollars of the United States of America."

Considerations of the Court

270. As the Court has already stated on previous occasions, costs and expenses are included within the concept of reparation established in Article 63(1) of the American Convention.[295]

271. The Court reiterates that, according to its case law,[296] costs and expenses form part of the concept of reparation, inasmuch as the activities undertaken by the victims in order to obtain justice, both at the national and the international level, entail outlays that must be compensated when the State's international responsibility is declared in a conviction. As to their reimbursement, the Court must prudently assess their scope, which includes expenses incurred before domestic authorities as well as those arising from proceedings before the Inter-American system, taking into account the circumstances of the specific case and the nature of international human rights jurisdiction. This assessment may be based on the principle of equity, taking into account the expenses stated by the parties, providing that their *quantum* is reasonable.[297]

272. The Court has indicated that the claims of victims or their representatives for costs and expenses, and the evidence supporting these, must be submitted to the Court at the first procedural opportunity, that is, in the brief of pleadings and motions, without prejudice to the fact that such claims may later be updated, as new costs and expenses may be incurred during the proceedings before this Court."[298]

273. In this case, the Court notes that in the attachments to their final arguments, the representatives included information related to monetary outlays and actions prior to the presentation of the brief of pleadings, motions and evidence. As to the evidence regarding the expenditures made and forwarded as attachments to the representatives' brief of final arguments, the Court finds that the vouchers received correspond to expenses for the

---

the return, processing and withdrawal of checks, commissions for bank transfers, sworn statements, stationery expenses, dispatch of documents, fees for expert opinions, travel and accommodation expenses to attend the public hearing at the seat of the Inter-American Commission, and also to attend the hearing before the Court in San José, Costa Rica, both of the representatives of the victims and of the deponents. Final written arguments of the representatives (Merits file, volume IV, pages 1925 a 2051).

295 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, para. 79, and Case of Suárez Peralta v. Ecuador, para. 217.

296 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, para. 79, and Case of Suárez Peralta v. Ecuador, para. 217.

297 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, para. 82, and Case of Suárez Peralta v. Ecuador, para. 218.

298 *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, para. 79, and *Case of Mohamed v. Argentina*, para. 173.

return, processing and withdrawal of checks, commissions for bank transfers, expenses incurred in the preparation of expert opinions and sworn statements, stationery expenses, dispatch of documents, expert fees, lawyers' fees, travel and accommodation expenses to attend the public hearing at the seat of the Inter-American Commission, and to attend the hearing before the Court in this case in San José, Costa Rica, both of the victims' representatives and of the deponents. The Court has confirmed that the expenses proven by the representatives total approximately US$ 47,756.35. Certain expenses, such as those related to transport and lodging[299] and expenditures for materials and legal counseling[300] have been duly accredited and justified.

274. Despite the foregoing, some of the expenses claimed by the representatives are not related solely to expenses incurred in this case. In this regard, the Court reiterates that "it is not sufficient to submit probative documents; rather the parties must also provide arguments that link the evidence to the fact under consideration, and, in the case of alleged financial disbursements, the items and their justification must be clearly described."[301] In application of the foregoing, certain expenses, such as banking charges for cashing checks,[302] have no connection with this case and therefore these expenses must be deducted from the amount established by the Court.

275. With respect to other expenses such as the fees of expert witnesses,[303] the Court emphasizes that the representatives have not offered sufficient arguments to justify the amount for fees. Furthermore, certain expenses for services rendered by the parties lack the proper evidentiary support that would confirm the outlay and, furthermore, they do not specify the nature of the expense.[304] Therefore, said amounts shall be deducted from calculation established by the Court. On the other hand, there are some expenses, such as specific expenses for courier and printing services[305] and transport[306], which have not been mentioned by the representatives in their briefs, and for which receipts are included in the file.

276. After deducting the aforementioned items, the amount for expenses that are justified and are directly related to the litigation of this case, totals 12,662.44 dollars.[307] Accordingly,

---

299 By way of example: invoice of "Euroviajes" No. 001-001-0039360 of March 6, 2006 (Merits file, volume IV, page 1930); invoice of "M Street Hotel" No. 732849898 of March 15, 2006 (Merits file, volume IV, page 1931); invoice of "Euroviajes" No. 001-001-0172259 of January 21, 2013 (Merits file, volume IV, pages 2034 a 2038), and invoice of "Hotelera Nacional S.A." of February 9, 2013 (Merits file, volume IV, page 2038).

300 For example, consultancy of Harold Andrés Burgano Villareal (Merits file, volume IV, pages 1976 a 1981).

301 *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. 277, and *Case Rosendo Cantú et al. v. Mexico*, para. 285.

302 By way of example: Banking commissions for "processing" or "return of checks" (Merits file, volume IV, pages 1971 to 1973, 1975 to 1982 and 2007 to 2012).

303 Expenses related to the opinion issued by Mr. Orlando Alcívar Santos (Merits file, volume IV, pages 1987 to 2005), and fees for expert opinion of Luis Pasara (Merits file, volume IV, pages 2029-2030).

304 By way of example: receipts for expenses submitted by "Serrano Puig Lawyers" (Merits file, volume IV, pages 1952 to 1954, 1959, 1962 and 1963), and Receipts issued by Armando Serrano Puig for "Travel Expenses to Hearing in Costa Rica" (Merits file, volume IV, pages 2042-2043).

305 Expenses for DHL courier services to the Inter-American Court of Human Rights (Merits file, volume IV, pages 2015 to 2020).

306 Air tickets to San José, Costa Rica (Merits file, volume IV, pages 1966 and 1967).

307 The expenses taken into account to calculate this amount were the following: i) travel expenses to Washington for Ramiro Ávila; ii) return ticket to Washington for Ramiro Ávila; iii) accommodation in Washington for Ramiro Ávila; iv) stationery Expenses; v) travel to Costa Rica for David Cordero; vi) air ticket to Costa Rica of David Cordero; vii) travel of Messrs. Trujillo and Donoso to Costa Rica; viii) hotel in Costa Rica; ix) travel and other

the Court decides to set, in equity, the sum of $US 15,000 (fifteen thousand dollars of the United States of America) for costs and expenses in favor of the representatives David Cordero Heredia and Ramiro Ávila. The amounts established shall be paid directly to the representatives of the victims.

F. Method of compliance with the payments ordered

277. The State shall make payment of the compensation for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses established in this Judgment directly to the individuals indicated therein, within one year as of notification of this Judgment, under the terms of the following paragraphs. The foregoing, without prejudice to the payment, in three installments, established for the compensation for pecuniary damage. Should the beneficiaries die before payment of the respective compensation is paid to them, such amounts shall be paid directly to their successors, in accordance with the applicable domestic legislation.

278. The State shall discharge its pecuniary obligations through payment in dollars of the United States of America.

279. If, for reasons attributable to the beneficiaries of the compensations or their successors, it is not possible for them to receive the amounts ordered within the indicated period, the State shall deposit those amounts in an account held in their name or in a certificate of deposit in a reputable Ecuadorian financial institution, in United States dollars and under the most favorable financial terms allowed by law and banking practices. If, after 10 years, the compensation has not been claimed, these amounts shall be returned to the State with the accrued interest.

280. The amounts allocated in this Judgment as compensation for pecuniary and non-pecuniary damages, and as reimbursement for costs and expenses, shall be delivered to the persons indicated in their entirety, pursuant to the provisions of this Judgment, without deductions derived from future taxes, within one year, as of notification of this Judgment.

281. If the State should fall into arrears with its payments, it shall pay interest on the amount owed corresponding to banking interest rates on arrears in Ecuador.

282. In accordance with its constant practice, the Court retains the authority inherent in its powers and also derived from Article 65 of the American Convention, to monitor full compliance with this Judgment. The case shall be considered concluded once the State has fully complied with the measures ordered in this Judgment.

283. Within one year as of notification of this Judgment, the State shall provide the Court with a report on the measures adopted to comply with it.

---

expenses of David Cordero in Costa Rica; x) per diem allowances Julio Cesar Trujillo, Arturo Donoso, David Cordero and Ramiro Ávila; xi) cost of sworn statements of Armando Serrano, Alexandra Vela, Enrique Ayala and Luis Torres, and xii) photocopying and printing costs.

X
OPERATIVE PARAGRAPHS

284. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To dismiss the preliminary objection filed by the State regarding the failure to exhaust domestic remedies under the terms of paragraph 29 of this Judgment.

DECIDES,

Unanimously that:

2. The State is responsible for the violation of Article 8(1) in conjunction with Article 1(1) of the American Convention, to the detriment of the 27 victims in this case, because they were dismissed from office by an incompetent body that did not grant them an opportunity to be heard, under the terms of paragraphs 156 to 169 and 180 of this Judgment.

3. The State is responsible for the violation of Article 8(1) in conjunction with Article 23(1) (c) and Article 1(1) of the American Convention, to the detriment of the 27 victims in this case, given the arbitrary effects on their tenure in office and the consequent effects on judicial independence, under the terms of paragraphs 143 to 180 of this Judgment.

4. The State is responsible for the violation of Article 25(1) in conjunction with Article 1(1) of the American Convention, inasmuch as the victims were denied access to an effective legal remedy, under the terms of paragraphs 185 to 194 of this Judgment.

5. The State is not responsible for the violation of Article 24 in conjunction with Article 1(1) of the American Convention, under the terms of paragraphs 195 to 198 of this Judgment.

6. The State is not responsible for the violation of Article 2 of the American Convention, under the terms of paragraph 184 of this Judgment.

7. It is not appropriate to issue a ruling regarding the alleged violations of Articles 8(2) and 9 of the American Convention on Human Rights, under the terms of paragraph 181 of this Judgment.

AND ORDERS

Unanimously that:

8. This Judgment constitutes *per se* a form of reparation.

9. The State shall issue the publications indicated in paragraph 208 of this Judgment, within a period of six months as of notification of this Judgment.

10. The State shall pay the 27 victims, as compensation for their inability to return to their duties as justices of the Supreme Court, the amounts stipulated in paragraph 215 of this Judgment, within one year as of notification of this Judgment.

11. The State shall pay the amounts specified in paragraphs 248 to 252 and 261 of this Judgment, as compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses, as appropriate, under the terms established in paragraph 276 of this Judgment.

12. Within one year as of notification of this Judgment, the State shall submit to the Court a report describing the measures adopted in compliance thereof.

13. In exercise of its authority and in compliance with its duties under the American Convention on Human Rights, the Court shall monitor full compliance with this Judgment, and shall consider this case concluded once the State has fully complied with the measures ordered therein.

Judge Ferrer Mac-Gregor Poisot informed the Court of his Concurring Opinion, which is attached to this Judgment.

Diego García Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE EDUARDO FERRER MAC-GREGOR POISOT ON THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE *CASE OF THE SUPREME COURT OF JUSTICE (QUINTANA COELLO ET AL.) V. ECUADOR*, *AUGUST 23, 2013*

I. INTRODUCTION: THE ROLE OF JUDICIAL INDEPENDENCE IN A CONSTITUTIONAL AND DEMOCRATIC STATE GOVERNED BY THE RULE OF LAW

1. This case highlights the importance of one of the defining principles of the constitutional and democratic State governed by the rule of law: the independence of judges. In general terms, we can begin by affirming that a judge is independent if he takes decisions based solely on the case before him, without being influenced by particular considerations related to the parties that are not relevant to the specific matter, and if he rules without having regard to his own interests or to those of the individual or body that appointed him.[1]

2. To accomplish that objective, institutional guarantees must be provided to enable judges to exercise this independence. These guarantees include security of tenure in their positions, adequate remuneration and a system for appointments and removal from office.[2] Indeed, with regard to judicial independence *The Federalist No. 78* notes that "nothing contributes as effectively to its firmness and independence as tenure in office, the standard being good behavior for continuance in office of the judicial magistracy."[3] However, such guarantees will never be sufficient if a judge does not wish to exercise these.[4]

3. Now, from an institutional perspective, judicial independence is inherent to the principle of the separation of powers. Both elements, in turn, are essential to an understanding of the authentic rule of law. As to the principle of separation of powers, it is often said that nowadays this cannot be conceived in an absolute or rigid manner; rather, in the modern concept, it implies a distribution of the State's functions through an appropriate organization of mutual and reciprocal relations and controls between the powers. Thus,

---

[1] MacDonald, Roderick A. and Kong, Hoi, "Judicial Independence as a constitutional virtue", in Michel Rosenfeld and Andras Sajo, The Oxford Handbook of Comparative Constitutional Law, Oxford University Press, 2012, p. 832. In similar vein Chaires Zaragoza, Jorge, "*La independencia del poder judicial*", *Boletin Mexicano of Derecho* Comparado, new series, year XXXVII, No. 110, May -August 2004, p. 532.

[2] Ernst, Carlos, "*Independencia judicial y democracia*", in Jorge Malem, Jesús Orozco and Rodolfo Vázquez (comps.), *La función judicial. Ética y democracia*, Barcelona, Gedisa, 2003, p. 236.

[3] Hamilton, A., Madison, J. and Jay, J., *The Federalist,* translation by Gustavo R. Velasco, Mexico, Merits of Cultura Económica, 1ª rep., 2004, pp. 331 and 335.

[4] MacDonald, Roderick A. and Kong, Hoi, *op. cit.*, p. 834.

rather than unlimited separation, what this principle really seeks to prevent is the concentration of powers.[5]

4. From its remotest historical origins, the separation of powers has always implied, in relation to the judiciary, the independence of this branch of government from the executive power. Judicial independence has always been understood as a necessary outcome of the separation of powers, aimed at ensuring that judges are able to withstand pressures or attacks both from the legislative and the executive powers. Thus, since its inception, judicial independence has embodied the essence of the separation of powers. The independence of the judicial function can be conceived as an irreplaceable component of a democratic State governed by the rule of law, which also implies other contiguous requirements, such as a regulated, well-ordered and coherent procedural system, which acts as guarantor of the juridical security and human rights of individuals.[6]

5. At the same time, the independence of the judicial power *vis à vis* the executive power may be conceived as a constitutional mechanism that impedes or hinders the arbitrary and unlawful exercise of power, and that obstructs or prevents its abuse or illegal exercise.[7] It therefore makes sense to ensure that the administration of justice is never a manifestation of political power, and that it is never in any way subject to the State organs that exercise that power, since it would be pointless to dictate standards that limit the actions of those who govern, if later, in the contentious phase of Law, these could influence the outcome of litigation.[8]

6. Certainly, the role of judicial independence in the democratic State under the rule of law could not be overlooked by the Inter-American Democratic Charter (cited in the Judgment)[9]; after reaffirming that representative democracy is an essential element for stability, peace and development in the region, the Charter establishes the following in Article 3:

> Essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government (underlining added).

7. Thus, the Inter-American Democratic Charter not only recognizes respect for human rights and fundamental freedoms as essential elements of representative democracy, and as elements inherent to electoral democracy; it also requires the separation of powers and independence of the branches of government, particularly the jurisdictional role in this case. The role of judges in the democratic governance of States implies acknowledging their genuine separation and independence from the rest, i.e. from the executive power, not only in the personal aspect, corresponding to each member of the judiciary, but also *in the institutional aspect*, as a separate body of authority among the components of the State.

---

[5] Kelsen, Hans, General Theory of Law and State, translation by Anders Wedberg, Cambridge, Harvard University Press, 2009, p. 282.

[6] *Cf.* Díaz, Elías, *Estado de derecho y sociedad democrática*, Madrid, Taurus, 1998, p. 48.

[7] *Cf.* Bobbio, Norberto, *Liberalismo y democracia*, translation by Jose F. Fernandez Santillán, Mexico, Fondo de Cultura Económica, 2001, pp. 19-20.

[8] *Cf.* Díez-Picazo, Luis María, "*Notas de derecho comparado sobre la independencia judicial*", *Revista Española of Derecho Constitucional*, No. 34, January-April 1992, p. 19-20.

[9] Para. 179 of the Judgment.

8. The Inter-American Court of Human Rights (hereinafter "Inter-American Court") has emphasized the democratic roots of judicial independence in several judgments and advisory opinions, and has also used the Inter-American Democratic Charter to explain the importance of judicial independence in the region's constitutional systems. In this regard I believe it is important to mention that the separation of powers is closely associated not only with the consolidation of the democratic system, but also with the desire to preserve individual freedoms and human rights, avoid the concentration of power which can turn into tyranny and oppression, and allow for the effective and efficient fulfillment of the purposes assigned to each branch of government. However, the separation of powers not only implies a specialization of the state's roles, according to how these have been assigned; it also implies the existence of a system of "checks and balances", through which reciprocal control and oversight is exercised by each branch of government. Thus, the separation of powers implies the exercise of limited power, subject to regulation, and organized in different bodies which are responsible for different functions, with the essential objective of guaranteeing the freedom of individuals before the State, within a framework of participatory and pluralist democracy.[10]

9. In the very important case of the *Constitutional Court v. Peru*, the Inter-American Court considered that one of the main purposes of the separation of powers is precisely to guarantee the independence of judges. It determined that, for those purposes, different political systems have developed strict procedures, both for the appointment and the removal of judges. In this regard, it referred to the "United Nations Basic Principles on the Independence of the Judiciary,"[11] which establish that:

> The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.[12]

10. Regarding the possibility of removing judges, it emphasized that the same "Principles" establish that:

> A charge or complaint made against a judge in his judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.[13]

11. Thus, in that landmark ruling, the Inter-American Court emphasized that the authority in charge of the process to remove a judge must act impartially in the procedure established for this purpose and allow the latter to exercise the right of defense. The Court also stressed that, under the rule of law, the independence of all judges must be guaranteed and, "in particular", that of constitutional judges, given the nature of the matters submitted to their consideration. Referring to the European Court, it specified that the independence of any judge presumes that there is an appropriate appointment process, and fixed term in the position and a guarantee against external pressures.[14]

---

10 Regarding these concepts, see Constitutional Court of Colombia, Judgment C-141 of February 26, 2010.

11 Adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Milan in August 26 - September 6, 1985, and ratified by the General Assembly in Resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985.

12 Principle 1, *Idem.*

13 Principle 17, *Idem.*

14 *Case of the Constitutional Court v. Peru. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, paras. 73-75.

12. The important point to emphasize here is that the Inter-American Court has held that judicial independence *constitutes an institutional guarantee in a democratic system* that goes hand in hand with *the principle of separation of powers*, now enshrined in Article 3 of the Inter-American Democratic Charter. In the instant case, it should also be borne in mind that the Supreme Court of Justice, of which the victims formed part in their capacity as judges, is itself a democratic institution called upon to uphold the rule of law.

13. It is also worth considering whether it is possible to configure a sort of right of defendants within the democratic conditions of public institutions, based not only on the aforementioned Article 3 of the Democratic Charter, but also on Article 29 of the American Convention;[15] this would be consistent with the international obligations of the States regarding the exercise of power according to the rule of law, the separation of powers and, of course, the independence of judges, as argued in other cases in which the Inter-American Court has clarified analogous issues.[16] A principle of this scope would go beyond the concept of democracy, in interpretative terms, as the Inter-American Court has stated inasmuch as "the just demands of democracy must […] guide the interpretation of the Convention and, in particular, the interpretation of those provisions that bear a critical relationship to the preservation and functioning of democratic institutions."[17]

14. In this initial context, which underscores the essentially democratic dimension of judicial independence, I consider it appropriate to examine and clarify certain primordial questions in this reasoned opinion: (i) the importance of context in this case (paras. 15-19); (ii) judicial independence in the Inter-American Court's case law on the dismissal of judges (paras. 20-44); (iii) different concepts of judicial independence, particularly the institutional and personal independence of each judge (paras. 45-54); (iv) the institutional facet of judicial independence and its relationship to democracy (paras. 55-76), and (v) the lack of analysis of violations of other judicial guarantees and the principle of legality (paras. 77-93).

---

[15] "Article 29. *Restrictions Regarding Interpretation*

No provision of this Convention may be interpreted as:

a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;

b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have."

[16] *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008. Series C No. 182, para. 222.

[17] *Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights).* Advisory Opinion OC-5/85, para. 44.

II. THE IMPORTANCE OF CONTEXT IN THIS CASE

15. According to the proven facts of this case, the dismissal of the members of Ecuador's three High Courts, namely, the Supreme Court, the Constitutional Tribunal and the Supreme Electoral Tribunal, occurred as a result of a political arrangement between the then President of the Republic, Lucio Gutiérrez, who was facing impeachment for embezzlement, and the *Partido Roldosista Ecuatoriano*. The leader of this party, former President Abdalá Bucaram, in turn, was seeking the annulment of several criminal proceedings brought against him before the Supreme Court.

16. Thus, on November 23, 2004, President Gutiérrez Borbúa announced his government's intention to promote, via Congress, the reorganization of the Constitutional Tribunal, the Supreme Electoral Tribunal and the Supreme Court of Justice. On November 25, 2004 the National Congress approved a resolution declaring that the full and alternate members of the Constitutional Tribunal had been illegally appointed in 2003 and terminating the appointments of all its full and alternate members, some of whom were subsequently impeached by Congress a few days later. Congress also decided to declare the termination of the duties of the full judges of the Supreme Electoral Tribunal and their substitutes, on the grounds that they had been appointed without observing the provisions of Article 209 of the Constitution.

17. On December 1, a first attempt was made to impeach some members of the Constitutional Tribunal, but without securing the necessary votes for their dismissal. For this reason, on December 5, 2004 President Gutiérrez Borbúa summoned the National Congress to a special session on December 8, at which the required number of votes was obtained to censure the former members of the Constitutional Tribunal in an impeachment proceeding. As a second point on the agenda, the Congress also dismissed all the judges of the Supreme Court of Justice, incorrectly applying Transitory Provision 25 of the 1998 Constitution, according to which officials and members of institutions appointed by the National Congress, as of August 10, 1998, for a four-year term, would remain in office until January 2003. These decisions were subsequently revoked by the National Congress, although this did not result in the reinstatement of the dismissed members.

18. It is important to emphasize that the United Nations Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, participated in the settlement of this political and social crisis by issuing several recommendations and monitoring their implementation. At the time, he pointed out that the removal of the judges of the Constitutional Tribunal affected the right of defense and other principles of due process.[18] In relation to the dismissal of the Supreme Court judges, he recognized that the National Congress did not have the authority to remove judges, or to appoint substitutes.[19]

19. The importance of taking into account the context lies in the fact that is crucial when deciding which institutional design to implement in a certain place, in order to insulate the judiciary from undue influences.[20] Among the factors that can influence the effective

---

[18] Report E/CN.4/2005/60/Add.4 of March 29, 2005, p. 3. See also Reports A/60/321 of August 31, 2005 and A/HCR/11/41 of March 24, 2009.

[19] *Idem.*

[20] MacDonald, Roderick A. and Kong, Hoi, *op. cit*., p. 846. Similarly, Linares considers that an assessment of judicial independence in a country requires a qualitative knowledge of the political actors and of the relevant matters on which power is exercised. Linares, Sebastián, "*La independencia judicial: conceptualización y medición*",

exercise of judicial independence are: a) the presence of an authoritarian regime, b) the existence of cultural patterns that could undermine the usefulness of the courts as a mechanism for settling disputes, c) the commitment of civil society and politicians to judicial independence, and d) the judicial tradition, whether based on continental European or Common Law.[21] Indeed, it has been noted that, in Latin America in general, democracy continues to be weak and that strong executive powers have been a constant source of attacks on judicial independence.[22]

III. JUDICIAL INDEPENDENCE IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS RELATED TO THE REMOVAL OF JUDGES

20. In the case of the *Constitutional Court v. Peru*, the Inter-American Court considered the resolution issued by Congress on May 28, 1997, in which some judges of Peru's Constitutional Court were dismissed for alleged irregularities in the processing of a petition for clarification of a judgment that declared the non-applicability of Law No. 26,657. In this case, the Inter-American Court ruled that the guarantees of Article 8 of the American Convention provided for both in Part 1 and in Part 2, in addition to being applicable to criminal matters are applicable to matters of a civil, labor, fiscal or any other nature, and therefore due legal process is applicable.[23]

21. The Court also pointed out that any public authority, whether administrative, legislative or judicial which, through its decisions, determines individual rights and obligations, has the obligation to observe the guarantees of due legal process.[24] Similarly, it specified that one of the main purposes of the separation of powers is to guarantee judicial independence and, to this end, different strict procedures have been devised for both the appointment and removal of judges.[25] The authority that carries out this procedure must behave impartially and allow judges to exercise their right of defense.[26]

22. The Court also established that the independence of all judges presumes that there is an appropriate appointment process, a fixed term in the position and a guarantee against external pressures.[27]

23. As regards the impeachment process in this case, in which the sanction of dismissal[28] was applied, the Court indicated that "any person subject to a proceeding of any nature

---

in German Burgos S. (ed.), *Independence Judicial in America Latina. ¿De quién? ¿Para qué? ¿Cómo?* ILSA, Bogota, 1ª ed., 2003, pp. 121, 122.

21 MacDonald, Roderick A. and Kong, Hoi, *ibid.*

22 Horan, Jennifer E. and Meinhold, Stephen S., "Separation of powers and the Ecuadorian Supreme Court: exploring presidential-judicial conflict in a post-transition democracy", *The Social Science Journal*, 2012, vol. 29, pp. 232-234.

23 *Case of the Constitutional Court v. Peru. Merits, Reparations and Costs*. Judgment of January 31, 2001, Series C, No. 71, para. 70.

24 *Ibid.* para. 71.

25 *Ibid.* para. 73.

26 *Ibid.* para. 74.

27 *Ibid.* para. 75.

28 *Ibid.* paras. 67 and 68.

before an organ of the State must be guaranteed that this organ is competent, independent and impartial and that it acts in accordance with the procedure established by law for hearing and deciding the case submitted to it."[29]

24. As to the application for *amparo* filed against the decision on dismissal, it considered that this was not decided within a reasonable period, or by an impartial judge.[30]

25. In the *Case of Apitz Barbera et al. v. Venezuela*, the Inter-American Court considered the case of the dismissal of the provisional former judges of the First Court of Administrative Disputes, for having allegedly committed the inexcusable judicial error of granting an *amparo* that suspended the effects of an administrative act that had denied a request for the registration of a land sale. In this case, the Inter-American Court noted that the States are bound to ensure that provisional judges can be independent and therefore must grant them some sort of stability and permanence in office, for to be provisional is not equivalent to being discretionally removable from office. Similarly, it considered that provisional tenure should not imply any change in the safeguards instituted to guarantee the good performance of the judges and to benefit the parties to a case.[31] Indeed, the Inter-American Court considers that an adequate appointment process and a fixed term of office are some of the ways to guarantee the independence of judges.[32]

26. Furthermore, the Court reiterated that the authority in charge of the procedure to remove a judge must act impartially and allow the judge to exercise the right of defense[33], in order to be considered an independent tribunal.[34] Similarly, it recalled that *all the organs that exercise functions of a substantially jurisdictional nature* have the obligation to adopt just decisions based on full respect for the guarantees of due process established in Article 8 of the American Convention.[35]

27. Regarding the issue of judicial independence, the Inter-American Court emphasized its importance for the separation of powers, together with the State's obligation to guarantee its institutional aspect, in other words, in relation to the Judiciary as a system, as well as in connection with its individual aspect, that is to say, regarding the person of the specific judge.[36] At the same time, impartiality demands that the judge acting in a specific dispute approach the facts of the case subjectively, free of all prejudice, and also offer sufficient objective guarantees to exclude any doubts that might be harbored by the parties or by the community as to his or her lack of impartiality.[37]

28. The Inter-American Court also argued that under international law the valid grounds for suspending or removing a judge may include, *inter alia*, misconduct or incompetence. However, judges cannot be removed solely on the grounds that one of their decisions has

---

29 *Ibid.* para. 77.

30 *Ibid.* paras. 93 and 96.

31 *Case Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 43.

32 *Ibid.* para. 138.

33 *Ibid.* para. 44.

34 *Ibid.* para. 137.

35 *Ibid.* para. 46.

36 *Ibid.* para. 55.

37 *Ibid.* para. 56.

been overturned on appeal or review by a higher judicial body.[38] Similarly, it considered that the State failed in its duty to provide reasons for the penalty of dismissal from office, because it did not analyze whether or not the inexcusable judicial error constituted a disciplinary offense.[39]

29. In relation to the victims' request for evidence for the purpose of clarifying a decisive aspect of the case, the Inter-American Court considered that the disciplinary body, at the very least, should have ruled by allowing or denying that request for evidence or even by ordering the parties to submit such evidence.[40]

30. In the *Case of Reverón Trujillo v. Venezuela*, the Inter-American Court considered the arbitrary dismissal from office of a provisional judge, on February 6, 2002. On October 13, 2004 the Political-Administrative Chamber of the Supreme Court of Justice ordered the annulment of the act of dismissal, considering that it was not lawful, but it did not order the alleged victim's reinstatement in office, or the payment of the salaries and social benefits she did not receive.

31. In this case, the Inter-American Court pointed out that judges, unlike other public officials, enjoy strengthened guarantees so as to ensure the necessary independence of the judiciary. It reiterated the importance of judicial independence for the separation of powers, and for the State's obligation to guarantee both the institutional aspect of the judicial power as a system, and also in connection with its individual aspect, that is, with regard to the specific judge as an individual.[41]

32. The Court also emphasized the guarantees derived from judicial independence: an appropriate appointment process, tenure in office and guarantees against external pressures.[42] It recalled that the authority in charge of the process for the dismissal of judges must act independently and impartially in the proceedings established for that purpose and allow the exercise of the right of defense.[43] Tenure in office is a guarantee of judicial independence which, in turn, is comprised of the following guarantees: continuance in office, an appropriate system of promotion and no unjustified dismissal or discretionary removal.[44] Furthermore, the guarantee of tenure must allow for the reinstatement of a judge who has been arbitrarily removed from office.[45] This does not mean to say that provisional or temporary judges should have unlimited tenure in office, but rather that they should be guaranteed a certain stability in their positions.[46] In other words, they must have security of tenure during a particular period in order to protect them from the pressures of different sectors.[47]

---

38 *Ibid.* para. 84.

39 *Ibid.* paras. 86 and 91.

40 *Ibid.* para. 94.

41 *Case Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 67.

42 *Ibid.* para. 70.

43 *Ibid.* para. 78.

44 *Ibid.* para. 79.

45 *Ibid.* para. 81.

46 *Ibid.* paras. 115 and 116.

47 *Ibid.* para. 117.

33. Similarly, the Inter-American Court argued that Article 8(1) establishes that "[e]very person has the right to a hearing […] by an independent judge or tribunal […]." The wording of this Article indicates that the subject of that right is the defendant, the person facing the judge who will decide the case submitted to him. Two obligations arise from this right. The first pertains to the judge and the second to the State. A judge has the obligation to be independent, a duty that is fulfilled only when he acts according to—and guided by — the Law. The State, for its part, has the obligation to respect and guarantee the right to be heard by an independent judge, pursuant to Article 1(1) of the American Convention. The obligation to respect this right entails the negative obligation of public authorities to refrain from any undue interference with the Judiciary or with any of its members, that is, with an individual judge. The obligation to guarantee this right entails preventing such interference and investigating and punishing those who commit these acts. Moreover, the duty of prevention involves the adoption, pursuant to Article 2 of the Convention, of an appropriate regulatory framework that guarantees judges an appropriate appointment process, tenure in office and other conditions.

34. Now, from the State's aforementioned obligations other rights arise, in turn, for judges or for other citizens. For example, the guarantee of an appropriate appointment process for judges necessarily involves the right of citizens to have access to public office under conditions of equality; the guarantee of not being subject to discretionary removal implies that disciplinary and punitive processes for judges must necessarily respect the guarantees of due process and must offer them an effective remedy; the guarantee of tenure in office must be reflected in adequate conditions of service for judges, in which transfers, promotions and other conditions are sufficiently controlled and respected.

35. Finally, in the *Case Chocrón Chocrón v. Venezuela*, the Inter-American Court considered the arbitrary dismissal of a temporary judge of the First Instance Court of the Caracas Metropolitan Area Criminal Judicial Circuit, without affording her the minimum guarantees of due process and without adequate justification, without giving her an opportunity to be heard and to exercise her right of defense, and without allowing her any effective judicial remedy against the alleged violations of her rights, all as a consequence of the absence of guarantees in the transition process of the Judiciary

36. The Inter-American Court reiterated that one of the main objectives of the separation of powers is to guarantee the independence of judges. The purpose of this protection is to prevent the judicial system in general and its members in particular from being subject to possible undue restrictions in the exercise of their duties, imposed by bodies outside the Judiciary or even by those judges who perform review or appellate functions.[48]

37. The Court emphasized, once again, the guarantees stemming from judicial independence: an appropriate appointment process, secure tenure in office and guarantees against external pressures. It also reaffirmed that the authority in charge of removing a judge must act independently and impartially in the procedure established for that purpose and allow the exercise of the right of defense. This is so, because the discretionary removal of judges raises the objective doubt of the observer regarding the real possibility of judges deciding specific disputes without fear of reprisals.[49]

38. The Inter-American Court reiterated that, although provisional and permanent judges must have the same guarantees, these guarantees do not entail equal protection for both

---

[48] Case *Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 1, 2011. Series C No. 227, para. 97.

[49] *Ibid.* para. 99.

types of judge, because provisional and temporary judges are, by definition, elected in a different way and do not have indefinite tenure in their post. In this regard, it recognized that provisional and temporary judges have not demonstrated the qualities and aptitude to exercise their duties with the guarantees of transparency imposed by competitive examinations. However, 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."

39. The Inter-American Court further indicated that just as the State is required to guarantee an appropriate appointment procedure for provisional judges, it must also guarantee them certain tenure in their posts. Thus, in the case of provisional judges, the guarantee of tenure translates into a requirement that they enjoy all the inherent benefits of secure tenure until the resolutive condition occurs that puts a legal end to their mandate.

40. Furthermore, the Inter-American Court stated that the tenure of provisional judges is closely related to the guarantee against external pressures because, if temporary judges do not have security of tenure during a pre-determined period, they will be vulnerable to pressure from different sectors, particularly those who have the authority to decide on dismissals or promotions in the Judiciary.[50]

41. Also, the Inter-American Court held that provisional appointments must be the exception and not the rule, and that provisional appointments cannot be prolonged indefinitely.[51]

42. Similarly, the Court stated that any public authority, whether administrative, legislative or judicial, whose decisions may affect the rights of individuals are required to adopt said decisions with full respect for the guarantees of due legal process. It also reiterated that any State body that exercises function of a *substantially jurisdictional nature*, has the obligation to adopt decisions that respect the guarantees of due legal process under the terms of Article 8 of the American Convention.[52]

43. The Inter-American Court further emphasized that the authority to annul the appointment of judges based on "comments" must be minimally justified and regulated, at least specifying the facts that support those comments, and that the respective grounds are not of a disciplinary or punitive nature. If a disciplinary sanction is involved, the need for justification would be even greater, given that 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.[53]

44. In the Judgment that prompts this reasoned opinion, the Inter-American Court also considered its jurisprudential position on judicial independence[54] with reference to the standards issued by the Human Rights Committee and the United Nations Basic Principles

---

50 *Ibid.* paras. 104 to 106.

51 *Ibid.* para. 107.

52 *Ibid.* para. 115.

53 *Ibid.* para. 120.

54 Paragraph 144 of the Judgment establishes that "In its case law, the Court has indicated that the scope of judicial guarantees and effective judicial protection for judges must be examined in relation to the standards on judicial independence."

on the Independence of the Judiciary, the criteria of the European Court of Human Rights and the Council of Europe's recommendations on the Independence, Efficiency and Role of Judges, as well as the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.[55]

IV. DIFFERENT CONCEPTS OF JUDICIAL INDEPENDENCE: INSTITUTIONAL AND PERSONAL

45. There are different concepts of judicial independence which the Inter-American Court has developed in its doctrine and in its case law. Here, it is important to focus on the aspects related to its institutional and personal aspects.

46. According to Linares "we can analytically distinguish two aspects of judicial independence: one negative and another positive. The first involves the ability to avoid different sources of coercion and loyalties, while the second involves the application of the law—and all its sources— in deciding a specific case."[56]

47. For his part, Chaires distinguishes between objective-institutional independence and subjective-functional independence. [57] The first is associated with the absence of external pressures with respect to the judiciary.[58] The second concerns the mechanisms aimed at ensuring that a judge's action is, as far as possible, consistent with the law.[59]

48. Judicial independence has also been conceived as a value or as a guarantee. In its characterization as a value, its significance coincides with what is termed "functional independence" (also known as "substantive" or "decisional"). This concept of judicial independence translates into the basic rule of the system whereby a judge, in exercising his jurisdictional role, must be subject only to the law, i.e. to the current system of sources of law. On the other hand, in its characterization as a guarantee, judicial independence embodies a set of juridical mechanisms which seek to safeguard and fulfill the value mentioned, which is protected by other principles such as the separation of powers, the natural judge, impartiality, exclusivity, etc.[60]

49. Within the concept of judicial independence as a guarantee, we can identify several facets. The first of these is the so-called "personal independence" which protects each judge as an individual and embodies the characteristics of his constitutional status, protecting him from possible pressures by the State's political bodies —especially Parliament and the Executive Branch. Also, in more recent times, a guarantee of judicial independence in its "collective" and "internal" aspects has emerged. Collective judicial independence tends to protect the Judiciary as a whole against the other powers of the State, while the internal aspect protects the judge as an individual even from the rest of the judicial system.[61]

---

55 Paragraphs 144 to 154 of the Judgment.

56 Linares, Sebastián, *op. cit.,* p. 116.

57 Chaires Zaragoza, Jorge, *op. cit.*, p. 531.

58 *Ibid.* p. 534.

59 *Ibid.* p. 536.

60 *Cf.* Díez Picazo, *op. cit*., p. 20 and 21.

61 *Cf.* Díez Picazo, *op. cit.,* p. 21.

50. With respect to the Inter-American Court's case law —as is evident in the preceding section— this contemplates both the independence of the Judiciary as an expression of the principle of the separation of powers in a democratic system, and the independence of judges as their right to exercise their duties and even as a right of citizens to have access to justice and judicial guarantees.

51. Thus, as stated in the preceding section, the Inter-American Court has established that one of the main purposes of the separation of the branches of government is to guarantee the independence of judges. [62] This autonomous exercise must be guaranteed by the State, both in its institutional aspect, in other words, in relation to the Judiciary as a system, as well as in connection with its individual aspect, that is to say, regarding the person of the specific judge. The purpose of protection is to prevent the judicial system in general and its members in particular from being subject to possible undue restrictions in the exercise of their duties, imposed by bodies outside the Judiciary or even by those judges who perform review or appellate functions.[63] The objective of the principle of separation of powers is accomplished in two ways, corresponding to the two aspects mentioned: the institutional and the individual. When the State is required to protect the Judiciary as a system, there is a tendency to guarantee its external independence. When it is required to provide individual protection to a specific judge, there is a tendency to guarantee its internal independence.

52. Similarly, the Inter-American Court has held that Article 8(1) of the Convention acknowledges that "[e]very person has the right to a hearing […] by an independent judge or tribunal […]." The terms in which this article is worded indicate that the subject of that right is the defendant, the person facing the judge who will decide the case submitted to him.[64] Two obligations emerge from that right, referred to in the study of the Inter-American Court's case law: the first corresponding to the judge and the second to the State.[65]

53. Now, the Inter-American Court has also stated that the aforementioned obligations of the State result, at the same time, in rights for judges or for all other citizens. For example, the guarantee of an adequate appointment process necessarily involves the right of citizens to have access to public service in equal conditions; the guarantee that they will not be subject to discretionary removal implies that the disciplinary and punitive processes applicable to judges must necessarily respect the guarantees of due process and must offer those affected an effective remedy; the guarantee of tenure must translate into adequate conditions of service for judges, in which transfers, promotions and other conditions are sufficiently well-controlled and respected.[66]

54. In this specific case, the Inter-American Court considered that "the objective dimension is related to aspects that are essential for the rule of law, such as the principle of separation of powers, and important role played by the Judiciary in a democracy. Consequently, this objective dimension transcends the figure of the judge and collectively

---

[62] *Case of the Constitutional Court v. Peru. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, para. 73.

[63] *Case Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182. para. 55.

[64] *Case Reverón Trujillo v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 148.

[65] *Ibid.* para. 146.

[66] *Ibid.* para. 147.

affects society as a whole. Likewise, there is a direct connection between the objective dimension of judicial independence and the right of judges to have access to and remain in office, under general conditions of equality, as an expression of their guaranteed tenure."[67] Thus, "when a judge's tenure is affected in an arbitrary manner, the right to judicial independence enshrined in Article 8(1) of the American Convention is violated, in conjunction with the right to access and remain in public office, on general terms of equality, established in Article 23(1) (c) of the American Convention."[68] On this point it is important to stress that this interactive interpretation between Articles 8(1) and 23(1)(c) of the American Convention allows the Inter-American Court to complement its jurisprudence in the case of *Reverón Trujillo* by specifying that the institutional guarantee of judicial independence, derived from Article 8(1) of the American Convention, translates into a subjective right of the judge to not have his tenure in public office affected in an arbitrary way, within the context of Article 23(1)(c) of the Pact of San Jose.

V. THE INSTITUTIONAL ASPECT OF JUDICIAL INDEPENDENCE IN THIS CASE AND ITS RELATIONSHIP TO DEMOCRACY

55. In this case, the Inter-American Commission argued that in the absence of relevant procedures clearly established by law, it could be inferred that the National Congress acted without offering the necessary guarantees of independence in dismissing the victims. For their part, the representatives concluded that the removal of the judges before completion of their constitutional term, and by decision of an incompetent body, constituted a violation of judicial independence. They also pointed out that, having assumed the role of an "ad hoc" judge, Congress had an obligation to guarantee a person's right to be heard by an independent judge. Therefore, they argued that the National Congress could hardly guarantee independence, being a political body by nature, and even less so in this case because it responded to the interests of the government and parliamentary majorities.

56. As to the nature of the resolution to dismiss the judges, the Inter-American Commission pointed out that these types of decisions, issued in the absence of a precise legal framework, foster doubts about the ends they pursue, resulting in an implicit sanction of the judicial officials in reprisal for the manner in which they had discharged their duties. In other words, the dismissal was an action aimed at sanctioning the conduct or performance of the Supreme Court justices since the provision invoked by the National Congress was not applicable to the victims. For their part, the representatives argued that the process which concluded with the judges' dismissal was, in reality, punitive because during the parliamentary sessions Congress used arguments related to the exercise of public office by Ecuador's highest court. With this action, the National Congress sought to give the appearance that this was not a punitive procedure, but rather the application of a provision that was not observed, thereby equating the judges to any other public official with a fixed term and designated by Congress.

57. Contrary to what the State claimed, in this case no legal grounds were found for the termination of the judges' term in office. This claim would even be inconsistent with the State's expression of acquiescence at the public hearing in this case, given that the decision

[67] Para. 154 of the Judgment.

[68] *Ibid.* para. 155.

taken by the National Congress could indeed have been understood as an "*ad-hoc* procedure of a punitive nature."[69]

58. Bearing in mind the foregoing, in its Judgment the Inter-American Court concluded that Congress was not authorized to dismiss the Supreme Court justices, given that the new Constitution had removed its power to do so. It also noted that a proceeding already existed which stipulated the process and grounds on which a judge could be dismissed. Thus, it determined that "it is evident that Congress was not the competent authority to decide on the dismissal of Supreme Court judges."[70] Then, in order to determine the scope of the violations in this case, the Inter-American Court analyzed the aforementioned "ad-hoc" mechanism used by Congress to dismiss the judges.[71]

59. The Inter-American Court subsequently determined that the judges were dismissed by means of a resolution of the National Congress, which lacked the proper jurisdiction to do so, through the erroneous and arbitrary application of a legal provision and without being granted the right to be heard. The resolution through which the judges were dismissed was the result of a political alliance that was intended to establish a Supreme Court sympathetic to the political majority at that time, and to impede criminal proceedings against the acting President and a former President. The Court confirmed that Congress's resolution was not adopted by virtue of an exclusive assessment of specific factual evidence in order to ensure full compliance with the existing legislation, but that it pursued a completely different objective, *related to the abuse of power.*[72]

60. Indeed, as stated in the Judgment, the main violations in this case were due to a totally unacceptable and untimely political action,[73] against a basic pillar of a democratic State governed by the rule of law, that is, against a truly independent Judiciary and Supreme Court of Justice. The action which undermined this essential principle of constitutional democracy, showed a disregard for all the manifestations of that independence and, therefore, for the principle of separation of the branches of government, which also forms the basis for the full protection of individual human rights. A single fact proven in this matter is sufficient to show Congress's abuse of power: the fact that within a period of 14 days, it dismissed not only the Supreme Court, but also the Constitutional Tribunal and the Electoral Tribunal of Ecuador, as a consequence of the political and institutional context in this case, within a framework clearly contrary to the democratic rule of law.

61. This is the conclusion reached in the Judgment, to which this opinion refers. Thus, in paragraph 179, it cites Article 3 of the Inter-American Democratic Charter, concluding that the dismissal of all the members of the Supreme Court of Justice implied the destabilization of the democratic order in Ecuador, because a rupture occurred in the separation and independence of the branches of government when an attack was made on the country's three High Courts at that time.

62. However, I consider that the Judgment should have placed greater and more detailed emphasis on the antidemocratic attack proffered by the political powers against the Supreme Court of Justice in this case. Although the Inter-American Court declared the

---

69 *Ibid.* para. 13.

70 *Ibid.* para. 162.

71 *Ibid.* paras. 163 to 169.

72 *Ibid.* para. 177.

73 *Ibid.* para. 175.

violation of Article 8(1) of the American Convention, for infringing the right to a hearing and the guarantee of a competent tribunal to the detriment of the 27 victims, "because they were dismissed from office by an incompetent body that did not grant them an opportunity to be heard";[74] and Article 8(1) in conjunction with Article 23(1)(c) "given the arbitrary effects on the tenure in office of the judiciary and the consequent effects on judicial independence,"[75] it should also have elaborated on the violation of Article 8 from the perspective of the safeguards that the Inter-American System affords to the democratic State governed by the rule of law and, in particular, to the independence of judges who operate it and who make it resistant to the attacks of the political powers.

63. Likewise, the Judgment should have included a more exhaustive jurisprudential analysis of the Inter-American Democratic Charter itself, specifically in relation to Article 3. The Inter-American Court's contentious role consists of settling disputes submitted to it by the Inter-American Commission and the parties in a particular case; clearly, it also has the mission to act as guarantor of the principles that comprise the Inter-American System of Human Rights. This mission is accomplished by providing guidance through the interpretation of the meaning of those principles, in order to clarify them. Therefore, ruling on a dispute between the parties and the scope of the law is one of the tasks of the Inter-American jurisdiction, but it is not the only one: the Court also has an interpretive role as regards the American Convention, one that increases in importance given the very limited number of cases it hears.

64. Based on the proven facts it is clear that a multi-frontal attack was made on judicial independence as protected under the American Convention and reinforced by the Inter-American Democratic Charter, specifically in relation to the institutional facet of the independence of the judges of Ecuador's Supreme Court of Justice. Thus, the institutional independence of the Supreme Court of Justice, in its role as guarantor of its own domestic democratic system, was based on Ecuador's constitutional and legal framework in force at the time when the judges dismissed by the National Congress were originally designated. In this regard, the Court should have linked these aspects more firmly with the Inter-American jurisprudence on judicial independence, already mentioned in this opinion, and should have emphatically condemned the flagrant abuse of political power that occurred in this case against the Supreme Court of Justice and its independence.

65. Indeed, since the Constitution of the Republic of Ecuador of August 11, 1998, contained provisions guaranteeing judicial independence, because it recognized the principle of the separation of powers and the independence of the judiciary in Article 199.[76] Similarly, it established that in public law the branches of government can only exercise the powers

---

74 *Ibid.* para. 180.

75 *Idem.*

76 Art. 199. - The agencies of the judicial branch shall enjoy independence in the exercise of their duties and powers. No function of the State may interfere in matters of their competence. Judges shall be independent in the exercise of their jurisdictional powers, even in relation to the rest of the judicial organs; they shall be subject only to the Constitution and to the law. *Cf.* Constitution of the Republic of Ecuador of August 11, 1998.

established by the Constitution.[77] Moreover, that Constitution did not grant the National Congress the authority to decide matters pertaining to the judiciary.[78]

66. Furthermore, as the proven facts in this case show, Article 129 of the Reforms to the Constitution issued on July 23, 1997, was essentially reproduced in Article 202 of the Constitution adopted by the National Constituent Assembly in 1998. Regarding the appointment and term of office of the judges of the Supreme Court of Justice, it maintained the indefinite term of appointment and the cooptation system to fill vacancies.[79] The aforementioned Article 202 established the following:

> Article 202. The judges of the Supreme Court of Justice shall not be subject to a fixed period in their positions. Their duties shall be terminated for the reasons set forth in the Constitution and in law.
>
> When a vacancy arises, the plenary of the Supreme Court of Justice shall appoint the new judge, with a vote in favor of two-thirds of its members, with due consideration of the criteria of professionalism and judicial career, as provided for by law.
>
> Appointments shall be made, alternately, from professionals who have served in the judiciary, as university professors or in free professional exercise, in that order.

67. As to the dismissal of certain authorities, the Constitution's transitory provisions established that:

> Twenty-five- Officials and members of agencies appointed by the National Congress and the Comptroller General of the State for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January.[80]

68. As stated in the Judgment, the Supreme Court of Justice, in exercise of its constitutional[81] and legal[82] authority, regulated some aspects of the cooptation procedure in order to ensure effective participation by civil society organizations. It established that, should a vacancy occur, the President of the Supreme Court of Justice would issue a public appeal calling on civil society and the nominating bodies to submit candidates. It also determined that a list of twelve public and private institutions would be drawn up so that these could nominate candidates and submit personal applications. Subsequently, the

---

[77] Art. 119.- The institutions of the State, its agencies and branches and its public officials shall not exercise powers other than those established by the Constitution and by law, and have the duty to coordinate their actions in order to achieve the common good. Those institutions specified by the Constitution and by law shall enjoy autonomy in their organization and functions. *Cf.* Constitution of the Republic of Ecuador of August 11, 1998.

[78] Art. 130.-The National Congress shall have the following duties and powers: 1. To swear into Office the President and Vice President of the Republic proclaimed elect by the Supreme Electoral Tribunal. To receive their resignations; to dismiss them, <u>following impeachment</u>; to establish their physical or mental incapacity or abandonment of their duties, and to declare them suspended. […] 4. To reform the Constitution and <u>interpret it in a generally binding manner</u>. 5. To issue, amend and repeal laws <u>and interpret them in a generally binding manner</u>. […] 8. To oversee the actions of the Executive Branch and of the Supreme Electoral Tribunal and request any information considered necessary from public officials. 9. At the request of at least one-quarter of the members of the National Congress, to proceed to the impeachment of the President and Vice-president of the Republic; of Ministers of State; of the Comptroller General and the Attorney General; of the Ombudsman and of the Prosecutor General; of the superintendents, of members of the Constitutional Court and of the Supreme Electoral Tribunal, during the exercise of their duties and until one year after termination. *Cf.* Constitution of the Republic of Ecuador of August 11, 1998.

[79] *Cf.* Constitution of the Republic of Ecuador of August 11, 1998.

[80] *Cf.* Constitution of the Republic of Ecuador of August 11, 1998.

[81] *Cf.* Constitution of the Republic of Ecuador of August 11, 1998, art. 202.

[82] *Cf.* Resolution Supreme Court of Justice of September 22, 2003.

plenary of the Supreme Court of Justice would appoint a Committee made up of three judges to examine the documentation and present a report on the suitability of the nominees. Furthermore, it ordered that a list of nominees be published so that these could be challenged by civil society. If a challenge should be made, the person challenged would be afforded an opportunity to defend himself.[83] The Commission would then submit a list of eligible candidates and the plenary would vote for the new judge in a public session.[84]

69. On September 22, 2003, the Supreme Court [85] decided to regulate the procedure to hear complaints made against judges.[86] First, it determined that a Commission would be appointed to conduct the procedure, recognized the judge's right to defend himself and granted the Commission the power to present a report before the plenary of the Supreme Court and to decide by the two-thirds of the votes regarding the judge's dismissal.[87]

70. Thus, the National Congress flagrantly disregarded this constitutional and legal system for the lawful removal from office of the Supreme Court justices, in each and every one of its phases and requirements, as evidenced from the proven facts in this case.

71. Indeed, referring only to the culmination of that process by the National Congress, Resolution No. R-25-181, which dismissed the entire Supreme Court of Justice, contains the following 'whereas´ clauses:

> That the current Constitution of the Republic, in force since August 10, 1998, provides in its 25th Transitory Provision that: ´The officials and members of agencies appointed by the National Congress and the Comptroller General of the State for a four-year period as of August 10, 1998, under the provisions of this Constitution, shall remain in those positions until January 2003';
>
> That the current judges of the Supreme Court of Justice were appointed by the National Congress under the 16th Transitory Provision of the previous Constitution of the Republic, published in the supplement of the Official Record No. 142 of September 1, 1997, and so are currently under an expired mandate for not having resigned in January 2003;
> That the Constitution currently in force does not establish a procedure for electing the thirty-one judges of the Supreme Court of Justice, establishing only in Article 202, the proceeding for appointing a judge when a vacancy arises. Also, the Organic Law of the Judiciary, in Article 12 currently in effect, establishes the National Congress as the nominating authority for judges of the Supreme Court of Justice;
>
> That the State has the duty to guarantee the operation of the democratic system and the administration of justice free of corruption.[88]

72. To subsequently declare:

> TO TERMINATE the functions of the judges of the Supreme Court of Justice and their respective deputy judges, who failed to resign from office in January 2003, as provided for in Transitory Provision 25 of the current Constitution; and, TO APPOINT in their place, the jurists named below, who shall take the oath of office before the Second Vice President of the National Congress, shall not

---

83 *Cf.* Rules for the exercise of the cooptation system of September 30, 2003.

84 *Cf.* Rules for the exercise of the cooptation system of September 30, 2003.

85 In this regard, Article 13(1) of the Organic Law of Judiciary of September 11, 1974 states that the Supreme Court has the power to: "Appoint or remove the judges of the Superior Courts, and to dismiss judges, officials and employees of the judiciary for gross misconduct or serious incompetence in the fulfillment of their duties or abandonment of the post for more than eight days" "The Supreme Court shall regulate the trial process."

86 *Cf.* Resolution Supreme Court of Justice of September 22, 2003 (file of attachments to the brief of pleadings and motions, volume I, page o 2279).

87 *Cf.* Resolution Supreme Court of Justice of September 22, 2003.

88 Resolution 181 of December 8, 2004.

be subject to fixed terms for the duration of their office, and shall be subject to termination on the grounds prescribed by the Constitution and by law: […]

Within a period not exceeding fifteen days, the National Council of the Judiciary shall be restructured and shall submit, to the National Congress, shortlists of three names for the election of the Minister Prosecutor General of the Nation, the Superior Courts of Justice and the provincial prosecutors.

This resolution shall enter into force immediately, regardless of its publication in the Official Record.[89]

73. It should be noted that this resolution was approved with 52 votes in favor and 3 against. Immediately after adopting the resolution, and without it being included on the agenda, a motion for constitutional reform was presented so that Congress would regain its jurisdiction to impeach the Supreme Court of Justice.[90] This motion was approved by 34 votes in favor.[91]

74. According to the proven facts, the judges found out about their dismissal in several ways: some through the press, others through television news broadcasts and others through rumors circulating in the Court. The dismissed Supreme Court justices refused to leave their offices, considering that the National Congress resolution had no "legal validity whatsoever." Consequently, on December 9, 2004, the National Police proceeded to remove the President of the Supreme Court of Justice and some judges who accompanied him from the Palace of Justice. Also, other judges and employees were prevented from entering the building.

75. Once installed, the new Supreme Court of Justice adopted a number of decisions of major political importance to the dominant political force.[92] These decisions included the annulment of the proceedings against former Presidents Abdalá Bucaram and Gustavo Noboa, and against former Vice-president Alberto Dahik.[93]

76. Thus, this case reveals the circumstances in which the dismissal of the Supreme Court justices was confirmed, undermining their tenure in office, in the context of external pressures, with effects on judicial independence in its institutional and personal aspects. The proven facts, which reveal a veritable political onslaught and an attack on the basic principles of a democratic State governed by the rule of law and upheld by the Inter-American Human Rights System, highlight the need to define the limits imposed by this international system, not only regarding judicial independence in its personal aspect, but also in its institutional aspect, in favor of the entire group of 27 victims who comprised the Supreme Court of Justice and who were unlawfully dismissed by the National Congress.

VI. THE LACK OF ANALYSIS OF ALLEGED VIOLATIONS OF VARIOUS JUDICIAL GUARANTEES AND OF THE PRINCIPLE OF LEGALITY

A) Lack of analysis of other judicial guarantees (especially those provided for in Article 8(2) in conjunction with Article 1(1) of the American Convention)

---

89 Resolution 181 of December 8, 2004.

90 *Cf.* Record 24-001 of December 8, 2004.

91 *Cf.* Record 24-001 of December 8, 2004.

92 *Cf.* Report Special Rapporteur on the independence of the judges and lawyers of August 31, 2005.

93 *Cf.* Report Special Rapporteur on the independence of the judges and lawyers of August 31, 2005.

77. In its Judgment, the Inter-American Court omitted an analysis of other judicial guarantees enshrined in Article 8, invoked by the Inter-American Commission and referred to by the victims' representatives, considering that "having determined that the body that carried out the process was not competent, it is unnecessary to examine the other guarantees established in Article 8(1) of the Convention"[94]; and that, given the effects on the separation of powers and the arbitrary nature of the action by Congress, the Inter-American Court considered that "it is unnecessary to analyze in detail the arguments of the parties as to whether or not the decision to dismiss the judges was an action of a punitive nature, and therefore it will not examine its alleged effects on Article 8(2) of the Convention, or other aspects related to the possible scope that the principle of legality (Article 9 of the Convention) might have had in this case."[95]

78. In my opinion, the Inter-American Court could have analyzed this point and taken advantage of this opportunity to consolidate its case law on matters of due process applicable to procedures for the removal of judges. Indeed, just as the Inter-American Court analyzed the violations of the right to a hearing and some components of the right of defense (in light of Article 8(1) of the Pact of San Jose), the Court could also have conducted a specific analysis of the violation of other rights established in Article 8(2) of the American Convention, expressly referred to by the Inter-American Commission and argued by the victims' representatives. This, in consideration of the few opportunities that the Court has to rule on this matter and the institutional weakness that on occasion affects the region's judiciary and constitutional courts, when assailed by the political powers, a situation that unfortunately is not infrequent.

79. As I stated previously (*supra* para. 63), the Inter-American Court currently has an interpretative role *erga omnes* of the American Convention which extends beyond the scope of a particular case. This is of particular importance considering the limited number of cases it decides, owing to the design of the Inter-American System of Human Rights; the situation is very different in the European System, especially since the entry into force of Protocol 11 of the European Convention on Human Rights, which abolished the European Commission, allowing direct access to the Strasbourg Court.[96] Thus, under the inter-American system of justice, the extension of the "conventional rule interpreted"[97] beyond a particular case (*res interpretata*) takes on particular significance, constituting yet another element in the construction of a *ius constitutionale commune americanum,* or at least - and for now- *latinoamericanum*—[98], in order to guarantee a minimum standard for the regional applicability of the American Convention in favor of human rights and human dignity.

80. It should not go unnoticed that the Judgment itself, in analyzing the State's partial acknowledgement of international responsibility, considers that "disputes persist on other

---

94 Para. 181 of the Judgment.

95 *Idem.*

96 In the last Annual Report for 2012, the European Court of Human Rights had 128,100 cases pending resolution. *Cf. European Court of Human Rights. Annual Report 2012*, Strasbourg, 2013, pp. 4, 6, 7 and 150.

97 *Cf. Case Gelman v. Uruguay. Monitoring Compliance with Judgment*. Order of March 20, 2013, para. 67 and following paragraphs, the Inter-American Court established that the "conventional rule interpreted" is related either to the particular case (*res judicata*) or to general effects for the other States Parties to the American Convention (*res interpretata*). This is of particular importance for the "conventionality control" that should be exercised by all national authorities, in line with their respective competencies and the corresponding procedural regulations, and is also useful in the implementation of the Inter-American Court's decisions.

98 *Cf.* von Bogdandy, Armin, Morales Antoniazzi, Mariela, and Ferrer Mac-Gregor, Eduardo (coords.), *Ius Constitutionale Commune in Human rights in America Latina,* Mexico, Porrúa-IMDPC-Max Planck Institute for Comparative Public Law and International Law, 2013.

aspects related to Article 8 of the Convention."[99] Consequently, this should have provided an additional incentive to rule on their merits, as it was also probable that the Judgment would have autonomously declared the violation of the rights not analyzed.

81. Similarly, the Judgment notes that "although it has already been stated that the National Congress did not have jurisdiction to dismiss the Supreme Court judges from office, bearing in mind that the State acknowledged this point and that it is one of the guarantees established in Article 8(1) of the Convention, the Court shall proceed to analyze it". In other words, the Inter-American Court deemed it appropriate to analyze the right to a hearing enshrined in that article of the Pact of San Jose but, by contrast, did not do so in relation to other judicial guarantees contained in Article 8(2) thereof.

82. In this case, precisely because the Judgment expressly described the resolution adopted by the National Congress as "unacceptable" and an "abuse of power"[100], the Inter-American Court should have ruled on the other arguments concerning the rights under Article 8(2) of the Convention. It should also be recalled that in other cases where the Inter-American Court has declared a specific violation, this has not prevented it from considering it pertinent to specify other aspects of the State's international responsibility and, on occasion, to declare additional or complementary violations.[101] This was justified taking into account the specificities of the case. Given the "untimely" dismissal of Ecuador's High Courts and its dramatic effects on the institutional facet of judicial independence declared in the Judgment, I consider that the Inter-American Court should not have avoided responding to those arguments related to conventional due process, involving the dismissal of the Supreme Court justices, with special significance for the democracy defended by the Inter-American System.[102]

83. The need for exhaustive arguments would have been especially relevant, since it was highly probable that the Court would have reached a separate declaration on the violation of these rights had these been considered. We must not forget, also, that the right to due process is really comprised of a set of inseparable and requisite elements;[103] therefore respect for these is inconceivable if they are not satisfied, fully and in their totality. In this regard, the analysis of the other judicial guarantees allegedly violated, would have possibly established more robust standards on due process for judges or magistrates, subjected to

---

99 Paragraph 20 of the Judgment.

100 Paragraph 177 of the Judgment.

101 In the *Case of Kimel,* the Inter-American Court issued a ruling on the proportionality of the restriction of the victim's freedom of expression. Although in its analysis of strict legality the Inter-American Court declared the respective violation, it included an analysis of other components of the principle proportionality. *Cf. Case of Kimel v. Argentina. Merits, Reparations and Costs.* Judgment of May 2, 2008 Series C No. 177, paras. 81-94. Also, in the case of the *Pueblo Bello Massacre*, even though the Inter-American Court pointed out that the military criminal courts did not have jurisdiction to hear the case, it nevertheless analyzed the fact that the military jurisdiction failed to act with due diligence in the investigation. The Inter-American Court stated that the "few investigatory actions, and the speed with which they were carried out, reflect little or no interest of the military criminal jurisdiction in carrying out a serious and exhaustive investigation into the events that occurred." It should be emphasized that the Inter-American Court also analyzed the effectiveness of the intervention of other courts, such as the disciplinary tribunal. *Cf. Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, paras. 192-204.

102 It should not be forgotten that the Preamble of the American Convention establishes its "intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."

103 *Cf.* García Ramírez, Sergio, *El debido proceso. Criterios de la jurisprudencia interamericana*, Mexico, Porrúa, 2012, p. 23.

dismissal proceedings at the hands of the national Congresses, which should never be considered exempt from compliance.

B) Lack of analysis of the principle of legality (Article 9 in conjunction with Article 1(1) of the American Convention)

84. While I concur with the other members of the Inter-American Court regarding all the operative paragraphs of this Judgment, in the following lines I wish to make some clarifications, in the same tone as the points discussed previously regarding the analysis of Article 8(2) of the Convention, regarding the possibility of having analyzed the possible violation of the principle of legality (Freedom from Ex Post facto Laws) provided for in Article 9 of the American Convention.

85. First, it should be noted that in this case the State of Ecuador acknowledged the violation of Article 9 of the Convention in the following terms:

> Ecuador acknowledges [...] principle of legality in Article 9 of the American Convention, inasmuch as the law contained no specific grounds for removing the judges from office, and that the National Congress's resolution could have been understood as an *ad-hoc* proceeding of a punitive nature. (Underlining added).

86. It is true that the State's declaration made it difficult to understand the scope of its acknowledgment of international responsibility on this point, particularly because the Inter-American Court considered it proven that at the time of the facts, it was the Supreme Court of Justice itself which had the authority to investigate and potentially sanction any judges who might have committed disciplinary infractions. In other words, domestic law did provide grounds and procedures for the removal of judges.

87. Despite the State's acquiescence, in its Judgment the Inter-American Court decided not to analyze whether the National Congress's decision to terminate the Supreme Court justices on December 8, 2004 was of a punitive nature and, therefore, it did not examine the arguments presented by the Inter-American Commission and the victims' representatives in relation to Article 9 of the Convention. In that regard, as I mentioned previously (*supra* para. 77), paragraph 181 of the Judgment stated that:

> [h]aving determined that the body that undertook the process was not competent, it is unnecessary to examine the other guarantees established in Article 8(1) of the Convention. Therefore, the Court will not examine the arguments presented by the Commission and the representatives regarding the alleged violation of other judicial guarantees. Similarly, given the effects on the separation of powers and the arbitrary nature of the action by Congress, the Court considers it unnecessary to analyze in detail the arguments of the parties as to whether or not the dismissal decision was an action of a punitive nature, and will therefore not examine the alleged effects of Article 8(2) of the Convention, as well as other aspects related to the possible scope that the principle of legality (Article 9 of the Convention) would have had in this case.

88. It should also be emphasized that the Inter-American Court concluded that the events that took place constituted an "abuse of power". Indeed, paragraph 177 of the Judgment states that:

> Bearing in mind the foregoing, the resolution that called for the judges' dismissal was the result of a political alliance, which was intended to create a Supreme Court sympathetic to the political majority existing at that time and to impede criminal proceedings against the acting president and a former president. The Court has confirmed that Congress's resolution was not adopted by virtue of an exclusive assessment of specific factual evidence in order to ensure full compliance with the existing legislation, but that it pursued a completely different objective, related to an abuse of power. An example of this is that the summons to the session of Congress did not mention the imminent possibility of dismissing the judges [...].Thus, the Court emphasizes that these elements support the affirmation that a mass and arbitrary dismissal of judges is unacceptable given its

negative impact on judicial independence in its institutional aspect. (Underlining added).

89. From my perspective, the difference between this case and the case of the *Constitutional Court (Camba Campos et al.) v. Ecuador*[104] is that the National Congress was not authorized to dismiss the Supreme Court judges, whereas it was authorized to carry out impeachments against members of the Constitutional Tribunal. This lack of authority to sanction made it unnecessary, in principle, to declare the existence of an implicit sanction and a deviation of power in this case. For this reason my opinion in this case is concurrent and not dissenting.

90. The deviation of power implies that a state organ oversteps the boundaries or limits of its assigned task, a definition that requires it to have the power or authority to take the respective decision. In this case, Congress did not have the authority to dismiss the Supreme Court justices. And, since it did not have authority to sanction, I find it reasonable that in its Judgment the Court did not consider it appropriate to investigate in depth whether an implicit sanction existed in this case.

91. Furthermore, Congress's declaration of its lack of jurisdiction was a factor that the Inter-American Court considered in deciding not to analyze the punitive nature of the decision, which was an element for determining whether it was possible to analyze the facts in light of Article 9 of the American Convention which, in fact, also applies to punitive actions, according to the Inter-American Court's case law.[105]

92. For the Inter-American Court it was sufficient to take into account the context in which the facts occurred, as well as the clear intention to dismiss the judges, not because their term had expired, but rather for the purpose of controlling Ecuador's judicial power at that time. Indeed, the Judgment states that "the resolution by means of which the judges were dismissed was the result of a political alliance that was intended to create a Supreme Court sympathetic to the political majority existing at that time and to impede criminal proceedings against the acting president and a former president."[106] This allowed the Inter-American Court to conclude that the "abuse of power" which occurred in this case was another feature of the violation of the institutional facet of judicial independence.

93. Although I share that view, I consider that regardless of the National Congress's lack of competence to dismiss the victims from their duties as judges of the Supreme Court of Justice, the Inter-American Court should not have overlooked the State's acknowledgement that the action of the National Congress "could have been understood as an *ad-hoc* procedure of a punitive nature."[107] Accordingly, given that it clearly was an *ad-hoc* procedure, the Inter-American Court could have taken this circumstance into account to conduct an independent analysis of the possible violation of the principle of legality enshrined in Article 9 of the American Convention, and not only from the perspective of the institutional aspect of judicial independence.

---

104 *Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs).* Judgment of August 28, 2013, Series C No. 268.

105 *Cf. Case of Baena Ricardo et al. ("270 Workers v. Panama"). Merits, Reparations and Costs.* Judgment of February 2, 2001. Series C No. 72, especially para. 106.

106 Para. 177 of the Judgment.

107 Para. 13 of the Judgment.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Secretary