

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF LÓPEZ LONE ET AL. V. HONDURAS**  
**JUDGMENT OF OCTOBER 5, 2015**  
**(*Preliminary objection, merits, reparations and costs*)**

In the case of *López Lone et al. v. Honduras*,

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

Humberto Antonio Sierra Porto, President  
Roberto F. Caldas, Vice President  
Manuel E. Ventura Robles, Judge  
Diego García-Sayán, Judge  
Alberto Pérez Pérez, Judge  
Eduardo Vio Grossi, 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” or “the Court’s Rules of Procedure”), delivers this judgment, structured as follows:

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**I**

**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.* On March 17, 2014, in accordance with the provisions of Articles 51 and 61 of the American Convention and Article 35 of the **Court's** Rules of Procedure, 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 **Adán Guillermo López Lone et al. versus the Republic of Honduras** (hereinafter "the State" or "Honduras"). According to the Commission, the case relates to the disciplinary proceedings to which Judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, and Justice Tirza del Carmen Flores Lanza were subjected in the context of the *coup d'état* that took place in Honduras in June 2009. The presumed victims were members of the "*Asociación de Jueces por la Democracia*" (Association of Judges for Democracy) which had issued various public communiqués calling the events relating to the removal of former President Zelaya a *coup d'état*, contrary to the official version of the Supreme Court of Justice indicating that it was a constitutional succession. According to the Commission, the disciplinary proceedings were instituted against the presumed victims to sanction their actions and statements against the *coup d'état*, but were beset "**with numerous irregularities that affected due process.**" In this context, the case relates to alleged violations of the rights to judicial guarantees, the principle of legality, freedom of expression, freedom of association, political rights, judicial protection, and the right of assembly of the presumed victims.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

*Petition.* On July 6, 2010, the Association of Judges for Democracy (hereinafter "AJD") and the Center for Justice and International Law (hereinafter "CEJIL") lodged the initial petition.

*Admissibility Report.* On March 31, 2011, the Commission adopted Admissibility Report No. 70/11.<sup>1</sup>

*Report on the Merits.* On November 5, 2013, the Commission adopted Merits Report No. 103/13, in which it reached a series of conclusions and made several recommendations to the State:

- *Conclusions.* The Commission concluded that the State of Honduras was responsible for violating Articles 8, 9, 13, 16, 23 and 25 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Adán Guillermo López Lone, Ramón Enrique Barrios Maldonado, Luis Chévez de la Rocha and Tirza del Carmen Flores Lanza, and also for violating Article 15 of the Convention, in relation to Article 1(1) and 2 of the Convention, to the detriment of Guillermo López Lone.
- *Recommendations.* Consequently, the Commission made a series of recommendations to the State, namely:
  - i. Reinstate the victims in the Judiciary, in a post similar to the one they held, with the same salary and benefits, and at a similar level to the level they would have had currently if they had not been dismissed, for the time remaining in their term of office; alternatively, if, on reasonable grounds, it is not possible to reinstate them, the State must pay compensation.

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<sup>1</sup> In this report, the Commission decided "to combine the analysis of the requirement to exhaust domestic remedies with its consideration of the merits of the possible violation of Articles 8 and 25." Admissibility Report No. 70/11, *Case of López Lone et al. v. Honduras*, March 31, 2011 (evidence file, folios 4577 and 4588).

- ii. Redress the consequences of the violations declared in the Merits Report, including both the pecuniary and the non-pecuniary damage.
  - iii. Expedite the necessary amendments to the law to ensure that disciplinary proceedings against judges are conducted by competent authorities with sufficient guarantees of independence and impartiality.
  - iv. Expedite the necessary amendments to the law to ensure that the grounds for disciplinary action against judges and the applicable sanctions are compatible with the principle of legality, in the terms set out in the Merits Report.
- **Notification of the Merits Report.** On December 17, 2013, the Merits Report was notified to the State granting it two months to report on compliance with the recommendations. The State presented a report on the measures taken to comply with these recommendations on February 17, 2014.

3. **Submission to the Court.** On March 17, 2014, the Commission submitted this case to the Court, "owing to the need to obtain justice for the [presumed] victims." The Commission appointed Commissioner Tracy Robinson, Executive Secretary Emilio Álvarez Icaza and the Special Rapporteur for Freedom of Expression at the time, Catalina Botero, as delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, Silvia Serrano Guzmán, Ona Flores and Jorge H. Meza Flores, as legal advisers.

4. **Requests of the Inter-American Commission.** Based on the above, the Inter-American Commission asked the Court to conclude and declare that Honduras was internationally responsible for the violations described in the Merits Report and to order the State, as measures of reparation, to comply with the recommendations made in the report (*supra* para. 2).

## II PROCEEDINGS BEFORE THE COURT

5. **Notification to the State and to the representatives.** The submission of the case was notified to the representatives of the presumed victims and to the State on April 29 and 30, 2014, respectively.

6. **Brief with pleadings, motions and evidence.** On June 29, 2014, the Center for Justice and International Law (CEJIL) (hereinafter "the representatives") presented their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") pursuant to Articles 25 and 40 of the Court's Rules of Procedure. The representatives were in substantial agreement with the arguments of the Commission and asked the Court to declare that the State was internationally responsible for violating the same articles indicated by the Commission. In addition, they alleged the violation of the presumed victims' rights to personal integrity and to honor, dignity and development of their life project, recognized in Articles 5 and 11 of the American Convention, the presumed violation of the right to personal liberty of Judge Chévez, recognized in Article 7 of the Convention, and also the violation of the "autonomous right to defend human rights" of the presumed victims, allegedly recognized in Articles 13(1), 15, 16(1), 23(1)(a) and 25 of the Convention. Lastly, the representatives asked that the Court order the State to adopt various measures of reparation and to reimburse certain costs and expenses.

7. **Answering brief.** On September 25, 2014, the State submitted to the Court its brief with a preliminary objection, answering the submission of the case by the Commission, and with observations on the pleadings and motions brief (hereinafter "answering brief"). In this brief, the

State filed a preliminary objection based on the presumed failure to exhaust domestic remedies, described the facts, and contested all the alleged violations.

8. **Observations on the preliminary objection.** On November 13 and 16, 2014, the representatives and the Commission, respectively, presented their observations on the preliminary objection filed by the State.

9. **Public hearing.** On December 10, 2014, the President of the Court issued an order<sup>2</sup> in which he convened the State, the representatives and the Inter-American Commission to a public hearing on the preliminary objection and eventual merits, reparations and costs, in order to hear the final oral arguments of the parties and the final oral observations of the Commission on these issues. Also, in this order, he required that the statements of three presumed victims, four witnesses and seven expert witnesses be received by affidavit, and these were submitted by the representatives and the Commission on January 12, 2015. The representatives and the State were able to submit questions and comments to the deponents offered by the Commission and, in the case of the State, to those offered by the representatives. The Commission was able to submit questions to an expert witness offered by the representatives. The above-mentioned order also summoned one presumed victim, two expert witnesses proposed by the representatives, and one expert witness proposed by the Commission to testify at the public hearing. In view of the withdrawal of the expert witness proposed by the Commission and a request by the representatives, on January 26, 2015, the Court decided to summon to the public hearing an additional expert witness proposed by the representatives who had initially been summoned to testify by affidavit.<sup>3</sup> The public hearing took place on February 2 and 3, 2015, **during the Court's 107<sup>th</sup> session held in San José, Costa Rica.**<sup>4</sup> **During this hearing, the State presented various documents and the Court's judges asked for specific information and explanations.**

10. **Amicus curiae.** The Court received *amicus curiae* briefs from: (1) Gilma Tatiana Rincón Covelli, a collaborator of the Justice and Democracy Research Unit of the Universidad del Rosario, Bogotá, Colombia; (2) Corporación Fundamental, Centro para la Justicia y los Derechos Humanos, Chile; (3) Magistrats Européens pour la démocratie et les libertés (MEDEL), Jueces para la Democracia, Unión Progresista de Fiscales, Spain, and Neue Richter Vereinigung, Germany; (4) Asociación por los Derechos Civiles (ADC) and Asociación Civil por la Igualdad y la Justicia (ACIJ), Argentina; (5) Roberto Garretón Merino; (6) Red Iberoamericana de Jueces (REDIJ), and (7) the International Affairs Committee of the National Lawyers Guild, United States of America, on January 25, and February 2, 11, 13 and 18, 2015.

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<sup>2</sup> Cf. *Case of López Lone et al. v. Honduras*. Order of the President of the Court of December 10, 2014. Available at: [http://www.corteidh.or.cr/docs/asuntos/lopezlone\\_10\\_12\\_14.pdf](http://www.corteidh.or.cr/docs/asuntos/lopezlone_10_12_14.pdf)

<sup>3</sup> Expert witness Gabriela Knaul, proposed by the Commission and accepted by the President of the Court in his order of December 10, 2014, advised that she would be unable to attend the hearing, and the Commission therefore withdrew this expert opinion. As a result, the representatives asked the Court to summon expert witness Leandro Despouy to testify at the public hearing. Expert witness Despouy had been summoned to testify by affidavit. In an order of January 26, 2015, the Court decided to summon this expert witness to the hearing. Cf. *Case of López Lone et al. v. Honduras*. Order of the Court of January 26, 2015. Available at: [http://www.corteidh.or.cr/docs/asuntos/lopezlone\\_26\\_01\\_15.pdf](http://www.corteidh.or.cr/docs/asuntos/lopezlone_26_01_15.pdf)

<sup>4</sup> There appeared at this hearing: (a) for the Inter-American Commission: José de Jesús Orozco Henríquez, Commissioner; Edison Lanza, Special Rapporteur for Freedom of Expression; Silvia Serrano Guzmán, Ona Flores and Jorge H. Meza Flores, lawyers of the Executive Secretariat of the Inter-American Commission on Human Rights; (b) for the presumed victims: Oduemí Yeseli Arias, from the Association of Judges for Democracy; Marcia Aguiluz, Paola Limón, Alfredo Ortega, Esteban Madrigal and Sandra González from the Center for Justice and International Law (CEJIL), and (c) for the State: Jorge Abilio Serrano Villanueva, Assistant Attorney General and Agent for this case; María Luisa Ramos, Justice of the Supreme Court of Justice, Deputy Agent; Eblin Rosely Andino Sabillón, Human Rights Adviser, attached to the Office of the Assistant Attorney General, and Lilian Malexy Juárez, Legal Officer from the Multilateral Policy Directorate of the Secretariat of State for Foreign Affairs.

11. *Final written arguments and observations.* On March 3, 2015, the parties and the Commission presented their final written arguments and observations, respectively. Together with their final written arguments the parties presented some of the information, explanations, and useful evidence requested by the judges of this Court (*supra* para. 9), as well as certain documentation. On March 6, 2015, **the Court's Secretariat, at the request** of the President, asked the parties and the Commission to submit any observations they deemed pertinent on the said documentation.

12. *Useful information and evidence, and supervening evidence on expenses.* On July 20 and 23, 2015, the President of the Court asked the State to present useful information and evidence. The State submitted this information and documentation on August 7, 2015.

13. *Observations on the useful information and evidence, and the supervening evidence on expenses.* On March 13, 18 and 25, 2015, the State and the representatives presented their observations on the documentation presented by the other party together with their final written arguments. On August 19 and 21, 2015, the representatives and the Commission presented their observations on the information and documentation submitted by the State on August 7, 2015.

14. *Deliberation of this case.* The Court began deliberating this judgment on September 28, 2015.

### **III JURISDICTION**

15. The Court is competent to hear this case pursuant to Article 62(3) of the Convention, because Honduras has been a State Party to the American Convention since September 8, 1977, and accepted the contentious jurisdiction of the Court on September 9, 1981.

### **IV PRELIMINARY OBJECTION ALLEGED FAILURE TO EXHAUST DOMESTIC REMEDIES**

#### **A. Arguments of the State and observations of the representatives and the Commission**

16. The State argued that neither the contentious administrative action nor the application for *amparo* had been exhausted. Regarding the contentious administrative action, it indicated that, according to **the law, this remedy is able to examine "[t]he execution of decisions adopted under the Judicial Service Act aimed at reimbursements or payment of compensation."**<sup>5</sup> Regarding the application for *amparo* (constitutional protection), it asserted that article 183 of the Constitution, as well as the Constitutional Justice Act recognized the guarantee of *amparo*, thereby tacitly annulling article 31 of the rules of procedure of the Judicial Service Council.

17. The Commission reiterated that, "in the first place, the Convention attribute[d] decisions concerning **admissibility**" to the Commission, so that **"the content of admissibility decisions [...]** should not be re-examined at subsequent stages of the proceedings." It indicated that, "in principle, and in the absence of exceptional circumstances, it was incumbent on the Court to defer to the **decisions taken by the [Commission] in this regard.**" It stressed that the argument of failure to exhaust the contentious administrative action was time-barred. Furthermore, it indicated that the **Council's** decision could not be contest according to article 31 of the rules of procedure of the Judicial Service Council. Lastly, it indicated that, in the Admissibility Report, it had established that

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<sup>5</sup> In this regard, it cited article 3(c) of the Contentious Administrative Jurisdiction Act. *Cf.* Contentious Administrative Jurisdiction Act (evidence file, folios 6972 to 6981).

the application for *amparo* was ineffective owing to the composition and functional dependence of the Judicial Service Council.

18. The representatives argued that the filing of the objection regarding the action before the contentious administrative jurisdiction was time-barred. Regarding the application for *amparo*, they indicated that it is exceptional in nature so that "it does not necessarily have to be exhausted." In addition, they emphasized that, "in its answer to the initial petition, the State itself had accepted that [based on article 31 of the rules of procedure of the Judicial Service Council,] there was no remedy whatsoever against the decisions of the Supreme Court of Justice." Lastly, they indicated that the application for *amparo* was also illusory, because the State Judiciary did not have the necessary independence to decide this.

### **B. Considerations of the Court**

19. The Convention attributes to the Court full jurisdiction over all matters pertaining to a case that it is examining, including those of a procedural nature on which the possibility of it exercising its jurisdiction is based.<sup>6</sup> Under Article 61(2) of the Convention, in the exercise of that power, the Court is not bound by a prior ruling of the Commission, but is authorized to render judgment freely, based on its own assessment.<sup>7</sup>

20. Article 46(1)(a) of the Convention stipulates that, admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.<sup>8</sup> The rule of the prior exhaustion of domestic remedies was conceived in the interest of the State, because it seeks to exempt it from responding before an international organ for acts of which it is accused before having had the opportunity to remedy them by its own means.<sup>9</sup> However, the Court has maintained that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be filed at the proper procedural moment; that is, during the admissibility procedure before the Commission.<sup>10</sup>

21. When arguing the failure to exhaust domestic remedies, the State must, at the same time, specify the domestic remedies that have yet to be exhausted and prove that those remedies are available and adequate, appropriate and effective.<sup>11</sup> Thus, it is not the task of either the Court or the Commission to identify *ex officio* the domestic remedies that remain to be exhausted. The Court underlines that it is not incumbent on the international organs to rectify any lack of precision in the

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<sup>6</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 29, and *Case of Bayarri v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of October 30, 2008. Series C No. 187, para. 20.

<sup>7</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 29.

<sup>8</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 85, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 27.

<sup>9</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 27.

<sup>10</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 88, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 27.

<sup>11</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, paras. 88 and 91, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 31.



**State's arguments.**<sup>12</sup> Consequently, when a State cites the existence of a domestic remedy that has not been exhausted, it must do so at the proper moment and identify clearly the remedy in question, as well as how it would be adequate and effective to protect the persons in the situation that has been denounced.<sup>13</sup> Thus, it is not sufficient to indicate the existence of a remedy, but its availability must also be proved.<sup>14</sup>

22. In this case, the State argued the failure to exhaust two specific remedies: (i) the contentious administrative action, and (ii) the application for *amparo*. Therefore, the Court must analyze whether the State presented arguments concerning both remedies during the admissibility procedure before the Commission.

23. Regarding the contentious administrative jurisdiction, the Court notes that the State mentioned the alleged failure to exhaust this remedy for the first time in its answering brief before this Court. Thus, the State did not refer to the said remedy at the proper procedural moment. Consequently, this aspect of the preliminary objection is rejected.

24. Meanwhile, it can be observed that, during the admissibility procedure before the Commission, in communications dated October 19, 2010,<sup>15</sup> and March 16 and 25, 2011, the State argued that the presumed victims could still exhaust the application for *amparo*.<sup>16</sup> Following the Admissibility Report,<sup>17</sup> in which the Commission decided to combine the matter of the failure to exhaust domestic remedies with the analysis of the merits of the petition, the State continued to present arguments in this regard on February 1<sup>18</sup> and June 25, 2012.<sup>19</sup> In those briefs, the State argued that the application for *amparo* was **suitable and adequate "to contest [the] hypothetical rights violations during the disciplinary proceedings" and that it could be filed within two months of notification of the Judicial Service Council's decision.** It also indicated that, the *amparo* could **"uphold or reinstate the enjoyment of the rights and guarantees established by the Constitution and international treaties, conventions and other instruments."**<sup>20</sup>

25. Meanwhile, the representatives indicated that, according to article 31 of the rules of procedure of the Judicial Service Council, no remedy could be filed, against the Council's **decisions**, not even the application for *amparo*.<sup>21</sup>

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<sup>12</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 23, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 28.

<sup>13</sup> Cf. *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 282, para. 30.

<sup>14</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 88, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288, para. 43.

<sup>15</sup> Cf. The State's brief of October 19, 2010 (evidence file, folios 53, 63 to 67, 83 to 86, 100 and 102).

<sup>16</sup> Cf. The State's brief of March 16, 2011 (evidence file, folios 4623 to 4661), and the State's brief of March 25, 2011 (evidence file, folios 4611 to 4618).

<sup>17</sup> The Commission indicated that "[g]iven the interrelationship between the effectiveness of the remedies available in order to exhaust domestic remedies and the possible violations of human rights at issue in the case, the Commission considers that the question of the prior exhaustion of those remedies must be taken up together with the merits of the petition." Admissibility Report No. 70/11, Petition 975-10, Adán Guillermo López Lone *et al.*, Honduras, issued by the Inter-American Commission on March 31, 2011 (evidence file, folio 4586).

<sup>18</sup> Cf. The State's brief of February 1, 2012 (evidence file, folios 4341 to 4344).

<sup>19</sup> Cf. The State's brief of June 25, 2012 (evidence file, folios 4290 to 4294).

<sup>20</sup> In this regard, it cited article 42 of the Constitutional Justice Act which establishes that "[t]he application for *amparo* is admissible against the decisions, acts and deeds of the Branches of the State." The State's brief of October 15, 2010 (evidence file, folios 84, 85 and 86), and Constitutional Justice Act, article 42 (evidence file, folio 3919).

<sup>21</sup> Cf. The representatives' brief of January 20, 2011 (evidence file, folio 4791).

26. The Court notes that, in the first brief it submitted to the Commission, the State had indicated that, according to article 31 of the rules of procedure of the Judicial Service Council, it was not possible to file another remedy.<sup>22</sup> The said article 31 stipulates that:

Article 31. The final decisions issued by the Council shall be clear, precise and congruent with the complaint and the other claims opportunely submitted during litigation, and shall include the considerations required by such claims, declare whether or not the claims are admissible, and decide all the contentious issues that were in dispute. If there were several issues, this shall be done duly separating the ruling corresponding to each of them. No ordinary or special appeal shall be admissible against the final decisions of the Council.<sup>23</sup>

27. However, in subsequent briefs Honduras indicated that this conclusion “disregard[ed] and contravene[d] article 320 of the Constitution which establishes that “[i]n cases of incompatibility between a constitutional norm and an ordinary legal norm, the former shall apply”; thus article 31 of the rules of procedure of the Judicial Service Council was not applicable.<sup>24</sup> In this regard, the State emphasized that, since its creation, the Constitutional Chamber of the Supreme Court of Justice had been basing itself on the said **article 320 of the Constitution to “found its rulings on the admissibility of, and decisions taken on, the different applications for *amparo* filed against acts of the Judicial Service Council.”**<sup>25</sup> The State, in a report presented by the President of the Supreme Court, gave the names of, and basic information on, 39 precedents that presumably demonstrated the availability of the remedy; however, it did not provide copies of these cases or refer to the grounds used by the respective courts so as not to apply article 31 of the rules of procedure of the Judicial Service Council.<sup>26</sup>

28. The Court notes that the Constitution<sup>27</sup> and the Constitutional Justice Act granted the presumed victims the possibility of filing an application for *amparo*.<sup>28</sup> However, since article 31 of the rules of procedure of the Judicial Service Council established that “[n]o ordinary or special appeal shall be admissible against the final decisions of the [Judicial Service] Council,” it could be interpreted that it was not possible to file an application for *amparo*.<sup>29</sup> Given the uncertainty arising from the prohibition established in article 31 of the said rules of procedure, the presumed victims could not be required to exhaust the application for *amparo* as a requirement of admissibility. Furthermore, the State did not indicate why the said article 31 had not been expressly annulled. It should also be emphasized that, during the admissibility stage of the procedure before the Commission, the State failed to prove that article 31 of the said rules of procedure was not applicable in practice. The mere reference to the names and basic information of precedents of cases where applications for *amparo* had been decided against decisions of the Judicial Service Council was insufficient. The Court recalls that, when arguing the failure to exhaust domestic

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<sup>22</sup> Cf. The State’s brief of October 15, 2010 (evidence file, folio 99).

<sup>23</sup> Rules of procedure of the Judicial Service Council (evidence file, folio 218).

<sup>24</sup> Cf. The State’s brief of March 11, 2011 (evidence file, folio 4636).

<sup>25</sup> The State’s brief of March 11, 2011 (evidence file, folios 4636 and 4637).

<sup>26</sup> Cf. The State’s brief of March 11, 2011 (evidence file, folios 4638 to 4649).

<sup>27</sup> The Constitution establishes that “any aggrieved person, or anyone on his or her behalf, has the right to file an application for *amparo* [... in order to uphold or reinstate the enjoyment of the rights and guarantees established by the Constitution and international treaties, conventions and other instruments, [or] to obtain a declaration, in specific cases, that the applicant is not bound by a regulation, action, act or decision of an authority, and the latter is not applicable because it contravenes, reduces or distorts any of the rights recognized by the Constitution.” **1982 Constitution of the Republic of Honduras** (as amended up until January 20, 2006), article 183. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CONSTITUCI%C3%93N%20DE%20LA%20REP%C3%9ABLICA%20%2809%29.pdf>

<sup>28</sup> Cf. Constitutional Justice Act, articles 41 and 42 (evidence file, folios 3918 and 3919).

<sup>29</sup> Cf. Rules of procedure of the Judicial Service Council, article 31 (evidence file, folio 218)

remedies, the State has the burden of specifying, at the proper opportunity, the domestic remedies that remain to be exhausted, and demonstrating that those remedies were available and adequate, appropriate and effective (*supra* paras. 20 and 21). The Court notes that, in this case, the State did not comply with this burden of proof.

29. Based on the above considerations, the Court rejects the preliminary objection filed by the State.

## **V EVIDENCE**

### **A. Documentary, testimonial and expert evidence**

30. The Court has received diverse documents presented as evidence by the Commission and the parties attached to their main briefs (*supra* paras. 1, 6 and 7). Similarly, the Court has received from the parties **documents requested by the Court's judges as helpful evidence** under Article 58 of the Rules of Procedure. The Court has also received the affidavits made by presumed victims Luis Alonso Chévez de la Rocha, Tirza del Carmen Flores Lanza and Ramón Enrique Barrios Maldonado, and witnesses Carmen Haydee López Flores, José Ernesto López Flores, Daniel Antonio López Flores and Lidia Blasina Galindo Martínez. In addition, it has received the expert opinions of Leandro Despouy, María Sol Yáñez de la Cruz, Hina Jilani,<sup>30</sup> Frank La Rue, Julio Escoto, Joaquín Mejía Rivera and Martín Federico Böhmer.<sup>31</sup> With regard to the evidence provided at the public hearing, the Court received the statements of the presumed victim Adán Guillermo López Lone, and the expert witnesses Perfecto Andrés Ibáñez, Leandro Despouy and Antonio Maldonado Paredes.

### **B. Admission of the evidence**

#### **B.1) Admission of the documentary evidence**

31. In this case, as in others, the Court admits those documents presented by the parties and the Commission at the appropriate moment or requested as useful evidence by the Court or its President, the admissibility of which was neither contested nor opposed.<sup>32</sup>

32. As regards the newspaper articles presented by the parties with their briefs, the Court has considered that these may be assessed when they refer to well-known public facts or statements made by State officials, or when they corroborate aspects related to the case.<sup>33</sup> The Court decides to admit those documents that are complete or in which it is possible to observe, at least, their source and date of publication.

33. Moreover, regarding some documents indicated by one of the parties by means of an electronic link, the Court has established that if the party provides, at least, the direct electronic link to the document that it cites as evidence and it is possible to access it, neither legal certainty nor

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<sup>30</sup> On January 19, 2015, the petitioners forwarded the Spanish translation of the affidavit made by expert witness Hina Jilani.

<sup>31</sup> The purposes of these statements was established in the order of the President of December 10, 2014 (*supra* nota 2).

<sup>32</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile. Merits, reparations and costs*. Judgment of September 2, 2015. Series C No. 300, para. 12.

<sup>33</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 12.

procedural equality is harmed because it can be found immediately by the Court, the other party, and the Commission.<sup>34</sup>

34. With regard to the procedural moment at which documentary evidence should be submitted, according to Article 57(2) of the Rules of Procedure it should be presented, in general, with the briefs submitting the case, with pleadings and motions, or answering the submission of the case, as applicable. Evidence forwarded outside the appropriate procedural moments is not admissible, except in the cases established in the said Article 57(2) of the Rules of Procedure; namely, *force majeure*, serious impediment or if it relates to a fact that took place after the said procedural moments.

35. After testifying at the public hearing, expert witness Perfecto Andrés Ibáñez submitted a written report relating to his opinion, and expert witness Antonio Maldonado Paredes submitted a copy of the "Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the *coup d'état* of 28 June 2009."<sup>35</sup> Copies of both documents were handed over to the parties and to the Commission and they were allowed to present their observations. The admissibility of these documents was not challenged and their authenticity was not contested. Regarding the report of the United Nations High Commissioner for Human Rights, the Court notes that it was also provided by the representatives in their pleadings and motions brief by means of an electronic link. Since it already formed part of the case file, there is no point in making a separate analysis of the admissibility of the copy provided by expert witness Maldonado Paredes. Regarding the written report of expert witness Perfecto Andrés Ibáñez, the Court admits this document, considering it useful for deciding this case, insofar as it relates to the purpose of this expert opinion duly defined by the President in the terms of Article 58 of the Rules of Procedure.

36. During the public hearing the State submitted a copy of the Law on the Council of the Judiciary and the Judicial Service, the Regulations governing the Law on the Council of the Judiciary and the Judicial Service, the rules of procedure of the Judicial Service Council, and certifications of ten rulings delivered on applications for *amparo*.<sup>36</sup> Neither the representatives nor the Commission contested the admission of the domestic norms provided by the State. Considering them useful for deciding the case, the Court admits the said domestic norms in the terms of Article 58 of the Rules of Procedure.

37. However, with regard to the judgments on *amparo* provided by the State, the representatives contested their admission, considering that they were time-barred and that the State had not offered any reason of *force majeure* that would have prevented it from presenting them with its answering brief. Moreover, they indicated that the said decisions bore no relationship to the facts of this case, because they were issued in a different context, mainly against decisions of the new Council of the Judiciary and the Judicial Service, rather than against those of the Supreme Court of Justice as in this case, with a different purpose, and by a Constitutional Chamber with a different composition to the one that decided the cases of the presumed victims. In this regard, the Court notes that, in its answering brief, the State had indicated **that, in addition to the "rulings on *amparo* guarantees" already attached to note No. SP-A-90-2012 of June 25, 2012, presented during the**

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<sup>34</sup> 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 Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 12.

<sup>35</sup> Cf. Record of documents received. Public hearing of February 2 and 3, 2015. *Case of López Lone et al. v. Honduras* (merits file, folio 1169).

<sup>36</sup> Specifically, the State presented the following: (1) copy of Official Gazette of the Republic of Honduras No. 25,657 dated October 17, 1998, which contains the rules of procedure of the Judicial Service Council issued on August 4, 1988, and (2) certifications of rulings: AA-0730=12 of July 28, 2014, AA 627=11 of August 14, 2012, AA 966-2012 of April 23, 2014, AA 205=14 of September 23, 2014, AA788=09 of August 17, 2010, AA 25=11 of October 22, 2013, 0006-2014 of October 14, 2014, 0125-2014 of June 3, 2014, 0123-2014 of November 10, 2014, and AA 0209=14 of November 11, 2014.

procedure before the Commission (annex 1 of the Merits Report), it would "provide rulings subsequent to **the date of that note.**" Nevertheless, those rulings were not presented with the answering brief; rather the State submitted them during the public hearing of the case without offering an explanation about their time-barred submission. The Court recalls that, pursuant to Article 57(2) of the Rules of Procedure, the appropriate procedural moment for the presentation of documentary evidence is with the briefs submitting the case, with pleadings and motions, or answering the submission of the case, as applicable. Evidence forwarded outside the appropriate procedural moments is not admissible, except in the cases established in the above-mentioned Article 57(2) of the Rules of Procedure; namely, *force majeure*, serious impediment or if it relates to a fact that took place after the said procedural moments. It was not demonstrated that any of the foregoing exceptions applied in this case; therefore the Court considers inadmissible the documentation relating to the applications for *amparo* that the State submitted during the public hearing.

38. Similarly, both the State and the representatives presented documentation with their final written arguments.<sup>37</sup> For the reasons given above, pursuant to Article 57(2) of the Rules of Procedure, the Court admits the documents issued following the said procedural moments. Specifically, it admits the note of March 3, 2015, of the Personnel Management Directorate provided by the State, as well as the documentation provided by the representatives concerning expenses incurred after the submission of the pleadings and motions brief, and the circular of the Council of the Judiciary and the Judicial Service of February 11, 2015. However, the State failed to justify the late submission of the document entitled "Procedure to impose sanctions on judicial officials and employees," and did not explain its origin or nature; therefore, the Court does not find it admissible.

## **B.2) Admission of the testimonial and expert evidence**

39. The Court also finds it pertinent to admit the statements of the presumed victims and witnesses and the expert opinions provided during the public hearing and by affidavit, insofar as they are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.

## **C. Assessment of the evidence**

40. Based on the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, and on its consistent case law concerning evidence and its assessment,<sup>38</sup> the Court will examine and assess the documentary and probative elements forwarded by the parties and the Commission, the statements, testimony, and expert opinions, and also the helpful evidence that was requested and that the Court has incorporated into the case file in order to establish the facts of the case and to rule on the merits. To this end, it will abide by the principles of sound judicial discretion, within the corresponding legal framework, taking into account all the evidence and arguments that have been presented.<sup>39</sup>

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<sup>37</sup> The State presented: (1) a note of March 3, 2015, from the Personnel Management Directorate, in reply to a request by the President of the Court in his order of December 10, 2014, that it present "information on the salary increases that would have corresponded to the projected salaries of the presumed victims if they had not been removed from their posts, based on the salaries of judges and justices who are in the same salary range of each of the presumed victims in this case when they were dismissed," as well as (2) a document entitled "Procedure to impose sanctions on judicial officials and employees" (merits file, folios 1818 to 1825). In addition to the documentation on expenses incurred since the pleadings and motions brief, the representatives presented a copy of a circular of the Council of the Judiciary and the Judicial Service dated February 11, 2015 (merits file, folio 1686).

<sup>38</sup> 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 Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 16.

<sup>39</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits, supra*, paras. 69 to 76, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 16.

41. In addition, in accordance with the Inter-American Court's case law, the statements made by the presumed victims cannot be assessed in isolation, but rather must be placed in the context of all the evidence in the proceedings, insofar as they can provide further information on the presumed violations and the consequences.<sup>40</sup>

## VI PROVEN FACTS

42. The case refers to the disciplinary proceedings instituted against the four presumed victims, three judges and one justice, as a result of which they were dismissed, and three of them were ultimately excluded from the Judiciary. These events occurred in the context of an acute democratic crisis, classified as a *coup d'état* by the General Assembly and the Permanent Council of the Organization of American States (hereinafter "OAS") and by the General Assembly of the United Nations (hereinafter "United Nations") (*infra* para. 52), and as a constitutional succession by the Supreme Court of Justice of Honduras (hereinafter "the Supreme Court") (*infra* para. 63). Consequently, the Court will set out: (A) the facts relating to the context in which the events of this case occurred; (B) the normative framework under which the disciplinary proceedings against the presumed victims were held, and (C) the facts relating to the disciplinary proceedings against the presumed victims.

### A. Context

43. In the exercise of its contentious jurisdiction, the Court has examined diverse historical, social and political contexts that have allowed it to situate the facts alleged to have violated the American Convention within the framework of the specific circumstances in which they occurred. In some cases, the context makes it possible to characterize the facts as part of a systematic pattern of human rights violations,<sup>41</sup> as a practice applied and tolerated by the State,<sup>42</sup> or as part of massive and systematic or generalized attacks on one sector of the population.<sup>43</sup> The Court has also taken the context into account to establish the international responsibility of the State,<sup>44</sup> to understand and assess the evidence,<sup>45</sup> to evaluate the relevance of certain measures of reparation, and to determine the standards established with regard to the obligation to investigate such cases.<sup>46</sup> Accordingly, since it is relevant to understanding the facts and the alleged violations of the Convention in this case, the Court will now present the facts relating to: (1) the *coup d'état* in

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<sup>40</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No 33, para. 43, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 16.

<sup>41</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 126, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, paras. 67 and 68.

<sup>42</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 126, and *Case of Espinoza Gonzáles v. Peru, supra*, paras. 67, 68 and 195.

<sup>43</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, paras. 94 to 96, 98 and 99, and *Case of Espinoza Gonzáles v. Peru, supra*, para. 67.

<sup>44</sup> Cf. *Case of Goiburú et al. v. Paraguay. Merits, reparations and costs*. Judgment of September 22, 2006. Series C No. 153, paras. 61 and 62, and *Case of Espinoza Gonzáles v. Peru, supra*, paras. 195 and 196.

<sup>45</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 129 to 146, and *Case of Espinoza Gonzáles v. Peru, supra*, paras. 67 and 68.

<sup>46</sup> Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, paras. 244 to 249 and 319 to 321, 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. 327.

Honduras; (2) the international reaction to the *coup d'état* and the actions taken by the OAS; (3) the position of the Supreme Court of Justice, and (4) the Association of Judges for Democracy.

### **A.1) The *coup d'état* in Honduras**

44. On March 23, 2009, the President of Honduras, José Manuel Zelaya Rosales (hereinafter "President **Zelaya**" or "former President **Zelaya**"), approved Executive Decree PCM-05-2009, in which he called for a popular consultation to be held by June 28 of that year at the latest. The following question would be posed in this consultation: "Do you agree that, during the elections [presidential, legislative and municipal] of November 2009, a fourth ballot box should be set up to decide on the advisability of convening a National Constituent Assembly to amend the Constitution?"<sup>47</sup> This decree was approved despite the lack of consensus among the political parties as regards the conditions and mechanisms for amending the Constitution because, although the initial reaction to the proposed constituent assembly had been favorable, some parties considered that it should be convened after the elections and not by means of a fourth ballot box.<sup>48</sup> In fact, the **opposition perceived the issue of the decree proposing the fourth ballot box as "a way of maintaining [President] Zelaya in power, not necessarily by means of re-election (even though [President] Zelaya had stated publicly that re-election would be one of the issues on the agenda of the national constituent assembly), but rather through convening an early constituent assembly that would possibly shorten the following presidential term and facilitate, if not the re-election of [President] Zelaya, at least the continuation in power of the liberals."**<sup>49</sup> The Truth and Reconciliation Commission considered that this consultation was illegitimate (*infra* para. 57), because the Honduran Constitution **only admitted "partial amendments" and included "a system of 'immutable rules' that could not be altered by [the said partial amendments]."**<sup>50</sup> Thus, article 374 of the Honduran Constitution established the prohibition to amend the constitutional article relating to the presidential term and the one containing the prohibition to re-elect the President of the Republic.<sup>51</sup>

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<sup>47</sup> Cf. Executive Decree PCM 05-2009 of March 23, 2009 (evidence file, folios 6919 and 6920), and IACHR, *Honduras: Human Rights and the coup d'état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, paras. 82 and 83. This decree was not published in the Official Gazette. Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 132 (evidence file, folio 7408).

<sup>48</sup> Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 121 (evidence file, folios 7398 and 7399).

<sup>49</sup> Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 121 and 122 (evidence file, folios 7399 and 7400).

<sup>50</sup> Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 183 and 184 (evidence file, folios 7459 and 7460).

<sup>51</sup> Cf. 1982 Constitution of the Republic of Honduras (as amended up until January 20, 2006), article 374, which **establishes the following:** "Under no circumstances shall amendments be introduced to the preceding article, the present article, the articles of the Constitution that concern the form of government, the national territory, the presidential term, the article prohibiting re-election of the person who served as President of the Republic regardless of the title of that office, and the article referring to those persons who are disqualified from running for the office of President in the following term." Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CONSTITUCI%C3%93N%20DE%20LA%20REP%C3%9ABLICA%20%2809%29.pdf>. Despite this, this Court has noted that, on April 22, 2015, the Constitutional Chamber of the Supreme Court of Justice declared "the inapplicability of articles 42(5) and 239 of the Constitution of the Republic," as well as "the partial inapplicability of articles [4] last paragraph and 374, the latter only as regards the paragraph reading: "the article prohibiting re-election of the person who served as President of the Republic regardless of the title of that office, and the article referring to those persons who are disqualified from running for the office of President in the following term." **Judgment of the Constitutional Chamber of the Supreme Court of Justice of April 22, 2015.** Available at: <http://www.poderjudicial.gob.hn/Documents/FalloSCONS23042015.pdf>. The said articles of the Constitution establish the following: "Article 4. The form of government is republican, democratic and representative. It is exercised by three branches: the Legislature, the Executive, and the Judiciary, which are complementary, independent and not subordinated one to the others. Alternation in the exercise of the office of President of the Republic is mandatory. The infringement of this norm constitutes a treasonable offense." "Article 42. Citizenship is lost: [...] 5. By inciting, promoting or supporting the continuity or re-election of the President of the Republic." "Article 239. The citizen who has acted as head of the Executive may not be elected President or Vice President of the Republic. Anyone who violates this provision or proposes that it be amended, as well

45. The Prosecutor General requested that the consultation be suspended arguing that it would be unconstitutional.<sup>52</sup> On May 26, 2009, "in the face of the imminent [decision] against the referendum procedure," President Zelaya approved Executive Decrees PCM-19-2009 and PCM-20-2009 annulling Executive Decree PCM-05-2009 and ordering that a national opinion poll be held on June 28, 2009, to ask a question similar to the one it had been proposed to ask by means of a popular consultation (*supra* para. 44).<sup>53</sup> On May 27, the Contentious Administrative Court ordered the suspension of the popular consultation and, on May 29, decided that the decision of May 27 included "any other general or specific administrative act that might have been issued or would be issued and that would have the same result as the administrative act that had been suspended."<sup>54</sup>

46. On June 24, 2009, the National Congress passed the "Special Law regulating Referendums and Plebiscites," which prohibited the use of either mechanism 180 days either before or after general elections.<sup>55</sup>

47. President Zelaya decided to press for the consultation and ordered the Head of the Joint Chiefs of Staff to safeguard the ballot boxes that would be used for this. The Head of the Joint Chiefs of Staff refused to obey this order and, on June 24, President Zelaya ordered that he be relieved of his command.<sup>56</sup> However, the Supreme Court of Justice annulled his removal. Also, on June 24, the President accepted the resignation of the Minister of Defense.<sup>57</sup>

48. On June 25, 2009, the Supreme Electoral Tribunal declared the national opinion poll illegal and proceeded to confiscate the materials for the survey and place them on the premises of the Honduran Air Force. However, the President, accompanied by his followers, retrieved the confiscated material and ordered the National Police to safeguard it.<sup>58</sup> On June 26, the Contentious Administrative Court also ordered that the material be confiscated because the said opinion poll would be in violation of its decision of May 29 (*supra* para. 45).<sup>59</sup>

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as those who support him directly or indirectly, shall immediately be removed from their respective functions, and shall be disqualified from exercising any public office for ten (10) years." Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/Constituci%C3%B3n%20de%20la%20Rep%C3%ABlica%20de%20Honduras%20%28Actualizada%202014%29.pdf>

<sup>52</sup> Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 132 (evidence file, folio 7408).

<sup>53</sup> These decrees were adopted on May 26, but published on June 25, 2009. Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 134 (evidence file, folios 7410 and 7457), and Executive Decree PCM-020-2009 (evidence file, folios 6922 and 6923)

<sup>54</sup> Cf. IACHR, *Honduras: Human rights and the coup d'état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 83, and Communiqué of the Supreme Court of Justice of June 30, 2009 (evidence file, folio 14).

<sup>55</sup> Cf. IACHR, *Honduras: Human rights and the coup d'état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 83.

<sup>56</sup> Cf. IACHR, *Honduras: Human rights and the coup d'état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 84, and Communiqué of the Supreme Court of Justice of June 30, 2009 (evidence file, folio 15).

<sup>57</sup> Cf. IACHR, *Honduras: Human rights and the coup d'état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, paras. 85 and 84.

<sup>58</sup> Cf. IACHR, *Honduras: Human rights and the coup d'état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 86, and Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 132 (evidence file, folio 7413).

<sup>59</sup> Cf. IACHR, *Honduras: Human rights and the coup d'état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 87; Communiqué of the Supreme Court of Justice of June 28, 2009 (evidence file, folio 11), and Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 138 (evidence file, folio 7414).



49. On June 28, at approximately 5 a.m., “members of the Army [...], acting on the instructions of the Head of the Joint Chiefs of Staff and of the then Vice Minister of Defense, entered the presidential residence and took the President into custody.”<sup>60</sup> The same day, President Zelaya was taken to an air force base and flown to Costa Rica aboard a military aircraft.<sup>61</sup> Subsequently, it was reported that the Prosecutor General had requested the Supreme Court of Justice to arrest him and that court had appointed a justice as an ordinary judge to prosecute the case.<sup>62</sup>

50. The same June 28, the National Congress met and read a “supposed letter of resignation [from President] Zelaya.”<sup>63</sup> Subsequently, by Legislative Decree 141-09, it ordered: “[t]he constitutional appointment of the [then President of Congress] Roberto Micheletti Bain [...] to the office of Constitutional President of the Republic for the remainder of the current presidential term.”<sup>64</sup> After taking office, Mr. Micheletti declared a state of emergency and imposed curfews.<sup>65</sup>

51. During the following days, numerous public protests were held and were “violently suppressed.”<sup>66</sup> In addition, “thousands of people [were detained], including children, mainly during protests against the *coup*.”<sup>67</sup> The Inter-American Commission indicated in its report that, during its visit to Honduras, it was able to confirm that political authorities, community leaders and public officials who voiced opposition to the *coup d’état* experienced situations that endangered their lives and personal integrity, as did members of the family of President Zelaya. They were threatened, pursued, beaten, harassed and/or investigated by the courts.<sup>68</sup>

## **A.2) The international reaction to the *coup d’état* and the actions taken by the OAS**

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<sup>60</sup> IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 73.

<sup>61</sup> Cf. IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 73, and United Nations, *Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009*. Doc. UN A/HRC/13/66, March 3, 2010, para. 73 (merits file, folio 1281).

<sup>62</sup> Cf. IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55. December 30, 2009, para. 78, and Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 141 (merits file, folios 7416 and 7417).

<sup>63</sup> Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 145 and 146 (evidence file, folios 7421 and 7422).

<sup>64</sup> Legislative Decree No. 141-09 cited in IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 77.

<sup>65</sup> Cf. IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, paras. 88 and 89, and Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009. Doc. UN A/HRC/13/66, March 3, 2010, para. 9 (merits file, folio 1281).

<sup>66</sup> IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 98; *Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009*. Doc. UN A/HRC/13/66, March 3, 2010, paras. 8, 19, 20, 24 and 29 (merits file, folios 1281, 1283, 1284 and 1285), and Communiqué of the United Nations Secretary General, Available at: <http://www.cinu.mx/noticias/la-onu-urge-a-cese-de-la-violenci/>. In this regard, the Report of the Truth Commission records that the demonstrations were suppressed by an excessive use of lethal and non-lethal force, and that those taking part in the political protests in support of President Zelaya were subject to arbitrary or illegal detention. The Truth Commission reported that nine people died during the confrontations between the security forces and the protesters. Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 307, 308, 326 and 327 (evidence file, folios 7581, 7582, 7600 and 7601).

<sup>67</sup> Cf. Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009. Doc. UN A/HRC/13/66, March 3, 2010, para. 32 (merits file, folio 1286); Subcommittee on Prevention of Torture, *Report on the visit to Honduras of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, paras. 40 to 43 (cited in the pleadings and motions brief - merits file, folio 327), and IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, paras. 99 and 340.

<sup>68</sup> IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 195.

52. Several international organizations, including the OAS General Assembly and Permanent Council and the UN General Assembly condemned what happened and classified to it as a *coup d'état*.<sup>69</sup>

53. In the case of the OAS, on June 25, 2009, the Government of Honduras, through its representative to the OAS, requested that the Permanent Council be convened urgently to examine **"the risk to the democratic institutional political process and/or the legitimate exercise of power in the Republic of Honduras."**<sup>70</sup> On June 26, the Permanent Council issued a resolution in support of democracy and the **rule of law in Honduras and resolved to call on "all the political and social actors involved to ensure that their actions respect the rule of law, in order to avoid a disruption of the constitutional order";** and to **"instruct the Secretary General to establish a Special Commission to visit Honduras as a matter of urgency, with a view to analyzing the facts and contributing to broad national dialogue aimed at finding democratic solutions to the current situation, and to report back to the Permanent Council."**<sup>71</sup>

54. On June 28, 2009, the Permanent Council **held a special meeting in which it resolved: "[t]o condemn vehemently the *coup d'état* staged this morning against the constitutionally-established Government of Honduras, and the arbitrary detention and expulsion from the country of the constitutional president José Manuel Zelaya Rosales, which has produced an unconstitutional alteration of the democratic order,"** demanded the immediate return of the President, and declared that no government arising from this unconstitutional interruption would be recognized.<sup>72</sup>

55. On July 1, 2009, the OAS General Assembly issued a resolution that also strongly condemned the *coup d'état*, instructing the OAS Secretary General **"to undertake, [...], diplomatic initiatives aimed at restoring democracy and the rule of law,"** and warning that **"[s]hould these prove unsuccessful within 72 hours, the Special General Assembly shall forthwith invoke Article 21 of the Inter-American Democratic Charter to suspend Honduras' membership."**<sup>73</sup>

56. In view of the fact that the diplomatic initiatives undertaken by the OAS Secretary General were unable to achieve the reinstatement of President Zelaya, on July 4, 2009, implementing article

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<sup>69</sup> Cf. Resolution of the OAS General Assembly on the Political Crisis in Honduras. OEA/Ser.P AG/RES 1 (XXXVII-E/09), of July 1, 2009. Available at: <http://www.oas.org/consejo/sp/AG/37SGA.asp#inf>; Resolution of the OAS Permanent Council on the Current situation in Honduras. CP/RES. 953 (1700/09), June 28, 2009. Available at: <http://www.oas.org/consejo/sp/resoluciones/res953.asp>, and Resolution of the United Nations General Assembly on Situation in Honduras: democracy breakdown, A/RES/63/301, July 1, 2009. Available at: <http://www.un.org/es/comun/docs/?symbol=A/RES/63/301>.

<sup>70</sup> OAS, Permanent Council, *Timeline of recent OAS engagement in Honduras: June-November 2009*. OEA/Ser.GCP/INF.5938/09 corr. 1, November 23, 2009. Available at: <http://www.oas.org/consejo/Documents%20INF2009.asp>.

<sup>71</sup> Resolution of the OAS Permanent Council on the Situation in Honduras. CP/RES. 952 (1699/09), of June 26, 2009. Available at: <http://www.oas.org/council/resolutions/res952.asp>.

<sup>72</sup> Cf. Resolution of the OAS Permanent Council on the Current Situation in Honduras. CP/RES. 953 (1700/09), June 28, 2009. Available at: <http://www.oas.org/council/resolutions/res953.asp>, and minutes of the special meeting of the OAS Permanent Council on June 28, 2009. Available at: <http://www.oas.org/consejo/sp/actas/acta1700.pdf>

<sup>73</sup> Resolution of the OAS General Assembly on the Political Crisis in Honduras. OEA/Ser.P AG/RES 1 (XXXVII-E/09), of July 1, 2009. Available at: <http://www.oas.org/consejo/sp/AG/37SGA.asp#inf>. Article 21 of the Inter-American Democratic Charter stipulates that: **"[w]hen the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS. The suspension shall take effect immediately. The suspended member state shall continue to fulfill its obligations to the Organization, in particular its human rights obligations. Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that state."**

21 of the Inter-American Democratic Charter for the first time, and pursuant to article 9 of the OAS Charter,<sup>74</sup> the OAS General Assembly decided “[t]o suspend the Honduran State from the exercise of its right to participate in the Organization of American States.”<sup>75</sup>

57. Following several negotiation initiatives undertaken by the OAS Secretary General and later by former Costa Rican President, Oscar Arias, an agreement known as the Guaymuras Dialogue, Tegucigalpa/San José Accord was signed on October 30, 2009, in order to achieve national reconciliation.<sup>76</sup> The agreements reached included the creation of a Truth and Reconciliation Commission, which was established by executive decree on April 13, 2010. The purpose of the **Commission was “to clarify the events that took place in Honduras before and after June 28, 2009, in order to identify the actions that led to the crisis and to provide the people of Honduras with essential information to avoid a repetition of such events in the future.” It was empowered to make constructive recommendations to strengthen the institutional framework and democratic development of Honduras and the defense and guarantee of human rights, as well as to recommend and propose ways of monitoring aspects that promoted and encouraged reconciliation among the Honduran people. The Truth and Reconciliation Commission functioned for one year (starting on May 4, 2010), and presented its report to the people of Honduras and to the representatives of the three branches of State on Thursday, July 7, 2011.**<sup>77</sup>

58. In addition, under the said Tegucigalpa/San José Accord it was agreed to establish a government of national unity and reconciliation, to forego the convocation of a constituent assembly or a reform of the Constitution, to normalize relations between Honduras and the international community, and to create a commission to verify the commitments made in the agreement, coordinated by the OAS and composed of two Hondurans and two international members. In addition, it was agreed that the National Congress would decide on the reinstatement of the ousted President and support was indicated for the presidential elections.<sup>78</sup> On November 3, 2009, Mr. Micheletti attempted to form a cabinet unilaterally, contrary to the Accord. In response, “President

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<sup>74</sup> **Article 9 of the OAS Charter states that:** “[A] Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other bodies established: (a) The power to suspend shall be exercised only when such diplomatic initiatives undertaken by the Organization for the purpose of promoting the restoration of representative democracy in the affected Member State have been unsuccessful; (b) The decision to suspend shall be adopted at a special session of the General Assembly by an affirmative vote of two-thirds of the Member States; (c) The suspension shall take effect immediately following its approval by the General Assembly; (d) The suspension notwithstanding, the Organization shall endeavor to undertake additional diplomatic initiatives to contribute to the re-establishment of representative democracy in the affected Member State; (e) The Member which has been subject to suspension shall continue to fulfill its obligations to the Organization; (f) The General Assembly may lift the suspension by a decision adopted with the approval of two-thirds of the Member States; (g) The powers referred to in this article shall be exercised in accordance with this Charter.

<sup>75</sup> Resolution of the OAS General Assembly on the Suspension of the right of Honduras to participate in the Organization of American States. OEA/Ser.P AG/RES 1 (XXXVII-E/09), of July 4, 2009. Available at: <http://www.oas.org/consejo/sp/AG/37SGA.asp#inf>.

<sup>76</sup> Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 43 to 46 (evidence file, folios 7324 to 7327).

<sup>77</sup> Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 17 (evidence file, folios 6937, 6940, 7308, 7309 and 7327).

<sup>78</sup> Cf. OAS, Permanent Council, *Timeline of recent OAS engagement in Honduras June-November 2009*. OEA/Ser.GCP/INF. 5938/09 corr. 1, November 23, 2009. Available at: <http://www.oas.org/consejo/sp/documentos/%20INF2009.asp>, and Tegucigalpa/San José Accord for “National Reconciliation and Strengthening Democracy in Honduras” of October 30, 2009, transcribed in the Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 44 and 45 (evidence file, folios 7325 and 7326).

Zelaya announced that the violation of the Accord by Mr. Micheletti had rendered it invalid.<sup>79</sup> On November 10, 2009, the OAS Permanent Council held a special meeting at which the Secretary General reported on the government *de facto's* non-compliance with the Tegucigalpa/San José Agreement. In these circumstances, most of the delegations present reiterated that the reinstatement of President Zelaya was a necessary condition for the recognition of the elections to be held on November 29.<sup>80</sup> Finally, on November 29, 2009, elections were held in Honduras in which Porfirio Lobo was elected president and he assumed office on January 27, 2010.<sup>81</sup>

59. On May 22, 2011, mediated by the Presidents of Colombia and Venezuela, former President Zelaya and then President Porfirio Lobo signed the "Agreement for National Reconciliation and Consolidation of the Democratic System in the Republic of Honduras," which contained a series of measures to ensure the safety of former President Zelaya and members of his government, as well as **"to ensure that all the actions and decision of the Government of Honduras were in strict compliance with the Constitution and the law."**<sup>82</sup>

60. On June 1, 2011, the OAS General Assembly accepted this agreement and resolved "to lift the suspension, with immediate effect, of the right of the State of Honduras to participate in the OAS."<sup>83</sup>

### **A.3) The position of the Supreme Court of Justice**

61. The Supreme Court of Justice adopted a position on the facts relating to the *coup d'état* that was in marked contrast to the conclusions reached by the OAS. On June 28, 2009, when President Zelaya was arrested (*supra* para. 49), the Supreme Court of Justice issued a press communiqué in which it stated that:

The Armed Forces, as defenders of the Constitution, have acted in defense of the rule of law, obliging those who have acted and spoken publicly against the provisions of the Constitution to comply with the law.

The Judiciary places on record that since the actions taken today are based on a court order issued by a competent judge, they are executed within the framework of legal precepts, and these actions must be taken against anyone who unlawfully opposes the return of the State of Honduras to the rule of law.<sup>84</sup>

62. On June 30, it issued another communiqué in which it indicated that, on that day, it had **suspended the "confidentiality"** of:

[C]harges, dated June 25, 2009, filed by the Public Prosecution Service against José Manuel Zelaya Rosales, accusing him of offenses relating to the [form of government, treason, abuse of

<sup>79</sup> OAS, Permanent Council, *Timeline of recent OAS engagement in Honduras June-November 2009*. OEA/Ser.GCP/INF. 5938/09 corr. 1, November 23, 2009. Available at: <http://www.oas.org/consejo/sp/documentos%20INF2009.asp>

<sup>80</sup> Cf. OAS, Minutes of the special session of the OAS Permanent Council of November 10, 2009. Available at: <http://www.oas.org/consejo/sp/actas/acta1727.pdf>

<sup>81</sup> Cf. Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 248 and 267 (evidence file, folios 7523 and 7542).

<sup>82</sup> Agreement for National Reconciliation and Consolidation of the Democratic System in the Republic of Honduras, "Cartagena Agreement". Colombia, May 22, 2011. Available at: [http://wsp.presidencia.gov.co/Prensa/2011/Mayo/Paginas/20110522\\_02.aspx](http://wsp.presidencia.gov.co/Prensa/2011/Mayo/Paginas/20110522_02.aspx).

<sup>83</sup> Cf. Resolution of the OAS General Assembly on the participation of Honduras in the Organization of American States. AG/RES.1 (XLI-E/11), June 22, 2011. Available at: <http://www.oas.org/council/sp/AG/41SGA.asp>.

<sup>84</sup> Communiqué of the Supreme Court of Justice of June 28, 2009 (evidence file, folios 11 and 12).

authority and usurpation of functions] against the [Public Administration and the State of Honduras].<sup>85</sup>

63. On July 20, 2009, it issued a third communiqué in which it also indicated that "its actions had been taken and will continue to be taken within the framework of the Constitution and the law."<sup>86</sup> On July 31, and August 21 that year, it issued two more press communiqués ratifying the preceding information.<sup>87</sup> In the second of these communiqués, it defined what had happened as a "constitutional succession."<sup>88</sup>

64. None of these press communiqués mentioned the forcible transfer of President Zelaya out of the country. According to different newspaper articles, Roberto Micheletti had met with the full Supreme Court during this time.<sup>89</sup>

65. Regarding all these actions by the Supreme Court, the Truth and Reconciliation Commission concluded that the Supreme Court "was unable to transcend the crisis, abandoned its role of arbitrator, and became a protagonist in the process of removing José Manuel Zelaya from the office of constitutional President of the Republic."<sup>90</sup> Similarly, the United Nations Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, stated that "the Supreme Court had participated in the dissolution of the constitutional order by deviating from the rules of independence and impartiality by which it should be characterized."<sup>91</sup> Also, the United Nations High Commissioner for Human Rights stated that these actions by the Supreme Court "cast doubt on its impartiality and commitment to the rule of law."<sup>92</sup>

66. With regard to other judicial authorities, the Truth and Reconciliation Commission asserted that, in the case of the "prosecutor general [...] a similar situation occurs to that of the Supreme Court of Justice, because he was involved from the start of the 2009 institutional crisis and acted in a way that favored the government *de facto*." In this regard, it stated that "the Prosecutor General and the Special Prosecutor for the Defense of the Constitution abstained from contesting the

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<sup>85</sup> Communiqué of the Supreme Court of Justice of June 30, 2009 (evidence file, folio 15).

<sup>86</sup> Communiqué of the Supreme Court of Justice of July 20, 2009 (evidence file, folio 22).

<sup>87</sup> Cf. Communiqué of the Supreme Court of Justice of August 21, 2009 (evidence file, folios 27 to 31).

<sup>88</sup> Cf. Communiqué of the Supreme Court of Justice of August 21, 2009 (evidence file, folio 30).

<sup>89</sup> Cf. Newspaper articles entitled: "*Micheletti consulta a la Corte opinión sobre polémico decreto*" and "*Micheletti y magistrados discuten decreto*" which appear in the file of the action on constitutionality filed by Adán Guillermo López Lone (evidence file, folios 425 and 427).

<sup>90</sup> Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 402 (evidence file, folio 7674). In this regard, the International Commission of Jurists indicated that these communiqués revealed a "broad and unconditional support for the Army's actions [and] sent a clear message that the Supreme Court of Justice would not oppose the coup d'état." International Commission of Jurists, *La independencia del Poder Judicial en Honduras (2004-2013)*, pp. 30. Similarly, see, Human Rights Watch, *After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras*, December 2010, p. 39. Available at: [https://www.hrw.org/sites/default/files/reports/honduras1210webwcover\\_0.pdf](https://www.hrw.org/sites/default/files/reports/honduras1210webwcover_0.pdf)

<sup>91</sup> Press communiqué on statement made by the United Nations Special Rapporteur on the independence of judges and lawyers. Available at: <http://www.cinu.mx/noticias/la/honduras-relator-especial-urge/>. See also, Expert opinion of Leandro Despouy provided during the public hearing held in this case.

<sup>92</sup> United Nations, *Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009*. Doc. UN A/HRC/13/66, March 3, 2010, para. 73 (merits file, folio 1293).

decrees that restricted rights.”<sup>93</sup> Likewise, the Ombudsman supported the Supreme Court’s thesis and refused to investigate the allegations brought before his office.<sup>94</sup>

67. In addition, the case file shows that, by means of an internal circular, the Judiciary’s Head of Personnel, “on instructions from his superior, [...] invited the Judiciary’s officials and employees to take part in the “March for Peace in Honduras” to be held on June 30, 2009, in support of the new government.”<sup>95</sup>

#### **A.4) The Association of Judges for Democracy (AJD)**

68. All the presumed victims in this case were members of the AJD. The association was founded on August 12, 2006.<sup>96</sup> According to its statutes, its basic purpose is “the defense, promotion and strengthening of the rule of law, specifically the area of justice, as well as respect for, and the independence of, the Honduran judiciary.” Only judges and justices who are in active service can be members of the association.<sup>97</sup>

69. In response to the events of June 2009, the AJD issued a communiqué on July 28, 2009, indicating its “profound concern [for] the situation of illegality and the collapse of all the institutions.” It also asserted that it “hope[d] that the Judiciary and, in particular, the Supreme Court of Justice, w[ould] fulfill their role of guaranteeing fundamental rights and placing a limit on other state authorities, exercising a jurisdictional role that, together with other actors, permits the return of the constitutional order.”<sup>98</sup> In subsequent communications, it condemned “the unlawful detention and mistreatment suffered” by Luis Alonso Chévez de la Rocha,<sup>99</sup> presumed victim in this case, as well as the disciplinary proceedings against the presumed victims and other judicial officials (*infra* paras. 86 to 147).<sup>100</sup>

#### **B) Legal framework**

70. This section describes the laws and regulations used by the State authorities and organs that intervened in the disciplinary proceedings against the presumed victims that are relevant for analyzing the international responsibility of the State in this case. In this regard, at the time of the

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<sup>93</sup> Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, p. 373 (evidence file, folio 7647).

<sup>94</sup> Cf. United Nations, *Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d’état on 28 June 2009*. Doc. UN A/HRC/13/66, March 3, 2010, para. 76 (merits file, folio 1294); IACHR, *Honduras: Human rights and the coup d’état*. OEA/Ser.L/V/II. Doc 55, December 30, 2009, para. 175, and Report of the Truth and Reconciliation Commission (CVR). *Para que los hechos no se repitan: Informe de la Comisión de la Verdad y la Reconciliación*, July 2011, pp. 376 and 377 (evidence file, folios 7650 and 7651).

<sup>95</sup> Cf. Communiqué of the Head of Personnel of the Personnel Management Directorate (evidence file, folio 397). Regarding this communication, an investigation carried out by the General Inspectorate of Courts and Tribunals concluded that the official had issued this in error. Cf. Report of June 14, 2010, signed by the General Inspector of Courts and Tribunals and addressed to the Supreme Court of Justice (evidence file, folios 854 and 858).

<sup>96</sup> Cf. Judiciary of the Republic of Honduras, Association of Judges for Democracy. Available at: <http://www.poderjudicial.gob.hn/asociaciones/Paginas/asociacionjd.aspx> (cited in the pleadings and motions brief – merits file, folio 332).

<sup>97</sup> Cf. Statutes of the Association of Judges for Democracy (AJD). Published in Official Gazette No. 31.528 of October 10, 2007, articles 6, 8 and 12 Available at: <http://www.poderjudicial.gob.hn/asociaciones/Documents/Estatutos%20Asociaci%C3%B3n%20de%20Judges%20por%20la%20Democracia.pdf>

<sup>98</sup> Communiqué of the Association of Judges for Democracy of July 28, 2009 (evidence file, folios 37 and 38).

<sup>99</sup> Cf. Communiqué of the Association of Judges for Democracy of August 14, 2009 (evidence file, folio 41).

<sup>100</sup> Cf. Communiqué of the Association of Judges for Democracy of October 7, 2009 (evidence file, folio 434), and Communiqué of the Association of Judges for Democracy of November 3, 2009 (evidence file, folio 45).

events, the 1982 Constitution of the Republic Honduras as amended up until January 20, 2006 (hereinafter “the Constitution”), was in force. This Constitution established the creation of a Council of the Judiciary and the enactment of a law to regulate its organization, scope and faculties.<sup>101</sup> However, at the time of the events, that law had not been enacted; thus the 1980 Judicial Service Act and its 1987 Regulations were applicable.<sup>102</sup> In addition, according to information provided by the parties, the following were also applicable: the 1906 Law on the Organization and Faculties of the Courts (as amended up until 1988), the 1988 rules of procedure of the Judicial Service Council, and the 1995 rules of procedure of the General Inspectorate of Courts.<sup>103</sup>

71. In addition to these norms, the authorities who decided the disciplinary proceedings against the presumed victims applied the Code of Ethics for Judicial Officials and Employees,<sup>104</sup> the Ibero-American Model Code of Judicial Ethics,<sup>105</sup> and the Statute of the Ibero-American Judge.<sup>106</sup>

### **B.1) Rights and duties of judges and incompatibilities with the office**

72. The Constitution establishes that:

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<sup>101</sup> *Cf.* 1982 Constitution of the Republic of Honduras (as amended up until January 20, 2006), article 317, which establishes: “The Council of the Judiciary shall be established, and its members shall be designated by the Supreme Court of Justice. The law shall indicate its organization, scope and faculties. Judges and justices may not be removed, suspended, transferred, demoted or retired, unless this is based on the reasons and with the guarantees established by law.” Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CONSTITUCI%C3%93N%20DE%20LA%20REP%C3%9ABLICA%20%2809%29.pdf>

<sup>102</sup> *Cf.* Judicial Service Act (evidence file, folios 4150 to 4176), and Regulations governing the Judicial Service Act (evidence file, folios 158 to 209).

<sup>103</sup> *Cf.* Law on the Organization and Faculties of the Courts. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LEY%20DE%20ORGANIZACI%C3%93N%20Y%20ATRIBUCIONES%20DE%20LOS%20TRIBUNALES%20%28ACTUALIZADA-07%29.pdf>; Rules of procedure of the Judicial Service Council (evidence file, folios 209 to 223), and Rules of procedure of the General Inspectorate of Courts. Available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Inspector%C3%ADa%20General%20de%20Tribunales.pdf>

<sup>104</sup> *Cf.* Code of Ethics for Judicial Officials and Employees, adopted by the Supreme Court of Justice by Judicial Decision No. 558 (evidence file, folios 5613 and 5619). In particular, in the proceedings of the presumed victims, the Supreme Court cited and applied the following provisions of that Code: “Article 1: Judges, Justices, Judicial Auxiliaries and other personnel of the Judiciary must exercise their functions with dignity, abstaining from any conduct contrary to the seriousness and decorum that these require. Consequently, they must: [...] (d) Avoid going to indecorous places or participating in events that could alter public order. [...] (f) Attend, on time, the hearings or meetings legally called by the superior authorities, provided these have been scheduled previously. Article 2: Justices or Judges must exercise their functions with integrity; thus, they must act with honesty, independence, impartiality and equanimity. To this end, they must: [...] (d) Abstain from expressing or communicating political opinions, publicly or privately. Their intervention should be restricted to exercising the right to vote. [...] (f) Act, above all, in a way that their conduct does not cause even the least suspicion that they have acted based on any motive other than the correct application of the law. [...] Article 8. All justices and judges must conduct themselves in their private and social life respecting the following rules: (a) they must conduct themselves in a way that no one can doubt that they are exemplary citizens, offering serenity in their opinions, prudence in their actions, and reflection in their decisions. [...] Article 9: Violations of the norms of this Code shall be sanctioned pursuant to the law.” According to information provided by the State, which was not contested by the representatives, this Code forms part of domestic law, “approved by Judicial Decision No. 558 of July 1, 1993, and published in Official Gazette No. 27126 of August 19, 1993; it is a law of the Republic and, therefore, compliance with it is compulsory.” *Cf.* Brief of the State received on August 7, 2015 (merits file, folio 1886), and brief of the representatives received on August 12, 2015 (merits file, folio 1899).

<sup>105</sup> *Cf.* Ibero-American Model Code of Judicial Ethics, 2006. Available at: <http://www.poderjudicial.gob.hn/CUMBREJUDICIALIBEROAMERICANA/Documents/CodigoEtico.pdf> According to information provided by the State, which was not contested by the representatives, this Code was adopted by the judicial authorities in June 2006 and contains “binding norms of an infra-legal nature.” *Cf.* Brief of the State received on August 7, 2015 (merits file, folio 1885), and Brief of the representatives received on August 12, 2015 (merits file, folio 1899).

<sup>106</sup> *Cf.* Statute of the Ibero-American Judge. Available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Estatuto%20del%20Judge%20Iberoamericano.pdf> According to information provided by the State, which was not contested by the representatives, this Code was adopted by the judicial authorities in May 2001 and contains “binding norms of an infra-legal nature.” *Cf.* Brief of the State received on August 7, 2015 (merits file, folio 1885), and Brief of the representatives received on August 12, 2015 (merits file, folio 1899).

Article 319. Judges and justices provide their services to the Judiciary, on an exclusive basis. Consequently, they may not exercise the legal profession independently, or provide advice or legal assistance to anyone. This prohibition does not include the performance of teaching or diplomatic functions (*ad hoc*). Judicial officials and auxiliary personnel from the jurisdictional and administrative areas of the Judiciary, may not take part, for any reason, in activities of a partisan nature of any type, except to cast their personal vote. They may not form labor unions or go on strike.<sup>107</sup>

73. The Judicial Service Act stipulates that:

Article 44: Judicial officials and employees must, at all times and in all places, observe irreproachable public and private conduct.

[...]

Article 49: Judicial officials may not be active members of political parties or intervene in debates of an electoral nature, except for exercising their right to vote.

Article 50: Positions in the Judiciary and in the Public Prosecution Service cannot be accumulated and are incompatible with the performance of any other remunerated function, with the professional management of the affairs of another person, with elected and political office, with engaging in business, with the office of Minister of any religion, with active malice except in the military criminal jurisdiction, with any participation in the exercise of the law or notary services, with the functions of data curator and justice auxiliary, and with the management and auditing of commercial companies. The prohibition to litigate and to exercise the functions of an auxiliary extends to those who are on leave. Substitute judges and representatives of the Public Prosecution Service, and teaching posts of up to ten hours a week at the most are exempt from this provision, provided they do not affect the normal rhythm of work.

Article 51: Judicial officers shall enjoy the right of tenure when they enter the judicial service in the appropriate manner and may only be removed when they give cause for dismissal under this law and its regulations.

Article 53: Acts by officials and employees, such as the following, are considered to be inimical to the dignity of the administration of justice:

[...]

b) Harmful or slanderous statements against the institutions or against any other employee or public official;

[...]

f) Requesting or encouraging publicity of any type for their own person or actions, without prejudice to the right to rectify information or comments.

g) Exercising, directly or indirectly, activities incompatible with the decorum of the function and that are inimical to its dignity in any way.

Article 54: The following acts are contrary to the effectiveness of the administration of justice:

[...]

c) Failure, without justification, to be present in the respective place of work, closing this without any legal reason, or unduly limiting working hours or the hours for attending the public.

[...]

j) Promotion, sponsorship or organization of strikes; shutdown, total or partial suspension of activities, reduction of the rhythm of work; participating in such acts or tolerating them.

[...]

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<sup>107</sup> 1982 Constitution of the Republic of Honduras (as amended up until January 20, 2006), article 319. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CONSTITUCI%C3%93N%20DE%20LA%20REP%C3%9ABLICA%20%2809%29.pdf>



Article 55: In general, failure to comply with the obligations of their functions, violation of the rules on incompatibilities to exercising such functions, or exercising their functions despite being aware of legal impediments prohibiting this are considered wrongdoing by judicial officials and employees.<sup>108</sup>

74. The Judicial Service Act did not establish the specific sanctions corresponding to each of these offenses. Both the act and its regulations established, among other possible sanctions: a fine, suspension from functions, dismissal or, if no other sanction was applicable, a reprimand. The **foregoing would be applied "in keeping with the severity of the offense, the background information, and the explicit provisions of [the Act] and the [Regulations]."**<sup>109</sup> Regarding the latter, the Act established that suspension **from functions for up to three months "c[ould] be imposed for serious offenses or repetition of minor ones," accompanied by possible "exclusion from the judicial service the first time and, necessarily, such exclusion if the offense is repeated."**<sup>110</sup> In addition, the Act and its Regulations established as causes for dismissal:

- a) Non-compliance or serious or repeated violation of some of the duties, incompatibilities and conducts established in the chapters [on duties, incompatibilities and rights, articles 44 to 52] and [the articles relating to the disciplinary regime, articles 53 to 55] of the Act; [...]
- d) Failing to attend work without permission and without justification for two complete, consecutive working days, or for three working days in a month; closing the office without legal grounds, or unduly limiting the working hours or the hours for attending the public. Absences on incomplete days may be added up to complete the preceding time frames;
- e) Repetition of a serious offense [...].<sup>111</sup>

75. Nevertheless, the Act did not define what constituted serious offenses.<sup>112</sup> The definition was made in the Regulations,<sup>113</sup> according to which those conducts contrary to the effectiveness of the administration of justice constituted serious offenses,<sup>114</sup> as well as the repetition of acts that were inimical to the dignity of the administration of justice.<sup>115</sup>

76. In addition, the Law on the Organization and Faculties of the Courts indicates that:

Article 3. Judicial authorities are prohibited from: 1. Intervening in the areas of responsibility of other authorities and exercising responsibilities other than those established by law. 2. Applying

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<sup>108</sup> Judicial Service Act (evidence file, folios 4161 to 4166). See also: Regulations governing the Judicial Service Act, article 174 (evidence file, folio 198).

<sup>109</sup> *Cf.* Judicial Service Act, article 56 (evidence file, folio 4166), and Regulations governing the Judicial Service Act, article 180 (evidence file, folio 199). In addition, the act and its regulations established that "[t]he disciplinary sanctions shall be applied taking into account the nature of the offense, the functions performed by the offender, the latter's level of participation in the offense, and any prior appraisals or sanctions. In order to make this assessment, the Public Prosecution Service shall provide the offender's professional record to the file." Judicial Service Act, article 60 (evidence file, folio 4166), and Regulations governing the Judicial Service Act, article 184 (evidence file, folio 199).

<sup>110</sup> Judicial Service Act, article 59 (evidence file, folio 4166), and Regulations governing the Judicial Service Act, article 183 (evidence file, folio 199).

<sup>111</sup> Judicial Service Act, article 64 (evidence file, folios 4167 and 4168). See also: Regulations governing the Judicial Service Act, article 187 (evidence file, folio 200).

<sup>112</sup> The Regulations classify offenses as minor, less serious, and serious, while the Act only refers to minor or serious offenses. *Cf.* Regulations governing the Judicial Service Act, articles 175, 177 and 178 (evidence file, folio 198), and Judicial Service Act, article 59 (evidence file, folio 4166).

<sup>113</sup> *Cf.* Regulations governing the Judicial Service Act, articles 177, 178 and 179 (evidence file, folios 196 to 198).

<sup>114</sup> These conducts are defined in article 54 of the Judicial Service Act, (evidence file, folios 4164 and 4165), and in article 173 of the Regulations governing the Judicial Service Act (evidence file, folios 196 to 198).

<sup>115</sup> These conducts are defined in article 53 of the Judicial Service Act (evidence file, folios 4163 and 4164), and in article 172 of the Regulations governing the Judicial Service Act (evidence file, folio 196).

laws, decrees or government decisions contrary to the Constitution. 3. Applying decrees, regulations, decisions or other provisions contrary to the law. 4. Addressing congratulations or criticism to the Executive, public officials or official institutions based on their actions. 5. Participating in elections in the territory where they exercise their functions to a greater extent than merely casting their vote. 6. Intervening in meetings, demonstrations or other acts of a political nature, even though every other citizen is allowed to do so.  
[...]

Article 108. All judges and justices are prohibited from exercising the law and prosecution activities in any court or tribunal, and may only defend personal cases, or those involving their spouse, wards, and relatives up to the fourth degree of consanguinity and second degree of affinity. The prohibition contained in the preceding paragraph does not include substitute judges and justices, or justices of the peace.<sup>116</sup>

## **B.2) Competent organs and disciplinary proceedings against judges in Honduras**

77. Article 313 of the Constitution established that the Supreme Court **was competent** “[t]o appoint and to remove justices and judges, at the proposal of the Judicial Service Council.”<sup>117</sup> Likewise, the Law on the Organization and Faculties of the Courts establishes that the Supreme Court **has the authority** “[t]o suspend, for disciplinary reasons, and to remove officials that it has appointed based on misconduct or serious offenses in the exercise of their functions, by summary information and a hearing for the official who it is proposed to suspend or dismiss.”<sup>118</sup>

78. Meanwhile, according to article 6 of the Judicial Service Act, the disciplinary proceedings were administered by three bodies: the Judicial Service Council, the Personnel Management Directorate and the Personnel Selection Committee.<sup>119</sup> The Supreme Court of Justice, the Judicial Service Council, the Personnel Management Directorate and, during the initial stage, the General Inspectorate of Courts, took part in the proceedings against the presumed victims.

79. The Judicial Service Council depended on the Supreme Court of Justice and was its auxiliary **“as regards the Personnel Management policy.** It is composed of five members designated by the Supreme Court of Justice, two of whom are justices of that court.<sup>120</sup> **The Council’s functions include hearing and deciding** “[t]he problems, conflicts and claims filed with regard to Personnel Management and those that arise between management and personnel as a result of the

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<sup>116</sup> Law on the Organization and Faculties of the Courts, articles 3 and 108. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LEY%20DE%20ORGANIZACION%20Y%20ATRIBUCIONES%20DE%20LOS%20TRIBUNALES%20%28ACTUALIZADA-07%29.pdf>

<sup>117</sup> According to an amendment of January 20, 2006, the text of the article appeared to be: “[t]o appoint and to remove justices and judges at the proposal of the Council of the Judiciary and the Judicial Service.” However, in 2009, when the facts of this case took place, the Council of the Judiciary and the Judicial Service had not yet been created, so that, in principle, this function corresponded to the Judicial Service Council. Indeed, both the State and the representatives have indicated to the Court and to the Commission that this norm established that it corresponded to the Supreme Court of Justice “[t]o appoint and to remove justices and judges at the proposal of the Judicial Service Council” (underlining added). Cf. The State’s brief of October 14, 2010, presented to the Commission (evidence file, folio 73), brief with pleadings, motions and evidence received on June 19, 2014 (merits file, folio 530) and 1982 Constitution of the Republic of Honduras (as amended up until January 20, 2006), article 313. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CONSTITUCION%20DE%20LA%20REPUBLICA%20DE%20HONDURAS%20%28ACTUALIZADA-07%29.pdf>

<sup>118</sup> Law on the Organization and Faculties of the Courts, article 78(10). Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LEY%20DE%20ORGANIZACION%20Y%20ATRIBUCIONES%20DE%20LOS%20TRIBUNALES%20%28ACTUALIZADA-07%29.pdf>

<sup>119</sup> Cf. Judicial Service Act, article 6 (evidence file, folio 4151).

<sup>120</sup> Cf. Judicial Service Act, articles 7 and 8 (evidence file, folio 4152).

application of [the Judicial Service Act], and of the admissible appeals filed against the decisions of the Personnel Management Directorate."<sup>121</sup>

80. In addition, the Personnel Management Directorate is "the executive body responsible for applying [the Judicial Service Act]" **The Head** of the Directorate is appointed by the Supreme Court of Justice.<sup>122</sup>

81. Lastly, the Supreme Court carries out judicial oversight through the General Inspectorate of Courts, which is regulated by the rules of procedure of the General Inspectorate of Courts.<sup>123</sup> The Inspector General, responsible for the General Inspectorate of Courts, and the other inspectors are appointed by the Supreme Court of Justice "after they have passed a public competition."<sup>124</sup>

### **B.3) The proceeding for removing judges in Honduras**

82. The Judicial Service Act establishes that: "[t]he sanction of dismissal may only be applied by means of summary information and a hearing of the person concerned, carrying out the pertinent investigations and obtaining the necessary evidence. The dismissal is final when any appeals filed by the defendant **have been exhausted and decided.**"<sup>125</sup> According to the Regulations governing the Judicial Service Act the initial decision corresponded to the Personnel Management Directorate.<sup>126</sup> However, according to the Constitution in force and the Law on the Organization and Faculties of the Courts, this provision was not applied because it corresponded to the Supreme Court to remove judges or justices, at the proposal of the Judicial Service Council (*supra* para. 77). It is on record that, in the case of the presumed victims, it was the Supreme Court of Justice that removed the judges and justice, at the proposal of the Personnel Management Directorate.<sup>127</sup> This was not contemplated in either the Constitution or the Judicial Service Act or its Regulations; rather it

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<sup>121</sup> Judicial Service Act, article 9(e) (evidence file, folios 4152 and 4153).

<sup>122</sup> *Cf.* Judicial Service Act, article 10 (evidence file, folio 4153).

<sup>123</sup> According to the Law on the Organization and Faculties of the Courts, the Supreme Court of Justice was responsible for judicial oversight and this was carried out through the General Inspectorate of Courts. *Cf.* Law on the Organization and Faculties of the Courts, article 85. Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LEY%20DE%20ORGANIZACION%20DE%20LOS%20TRIBUNALES%20ACTUALIZADA-07%29.pdf>, and Rules of procedure of the General Inspectorate of Courts, article 2. Available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Inspector%20de%20Tribunales.pdf>

<sup>124</sup> The General Inspectorate of Courts is composed of the General Inspectorate, the Regional Inspectorates and the Inspectorates of Courts and Tribunals. *Cf.* Rules of procedure of the General Inspectorate of Courts, Articles 4, 5, 14 and 15. Available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Inspector%20de%20Tribunales.pdf>

<sup>125</sup> Judicial Service Act, article 65 (evidence file, folio 4168). **In this regard, the Regulations add "Article 188: The sanction of dismissal [...] shall [...] only be applied by means of prior summary information, and after the person concerned has provided explanations and answered the charges during a hearing, the pertinent investigations have been made, and the corresponding evidence obtained. To this end, the Personnel Management Directorate, itself or through the senior official to whom it has delegated this function, shall summon the employee in writing, determining the charges of which he is accused, so that he may appear at the place, on the date and at the time the hearing will be held. The employee may provide the evidence he considers necessary or request that this be obtained. Once the foregoing has concluded, the Directorate, or the Head of the unit hearing the case, shall report on the results, in a record prepared for this purpose, which shall be signed by all those present. Should anyone refuse to sign, this will be recorded in the said document. The Personnel Management Directorate shall take the final decision on whether or not to ratify the disciplinary sanction announced to the employee, notifying its decision to the person concerned in writing. The dismissal shall be final once the appeal filed by the defendant **have been exhausted and decided.**"** *Cf.* Regulations governing the Judicial Service Act, article 190 (evidence file, folio 201).

<sup>126</sup> *Cf.* Regulations governing the Judicial Service Act, article 188 (evidence file, folio 201).

<sup>127</sup> The representatives and the State agree on this. *Cf.* Brief with pleadings and evidence, and answering brief (merits file, folios 344 and 719).

reflected the way in which the State applied the relevant procedural norms in force at the time of the facts (the Judicial Service Act and its Regulations, *supra* para. 70), together with constitutional provisions, to the disciplinary proceedings of the presumed victims

83. However, according to the rules of procedure of the General Inspectorate of Courts, and the Judicial Service Act and its Regulations, disciplinary proceedings were initiated by an investigation carried out by the General Inspectorate of Courts, *ex officio* or following a complaint by someone, to be completed within 30 days at the most, after which the file had to be forwarded to the Judicial Service Directorate and to the Supreme Court.<sup>128</sup> Once the investigation had been completed, the Personnel Management Directorate had to summon the judicial employee, having decided the charges that would be brought, so that the employee could appear before the Directorate and have the opportunity to provide and request evidence. **After the evidence had been obtained, "the Directorate, or the Head of the unit hearing the case" would report on the results in the respective record, following which the "Personnel Management Directorate will take the final decision on whether or not to ratify the disciplinary sanction announced to the employee, notifying the decision to the person concerned in writing."**<sup>129</sup> However, this latter part was not applied because the decision corresponded to the Supreme Court of Justice (*supra* para. 77).

84. Subsequently, according to the Judicial Service Act and its Regulations, "[t]he judicial officer affected by a disciplinary measure or by dismissal may, within ten days at the most from the date of notification of the disciplinary measure or the dismissal, contest the measure before the Judicial Service Council."<sup>130</sup> **The Council had to convene a hearing "so that the appellant and the Directorate could appear and present evidence, to be presented within fifteen of the date on which it was offered. Once the evidence had been presented, the Council would deliver its decision within the following five working days."**<sup>131</sup>

85. Additionally, article 68 of the Judicial Service Act established **that "[t]he decisions of the Judicial Service Council resulting from a claim against dismissal may consist in confirmation of the dismissal or reinstatement of the judicial official or employee concerned, either to the same post or to another of the same category, with the right to receive the salary accrued since his removal from the post."** Meanwhile, article 69 stipulates that **"[t]he judicial officer who has been removed from his post without a justified cause, shall have the right to be reinstated in his post, as provided for in the preceding article, or to receive compensation equivalent to a month of salary for each year of service up to a maximum of six years, when his reinstatement is not possible or desirable, pursuant to the ruling of the Judicial Service Council."**<sup>132</sup> Lastly, article 31 of the rules of procedure of the Judicial Service Council establish that: **"no ordinary or special appeal is allowed against the final decisions issued by the Council"** (*supra* para. 26).

### **C. The disciplinary proceedings against the presumed victims**

#### **C.1) Adán Guillermo López Lone**

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<sup>128</sup> Cf. Rules of procedure of the General Inspectorate of Courts, Articles 10, 11, 14 and 15. Available at: <http://www.poderjudicial.gob.hn/transparencia/regulacion/Documents/Reglamento%20de%20la%20Inspector%C3%ADa%20General%20de%20Tribunales.pdf>

<sup>129</sup> Cf. Regulations governing the Judicial Service Act, article 190 (evidence file, folio 201).

<sup>130</sup> Judicial Service Act, article 67 (evidence file, folio 4168), and Regulations governing the Judicial Service Act, article 190 (evidence file, folio 201).

<sup>131</sup> Judicial Service Act, article 67 (evidence file, folio 4168), and Regulations governing the Judicial Service Act, article 190 (evidence file, folio 201).

<sup>132</sup> Judicial Service Act, articles 68 and 69 (evidence file, folios 4168 and 4169).

86. Adán Guillermo López Lone was born on November 9, 1957,<sup>133</sup> and is married to Tirza del Carmen Flores Lanza, another of the presumed victims in this case (*infra* para. 105).<sup>134</sup> From February 20, 2002, until June 30, 2010, he was a Sentencing Judge of the San Pedro Sula Sentencing Court.<sup>135</sup> He was a founding member of the AJD and, at the time of the facts, he was president of that organization.<sup>136</sup>

87. On Sunday, July 5, 2009, Mr. López Lone took part in a demonstration near Toncontin Airport awaiting the return of President Zelaya.<sup>137</sup> The demonstration was repelled with teargas and shots, which resulted in a human stampede<sup>138</sup> during which Mr. López Lone's left leg was broken.<sup>139</sup> In the form to claim medical expenses from his health insurance company, Mr. López Lone indicated that "while walking, [he] fell, hit [his] knee and could walk no further."<sup>140</sup> Mr. López Lone's presence at the demonstration and the injury he suffered were reported in the newspapers.<sup>141</sup>

88. On July 6, 2009, based on an article in the *El Tiempo* newspaper that referred to Mr. López Lone's accident during the demonstration (*supra* para. 87), the Inspector of Courts and Tribunals for the Northwestern Region asked the Head of Personnel for the Northwestern Region for information "in order to know whether there was any record of disability leave."<sup>142</sup>

89. Then, on July 22 that year, the Secretary of State for National Defense filed a complaint before the Supreme Court of Justice against Mr. López Lone for "demonstrating in favor of a citizen who was supposedly responsible for the most contemptible offenses against our country"; affirming that this would be contrary to "the judicial principles of independence, impartiality and loyalty." He therefore asked "that the respective investigations be opened and the corresponding measures taken."<sup>143</sup> The Inspectorate General of Courts and Tribunals carried out an investigation and

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<sup>133</sup> Cf. Curriculum vitae of Adán Guillermo López Lone (evidence file, folio 5621).

<sup>134</sup> Cf. Certification of marriage certificate issued on June 4, 2014, by the municipal Registry Office of the National Registry of Persons of the Republic of Honduras (evidence file, folio 5650).

<sup>135</sup> Cf. Brief received on June 30, 2010, signed by Adán Guillermo López Lone and addressed to the Judicial Service Council (evidence file, folio 490), and salary certification issued by the Head of the Judiciary's Personnel Department on June 20, 2014 (evidence file, folio 5648).

<sup>136</sup> Cf. Minutes covering the election of the ADJ Board of Directors, period 2008-2010, dated September 27, 2008 (evidence file, folio 5628).

<sup>137</sup> Cf. Statement made by Adán Guillermo López Lone during the public hearing held in this case: complaint filed on July 22, 2009, before the Supreme Court of Justice (evidence file, folio 226), and newspaper article entitled "*Enfrentamientos entre Ejército y manifestantes deja un muerto*" included in the file of the disciplinary proceeding against Adán Guillermo López Lone (evidence file, folio 232).

<sup>138</sup> Cf. Statement made by Adán Guillermo López Lone during the public hearing held in this case: newspaper article entitled "*Enfrentamientos entre Ejército y manifestantes deja un muerto*" included in the file of the disciplinary proceeding against Adán Guillermo López Lone (evidence file, folio 232), and rebuttal hearing of December 3, 2009 (evidence file, folio 6179).

<sup>139</sup> Cf. Newspaper article entitled "*Enfrentamientos entre Ejército y manifestantes deja un muerto*" included in the file of the disciplinary proceeding against Adán Guillermo López Lone (evidence file, folio 232), and Statement made by Adán Guillermo López Lone during the public hearing held in this case.

<sup>140</sup> Medical expenses claim form dated July 21, 2009 (evidence file, folio 253).

<sup>141</sup> Cf. Newspaper articles entitled "*Enfrentamientos entre Ejército y manifestantes deja un muerto*"; "*Confuso y sangriento enfrentamiento*", and "*Investigarán a Juez de sentencia*" included in the file of the disciplinary proceeding against Adán Guillermo López Lone (evidence file, folios 232, 246 and 248), and Special report of the Inspectorate General of Courts and Tribunals (evidence file, folio 263).

<sup>142</sup> Cf. Record of procedure No. 45 of the Inspector of Courts and Tribunals for the Northwestern Region dated July 6, 2009 (evidence file, folio 231).

<sup>143</sup> Cf. Complaint received on July 22, 2009, signed by the Secretary of State for National Defense and addressed to the President of the Supreme Court of Justice (evidence file, folio 226).

concluded, in a report sent to the Supreme Court of Justice with a copy to the Personnel Management Directorate, that:

The presence and participation of Judge ADAN GUILLERMO LOPEZ LONE of the San Pedro Sula Sentencing Court in those disturbances involved conduct that was not in keeping with the ethical principles and legal provisions that regulate the actions of judicial officials and employees. Consequently, he has incurred administrative responsibility for committing acts that are inimical to the dignity and decorum of his functions, as well as judicial misconduct vis-à-vis the population.<sup>144</sup>

90. It therefore recommended that the Supreme Court of Justice “pursue any appropriate disciplinary measures.”<sup>145</sup> The Supreme Court forwarded the file to the Personnel Management Directorate “so that it could follow the procedure indicated in the Regulations governing the Judicial Service Act.”<sup>146</sup>

91. On October 30, 2009, the Deputy Director of Personnel Management summoned Mr. López Lone to appear before the Personnel Management Directorate on November 5 that year to be heard in the complaint proceeding against him.<sup>147</sup> Mr. López Lone did not attend this summons, alleging **that he was “not [being] given either the time or the means required to defend [himself].”**<sup>148</sup> Following several requests for an extension, the rebuttal hearing was held on December 3,<sup>149</sup> during which Mr. López Lone answered the charges and proposed evidence that was later admitted.<sup>150</sup>

92. In parallel, on December 9, 2009, Mr. López Lone filed an action of unconstitutionality before the Personnel Management Directorate **against the prohibition for judicial authorities “to intervene in meetings, demonstrations or other acts of a political nature,” established in article 3 of the Law on the Organization and Faculties of the Courts.**<sup>151</sup> On December 10, the Directorate declared itself incompetent to hear the appeal, because it related to an administrative procedure and not to a judicial proceeding.<sup>152</sup> On April 6, 2010, Mr. López Lone filed a remedy of appeal against this

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<sup>144</sup> The report cites the following norms among other legal considerations applicable to the case: article 319 of the Constitution; article 3(6) of the Law on the Organization and Faculties of the Courts; Articles 44, 53(f) and (g), 54(j) and 55 of the Judicial Service Act; Articles 149, 172(f), 173(i) and 174 of the Regulations of the Judicial Service Act; Articles 1 and 2(g) of the Code of Ethics for Judicial Officials and Employees, and Articles 3, 8, 43 and 55 of the Ibero-American Code of Ethics. *Cf.* Special report of July 30, 2009, signed by the Inspector General of Courts and Tribunals and addressed to the President of the Supreme Court of Justice (evidence file, folios 265 to 267), and decision of the Inspectorate General of Courts and Tribunals of July 31, 2009 (evidence file, folio 269).

<sup>145</sup> Special report of July 30, 2009, signed by the Inspector General of Courts and Tribunals addressed to the President of the Supreme Court of Justice (evidence file, folio 268).

<sup>146</sup> Decision of the President of the Supreme Court of Justice of August 4, 2009 (evidence file, folio 270).

<sup>147</sup> *Cf.* Writ of summons issued by the Deputy Director of Personnel Management dated October 30, 2009 (evidence file, folio 280).

<sup>148</sup> Brief of November 2, 2009, signed by Adán Guillermo López Lone addressed to the Director of Personnel Management (evidence file, folio 283).

<sup>149</sup> *Cf.* Brief received on November 4, 2009, signed by Adán Guillermo López Lone addressed to the Director of Personnel Management (evidence file, folio 286); decision of the Deputy Director of Personnel Management of November 5, 2009 (evidence file, folio 287); Brief received on November 23, 2009, signed by Adán Guillermo López Lone addressed to the Director of Personnel Management (evidence file, folio 289); decision of the Personnel Management Directorate of November 24, 2009 (evidence file, folio 290), and record of the rebuttal hearing of the Personnel Management Directorate of December 3, 2009 (evidence file, folios 293 to 308).

<sup>150</sup> *Cf.* Decision of the Personnel Management Directorate of December 7, 2009 (evidence file, folios 309 and 310).

<sup>151</sup> *Cf.* Brief received on December 9, 2009 signed by Adán Guillermo López Lone addressed to the Director of Personnel Management (evidence file, folios 368 to 373).

<sup>152</sup> *Cf.* Decision of the Director of Personnel Management of December 10, 2009 (evidence file, folio 374).

decision,<sup>153</sup> which was rejected by the Personnel Management Directorate on April 9 based on its **absolute lack of competence to "intervene, at any stage of the processing of an action of unconstitutionality."**<sup>154</sup>

93. On April 20, 2010, the Personnel Management Directorate recommended to the Supreme Court that it should:

Dismiss, with no liability for the institution, attorney **ADAN GUILLERMO LOPEZ LONE, [...]** owing to non-compliance with or serious or repeated violation of some of the duties, incompatibilities and conducts established in Chapters X and XI of the Judicial Service Act, because he had played an active part in the violent demonstration held near the **"TONCONTIN" Airport on July 5, 2009, [...]** a conduct that was incompatible with the ethical principles and the legal norms that govern the actions of public officials.<sup>155</sup>

94. On May 5, 2010, the plenum of the Supreme Court of Justice approved the Personnel Management Directorate's **recommendation** concerning the removal of Mr. López Lone and appointed a committee of three justices **"to draw up the** corresponding resolution and then to issue the corresponding decision on his removal."<sup>156</sup> The case file contains a resolution of the same date, signed by the President and the Secretary of the Supreme Court that, apparently following up on the orders of the **plenum of the Court, sets out "the corresponding** grounds, which have been approved, adding the date of the plenary meeting."<sup>157</sup> Nevertheless, the decision was not notified to Mr. López Lone.<sup>158</sup> On May 21, 2010, the presumed victims presented a joint request for reconsideration of their sanctions of dismissal before the Supreme Court, indicating that they had become aware of the May 5 decisions through the media, but had not received the corresponding resolutions.<sup>159</sup>

95. On June 16, 2010, the Supreme Court issued a ruling on the dismissal, citing the following grounds:

THE SUPREME COURT OF JUSTICE HEREBY DECIDES: 1. To dismiss, without any liability to the institution, attorney ADAN GUILLERMO LOPEZ LONE from the post of Judge of the Sentencing Court of the San Pedro Sula Judicial District, Department of Cortés, for serious or repeated non-compliance with or violation of some of the duties, incompatibilities and conduct established in Chapters X and XI of the Judicial Service Act, by virtue of his having played an active part **in the political demonstration staged near "TONCONTIN" Airport on July**

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<sup>153</sup> Cf. Brief received on April 6, 2010, signed by Adán Guillermo López Lone addressed to the Director of Personnel Management (evidence file, folios 375 to 377).

<sup>154</sup> Decision of the Director of Personnel Management of April 9, 2010 (evidence file, folio 378).

<sup>155</sup> **This recommendation was made "in application of** Articles 80, 82, 319, of the Constitution of the Republic 1, 3, 4 (2) 10, 12 (a), 44, 51, 53 (g), 55, 56 (3), 60, 64 (a), 66, 73, 74 and 77 of the Judicial Service Act; 1, 3, 7, 9 (4), 31, 33 (a), 149, 161, 172 (f), 174, 180 (3), 184, 186, 187 (a), 188, 189, 190, 206, 207 and 210 of the Regulations governing that Act; 3 (6) of the Law on the Organization and Faculties of the Courts, 1 (d) of the Code of Ethics for Judicial Officials and Employees." Resolution No. 172-2010 of the Personnel Management Directorate of April 20, 2010 (evidence file, folios 350 and 351).

<sup>156</sup> This decision is included in Minutes No. 24 of the meeting of the plenum of the Supreme Court of Justice that began on May 5, 2010, and concluded on May 7, 2010. The minutes were not notified to the presumed victims; rather a certified copy was issued at the request of Ramón Enrique Barrios and Tirza Flores Lanza on June 25, 2010 (evidence file, folios 5645 and 5646).

<sup>157</sup> Ruling of the Supreme Court of Justice of May 5, 2010 (evidence file, folios 352, 358 and 359).

<sup>158</sup> The victims and their representatives have repeatedly asserted that they were not notified of the said resolutions. The State has not contested this assertion and there is no record in the disciplinary files that these resolutions were notified to them.

<sup>159</sup> Cf. Brief with appeal for reconsideration received on May 21, 2011, signed by Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Ramón Enrique Barrios and Tirza Flores Lanza and addressed to the Supreme Court of Justice (evidence file, folios 1127 and 1128).

5, 2009. As he himself testified at the rebuttal hearing, when military forces guarding the air strip opened fire with their regulation weapons, a human stampede was set off; in the effort to save himself, he sustained a tibial plateau fracture to his left leg, a fact that is inconsistent with the statement made by attorney LOPEZ LONE on the Atlántida Insurance medical expense claim form, where he indicated that the accident happened when he tripped as he was walking and hit his knee, leaving him unable to walk. He thus violated the Code of Ethics for Judicial Employees and Officials, article 2 of which provides that a justice or judge must act with honesty, independence, impartiality and equanimity. Therefore his conduct is unbecoming to the dignity of his office and incompatible with ethical principles and the laws governing the conduct of judicial officials. Articles 80, 82, 90(1), 303, 313(1) and (8), 318, 319, 322 and 323 of the Constitution of the Republic; XXXIII of the Universal Declaration of the Rights and Duties of Man; 1, 3, 4(2), 44, 45, 51, 53(g), 55, 56(3), 60, 64(a), 65, 66, 73, 74, 83 and 84 of the Judicial Service Act; 1, 3, 4, 7, 9(4), 149, 160, 161, 171, 172(f), 174, 180(3), 184, 186, 187(a), 188, 189, 190, 206 and 214 of the Regulations governing the Judicial Service Act; Article 3(6) of the Law on the Organization and Faculties of the Courts; 43, 44, 53 and 55 of the Ibero-American Model Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge; 1(1)(f), 8(a) and 9 of the Code of Ethics for Judicial Officials and Employees.<sup>160</sup>

96. Following this decision, on June 30, 2010, Mr. López Lone filed an appeal before the Judicial Service Council requiring his reinstatement as a judge.<sup>161</sup> During this proceeding, five permanent or substitute members of the Council disqualified themselves because, as members of the Supreme Court of Justice they had heard the case for the dismissal of Mr. López Lone, or due to a family relationship or friendship.<sup>162</sup> On February 28, 2011, the Judicial Service Council held a hearing at which Mr. López Lone indicated that he was unaware of the probable composition of the Judicial Service Council who would examine his appeal and the evidence.<sup>163</sup> In addition, he referred, *inter alia*, to the presumed violations of due process in the processing of the disciplinary proceedings and offered evidence to substantiate this.<sup>164</sup>

97. In view of the fact that several of its members had disqualified themselves, on March 22, 2011, **it was considered that "the Judicial Service Council had been disbanded" and a note was sent to the President of the Supreme Court of Justice asking him "to appoint, or to provide guidance on the method to follow in order to incorporate the permanent and substitute members who w[ould] constitute the Judicial Service Council."**<sup>165</sup> In this regard, the President of the Supreme Court decided that:

Inasmuch as [he himself] had been a member of the plenum of the [Supreme Court] that had ruled on the dismissal that was being contested, it would not be legal or prudent [for him] to appoint the new members of the Judicial Service Council. Consequently, the method to be followed in order to incorporate the permanent members who w[ould] substitute the members whose disqualification had been accepted could be the one prescribed in article 16 of the internal rules of procedure of the Judicial Service and, by analogy, article 72(3) of

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<sup>160</sup> Note of June 16, 2010, signed by the Secretary General of the Supreme Court of Justice transcribing the dismissal decision of that date (evidence file, folios 501 and 502).

<sup>161</sup> *Cf.* Appeal received on June 30, 2010, signed by Adán Guillermo López Lone and addressed to the Judicial Service Council (evidence file, folios 490 and 500).

<sup>162</sup> *Cf.* Disqualification dated November 25, 2010, signed by Edith María López Rivera, Permanent Member of the Judicial Service Council (evidence file, folio 605); disqualification dated December 9, 2010, signed by Rosa Lourdes Paz Haslam, Substitute Member of the Judicial Service Council (evidence file, folio 607); disqualification dated January 14, 2011, signed by Gustavo Enrique Bustillo Palma, Substitute Member of the Judicial Service Council, (evidence file, folio 613); disqualification dated February 2, 2011, signed by Raúl Antonio Henríquez Interiano, Permanent Member of the Judicial Service Council (evidence file, folio 616), and disqualification dated March 3, 2011, signed by Léster Ilich Mejía Flores, Substitute Member of the Judicial Service Council (evidence file, folio 839).

<sup>163</sup> *Cf.* Minutes of the hearing of the Judicial Service Council of February 28, 2011 (evidence file, folio 634).

<sup>164</sup> *Cf.* Minutes of the hearing of the Judicial Service Council of February 28, 2011 (evidence file, folios 632 to 650).

<sup>165</sup> *Cf.* Decision of the Judicial Service Council of March 22, 2011 (evidence file, folio 1011).



the Law on the Organization and Faculties of the Courts and article 15(d) of the rules of procedure of the Supreme Court of Justice; without prejudice to any other method that the President or all the remaining members of the Council may determine.<sup>166</sup>

98. Following the preceding decision, the President of the Council appointed a lawyer to incorporate the Council and enable the process to proceed.<sup>167</sup> Subsequently, another two members disqualified themselves, and two new substitute members were appointed.<sup>168</sup>

99. On August 24, 2011, the Council declared that the appeal filed by Mr. López Lone was inadmissible (*supra* para. 96).<sup>169</sup> Regarding the alleged lack of competence, independence and impartiality of the Judicial Service Council to decide appeals against decisions of the Supreme Court of Justice, **the Council indicated that it was "an independent organ when issuing its decisions."** In addition, it emphasized the fact that permanent and substitute members had **"disqualified themselves from hearing these proceedings," thus guaranteeing impartiality.** With regard to the members who had been appointed by the President, the Council indicated that **"they were officials who had entered the Judiciary and been appointed to their functions through a competitive procedure and who had enjoyed a long and unblemished career within the Judiciary"; consequently, its independence could not be called into question.**<sup>170</sup>

100. The Council considered that it had been duly proved that Mr. López Lone:

Had played an active role in the partisan political protest carried out near the Toncontin Airport with flags representing the different political parties; [...] **added to this, the country's main newspapers had mentioned that [his] participation [...] was considered to be of a partisan political nature owing to his status as a judge, thus violating Article 319(2) of the Constitution [...] and article 3(6) of the Law on the Organization and Faculties of the Courts, because this action was incompatible with the exercise of the post of judge, pursuant to the provisions of article 49 of the Judicial Service Act and article 156 of its Regulations.**<sup>171</sup>

101. The Council also pointed out that, owing to his participation in the protest and the reports of **this in the press, Mr. López Lone's "impartiality and independence would be compromised when he was called upon to hear complaints filed by citizens with whom he had established a mutual interest in the political process in which they were partners in a common struggle."**<sup>172</sup>

102. Lastly, the Council underlined that Mr. López Lone's **statement at the hearing, that he had broken his leg during a "human stampede" that occurred at the demonstration in which he took part, "conflicted with the information he [...] had entered on the form to claim medical expenses [from the insurance company]."**<sup>173</sup> However, it considered that **"this circumstance does not warrant a sanction under the Judicial Service Act and its Regulations, but it should be noted that it ratifies the fact that [Mr. López Lone] was not at home, but rather in a partisan political meeting."**<sup>174</sup>

<sup>166</sup> Resolution of the President of the Supreme Court of Justice of April 14, 2011 (evidence file, folio 1017).

<sup>167</sup> *Cf.* Decision of the Judicial Service Council of April 26, 2011 (evidence file, folio 1020).

<sup>168</sup> *Cf.* Disqualification dated April 26, 2011, signed by Zoe Celeste Vásquez Ordoñez, Permanent Member of the Judicial Service Council (evidence file, folio 1022); decision of the Judicial Service Council of April 29, 2011 (evidence file, folio 1023), and notification of disqualification presented by Jorge Alberto Zelaya Saldana and appointment of Ernesto Antonio Rodríguez Corrales on August 1, 2011 (evidence file, folio 1036).

<sup>169</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 1079 and 1080).

<sup>170</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 1057 to 1081).

<sup>171</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 1075).

<sup>172</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 1077 and 1078).

<sup>173</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 1076).

<sup>174</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 1076 and 1077).

103. The Council determined that Mr. López Lone's conduct was:

Contrary to the provisions of the Constitution of the Republic, in violation of its article 303, as well as of articles 55 and 64 of the Judicial Service Act; 161, 174 and 187(a) of the Regulations governing the Judicial Service Act, and article 8 of the Code of Ethics for Judicial Officials and Employees, and conclude[d] that, on July 5, 2009, the appellant took part in the partisan political demonstration organized near the Toncontin Airport with flags of the different political parties of diverse ideologies represented there, which resulted in his dismissal pursuant to Decision No. 371 of June 16, 2009, issued by the Supreme Court of Justice.<sup>175</sup>

104. Article 31 of the rules of procedure of the Judicial Service Council established that there could be no appeal against this decision (*supra* paras. 26 and 85). On December 12, 2011, the Judicial Service Council placed on record that the sixty days granted to the parties by the Constitutional Justice Act had elapsed and no appeal had been filed and that, therefore, it proceeded to archive the proceedings.<sup>176</sup>

## C.2) Tirza del Carmen Flores Lanza

105. Tirza del Carmen Flores Lanza was born on August 5, 1964,<sup>177</sup> and is married to Mr. López Lone (*supra* para. 86).<sup>178</sup> From June 11, 2002, until July 1, 2010, she was a justice of the District Appellate Court of San Pedro Sula.<sup>179</sup> She was a founding member of the AJD and, at the time of the events, she was a member of the **association's Honor Tribunal**.<sup>180</sup>

106. On June 30, 2009, Ms. Flores Lanza filed an application for *amparo* in favor of President Zelaya and against the Chairman of the Joint Chiefs of Staff of the Armed Forces for presumably having violated "articles 69, 81, 84, 99 and 102 of the Constitution and articles 7(1) and (2), 11(2) and 22(5) of the American Convention." **She requested, "as an urgent precautionary measure, the immediate repatriation"** of President Zelaya.<sup>181</sup> The same day, the Constitutional Chamber admitted the application and joindered it to similar actions filed by other individuals. It then asked the

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<sup>175</sup> In addition to the findings and norms cited in paragraphs 100 to 103 *supra*, the operative paragraphs of the decision of the **Judicial Service Council included the determination that the appeal filed by Mr. López was inadmissible, "in application of the provisions of Articles 8 of the Universal Declaration of Human Rights; 3 of the American Convention on Human Rights; 72, 74, 82, 90, 303, 319 and 322 of the Constitution of the Republic; 1, 3, 4(1), 6(1), 9(e)(1), 44, 45, 53(b), 56, 67, 69 amended and 85 of the Judicial Service Act; 20(1), 23, 28(d) (1), 54, 171(b), 173(c), 179, 190, 191 and 192 of the Regulations governing the Judicial Service Act; and 3, 7(e)(1), 21, 24, 26, 31 and 34 of the rules of procedure of the Judicial Service Council."** Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 1079 and 1080).

<sup>176</sup> *Cf.* Decision of the Judicial Service Council of December 12, 2011 (evidence file, folio 1125).

<sup>177</sup> *Cf.* Curriculum vitae of Tirza del Carmen Flores Lanza (evidence file, folio 5660).

<sup>178</sup> *Cf.* Certification of marriage certificate issued on June 4, 2014, by the Municipal Civil Registry Office of the National Registry of Persons of the Republic of Honduras (evidence file, folio 5650).

<sup>179</sup> *Cf.* Brief received on June 30, 2010, signed by Tirza del Carmen Flores Lanza and addressed to the Judicial Service Council (evidence file, folio 2291), and **salary certification issued by the Head of the Judiciary's Personnel Department on June 20, 2014** (evidence file, folio 5674).

<sup>180</sup> *Cf.* Minutes covering the election of the ADJ Board of Directors, period 2008-2010, dated September 27, 2008 (evidence file, folio 5630), and affidavit made by Tirza del Carmen Flores Lanza on January 7, 2015 (evidence file, folio 6672).

<sup>181</sup> *Cf.* Application for *amparo* filed on June 30, 2009, by Tirza del Carmen Flores Lanza before the Constitutional Chamber of the Supreme Court of Justice (evidence file, folios 2905 and 2907). Similar applications were filed by other individuals, including Mr. Lopez Lone. *Cf.* Application for *amparo* filed by Ben Hur López García before the Constitutional Chamber of the Supreme Court of Justice (evidence file, folios 2919 to 2921), and application for *amparo* filed on September 29, 2009, by Adán Guillermo López Lone before the Constitutional Chamber of the Supreme Court of Justice (evidence file, folios 2925 to 2930).

Chairman of the Joint Chiefs of Staff to provide a detailed report on the events that had been denounced.<sup>182</sup>

107. On the same date, Ms. Flores Lanza and a group of persons filed a criminal complaint before the Prosecutor General accusing members of the Joint Chiefs of Staff of the Armed Forces of Honduras and other persons who “took part in and approved the decision or decree ousting José Manuel Zelaya Rosales]” of “falsification of public documents, abuse of authority, home invasion, terrorism, rebellion, treason, and crimes against the form of government and against senior officials of the Honduran State.”<sup>183</sup>

108. On July 1, 2009, the Inspector General of Courts and Tribunals opened an investigation, *ex officio*, against Ms. Flores Lanza, based on the applications for *amparo* filed in favor of President Zelaya, indicating that she had learned of these applications “on the evening television news.”<sup>184</sup> On July 30, that year, the Inspector General concluded, in a report forwarded to the Supreme Court of Justice, with a copy to the Personnel Management Directorate, that, on June 30, Ms. Flores Lanza was in the capital, Tegucigalpa, and “written proof existed that she had not requested the respective permission.” The Inspector General stated that “[t]he exercise of the functions of justice or judge [...] is incompatible with the actions and conducts that have been described; unless such actions had been taken on her own behalf, or on behalf of her spouse or immediate family members.” The Inspector General also indicated that:

The fact that the officials under investigation established the District Appellate Court of San Pedro Sula and the Sentencing Court of the same Judicial District as the place to receive notifications, [...] in addition to demonstrating lack of respect towards their office, is aggravated by the fact that the acts took place before the highest court of justice and had public repercussions, apart from the fact that the said courts have the exclusive and specific purpose of imparting and administering justice, to the exclusion of any other activity.<sup>185</sup>

109. In this regard, she indicated that the conduct “fell within the provisions of article 53(g) of the Judicial Service Act.” Therefore, she recommended to the Supreme Court that it “follow through with any appropriate disciplinary measures.”<sup>186</sup>

110. On August 12, 2009, Ms. Flores Lanza submitted a request for a declaration of nullity in the proceedings concerning the application for *amparo*.<sup>187</sup> On September 9, 2009, the Constitutional Chamber declared the nullity requested, *ex officio*, but also declared that the request for a declaration of nullity submitted by Ms. Flores Lanza was inadmissible, because she was not authorized to submit this. In this regard, it indicated that:

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<sup>182</sup> Cf. Decision of the Constitutional Chamber of June 30, 2009 (evidence file, folio 2931).

<sup>183</sup> Complaint filed by Tirza del Carmen Flores Lanza and others on June 30, 2009, before the Prosecutor General (evidence file, folios 5666 and 5667). The group of those presenting this complaint included Mr. Lopez Lone.

<sup>184</sup> Record of investigation by the Inspector General of Courts and Tribunals of July 1, 2009 (evidence file, folio 2892).

<sup>185</sup> Special Report of July 30, 2009, signed by the Inspector General of Courts and Tribunals and addressed to the President of the Supreme Court of Justice (evidence file, folio 2902), and decision of the Inspectorate General of Courts and Tribunals of July 31, 2009 (evidence file, folio 2904).

<sup>186</sup> Special Report of July 30, 2009, signed by the Inspector General of Courts and Tribunals and addressed to the President of the Supreme Court of Justice (evidence file, folios 2902 and 2903). Mr. López Lone was also included in this investigation. However, the procedure with regard to Mr. López Lone was suspended temporarily because he was “on medical leave.” According to information provided by the representatives, the investigation against Mr. López Lone was not taken up again subsequently. Cf. Brief of the representatives of August 12, 2015 (merits file, folio 1928).

<sup>187</sup> The nullity was requested because the June 30 report in relation to the application for *amparo* submitted by the respondent authority had been prepared by the Legal Auditor and not by the Head of the Armed Forces, General Romeo Vásquez Velásquez, against whom the application had been filed. Cf. Brief requesting a declaration of nullity received on August 12, 2009, signed by Tirza del Carmen Flores Lanza and addressed to the Constitutional Chamber (evidence file, folio 2472).

Pursuant to the law, the act of filing an application for *amparo* does not, in itself, constitute the practice of law; however, the act of requesting a declaration of the nullity of the proceedings, as the appellant, attorney [Flores Lanza], requests at this stage of the proceedings, is practicing law and, in the opinion of this chamber, this is a violation of article 108 of the aforementioned Law on the Organization and Faculties of the Courts owing to the position held by the said appellant as a tenured justice of the San Pedro Sula District Appellate Court.<sup>188</sup>

111. On September 16, Ms. Flores Lanza requested photocopies of the file of the investigation against her.<sup>189</sup> However, this was refused by the Regional Inspectorate of Courts and Tribunals, **"because it was not part [...] of the procedure established by the Judicial Service Act and its respective Regulations, or in the rules of procedure of the Inspectorate of Courts and Tribunals."**<sup>190</sup> **Moreover, the Inspectorate "clarified that [its] investigation was not final; it was subject to review by the immediate superiors and was part of a procedure established by the Judicial Service Act and Regulations."**<sup>191</sup>

112. On October 20, 2009, the Personnel Management Directorate opened a disciplinary proceeding against Ms. Flores Lanza and summoned her to appear in order to answer the charges brought against her.<sup>192</sup> After being rescheduled several times, the rebuttal hearing was held on January 7, 2010.<sup>193</sup> Ms. Flores Lanza presented the corresponding defense and, *inter alia*, proposed evidence that was subsequently admitted.<sup>194</sup>

113. On April 20, 2010, the Personnel Management Directorate recommended to the Supreme Court that it:

Dismiss, without any liability for the institution, attorney Tirza del Carmen FLORES LANZA, [...] for non-compliance or serious or repeated violation of some of the duties, incompatibilities and conducts established in Chapters X and XI of the Judicial Service Act, by virtue of the following: (1) Having been absent from her court office on June 30, 2009, [...] on which date she was in the capital of the Republic, engaging in matters that are not inherent in the functions of her post, without any record of the respective permission; (2) Engaging in activities incompatible with the performance of her functions, by engaging in the practice of law in processing a request for a declaration of nullity filed in the [proceeding on the application for *amparo*]; (3) Indicating the offices of the San Pedro Sula Appellate Court as the address for receiving notifications pertaining to actions that are entirely unrelated to her sole function, which is to impart and to administer justice impartially; (4) Involving herself in activities that, as a justice, are not permitted, by appearing

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<sup>188</sup> The Chamber indicated that "the only way in which this Chamber could consider valid the actions involving the practice of law carried out by attorney [Flores Lanza] or determine that she was authorized to take such actions in the name of JOSÉ MANUEL ZELAYA ROSALES, would be that she prove that this fell within one of the following categories: 1. That she is defending a personal case, which is not the case, because she is doing so in favor of a third party; 2. That she is defending a case involving her spouse, which is not the case either, because she is not related by marriage to the third party in favor of whom she filed the application for *amparo*; 3. That Mr. ZELAYA ROSALES is her ward; that Mr. ZELAYA is a relative within the fourth degree of consanguinity or the second of affinity, and/or 5. That the appellant is no longer a tenured justice of the San Pedro Sula District Appellate Court or is a substitute justice or a justice of the peace." Decision of the Constitutional Chamber of September 9, 2009 (evidence file, folios 2595 and 2596).

<sup>189</sup> Cf. Brief of September 16, 2009, signed by Tirza del Carmen Flores Lanza addressed to the Inspectors of Tribunals, San Pedro Sula (evidence file, folio 2734).

<sup>190</sup> Decision of the Regional Inspectorate of Courts and Tribunals of September 16, 2009 (evidence file, folio 2736).

<sup>191</sup> Decision of the Regional Inspectorate of Courts and Tribunals of September 16, 2009 (evidence file, folio 2736).

<sup>192</sup> Cf. Decision of the Personnel Management Directorate of October 20 2009 (evidence file, folios 2975 and 2976).

<sup>193</sup> Cf. Decision of the Personnel Management Directorate of December 10, 2009 (evidence file, folio 2988), and record of the rebuttal hearing held by the Personnel Management Directorate of January 7, 2010 (evidence file, folios 2990 to 3011).

<sup>194</sup> Cf. Decision of the Personnel Management Directorate of January 11, 2010 (evidence file, folios 3012 to 3013).

before the Prosecutor General and filing a complaint against agents of the State based on the supposed perpetration of offenses, and (5) Making comments on judicial actions of other jurisdictional organs and the Supreme Court itself; all these conducts are incompatible with the ethical principles and legal norms that regulate the actions of judicial officials and employees.<sup>195</sup>

114. On May 5, 2010, the plenum of the Supreme Court of Justice approved the recommendation of the Personnel Management Directorate to dismiss Ms. Flores Lanza and appointed a committee of **three justices "to draw up the corresponding resolution and then to issue the respective dismissal decision."**<sup>196</sup> The case file contains a resolution of the same date signed by the President and the Secretary of the Supreme Court, in which, apparently following up on the orders of the plenum, it **set out "the corresponding grounds, which have been approved, adding the date on which the plenary meeting had been held."**<sup>197</sup> However, this resolution was not notified to Ms. Flores Lanza.<sup>198</sup> On May 21, 2010, the presumed victims filed a joint request before the Supreme Court for reconsideration of the sanctions of dismissal of those concerned, pointing out that they had learned of the decisions on May 5, through the media, but had not received the corresponding resolutions.<sup>199</sup>

115. On June 4, the Supreme Court issued a ruling on the dismissal; the only justification included was the following:

THE SUPREME COURT OF JUSTICE HEREBY DECIDES: (1) To dismiss, without any liability to the institution, attorney TIRZA DEL CARMEN FLORES LANZA from the post of justice on the San Pedro Sula Appellate Court, department of Cortés, for non-compliance with, or serious or repeated violation of, some of the duties, incompatibilities and conducts set forth in Chapters X and XI of the Judicial Service Act, by virtue of the following: (a) having been absent from her court office on June 30, 2009, on which date she was in the capital of the Republic engaging in matters that are not inherent functions of her post, without obtaining the necessary leave; (b) carrying out activities incompatible with the performance of her office, by engaging in the practice of law in processing the request for a declaration of nullity filed in the proceeding on the application for *amparo*; (c) indicating the offices of the San Pedro Sula Appellate Court, which is the exclusive and legal domicile of the Judiciary, as the address for receiving notifications pertaining to actions entirely unrelated to her sole function, which is to impart and administer justice impartially; (d) becoming involved in activities that, as a justice, are not permitted, by appearing before the Prosecutor General to file a complaint against agents of the State for the supposed perpetration of offenses; (e) making comments on judicial acts of other jurisdictional bodies, including the [Supreme Court of Justice] itself; all these conducts are incompatible with the ethical principles and legal norms governing the conduct of judicial officials and employees. Articles 80, 82, 90(1), 303, 313(1) and (8), 318,

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<sup>195</sup> This recommendation was made, "in application of Articles 80, 82, 319(1) of the Constitution of the Republic: 1, 3, 4(1), 10, 12(a), 44, 45, 51, 53(g), 54(c), 55, 56(3), 60, 64(a), 66, 73, 74 and 77 of the Judicial Service Act; 1, 3, 4, 7, 9(1), 31, 33(a), 149, 157, 158, 161, 172(f), 173(c), 174, 180(3), 184, 186, 187(a) 188, 189, 190, 206, 207 and 210 of the Regulations governing the same Act; 3(4) of the Law on the Organization and Faculties of the Courts; 1 of the Code of Ethics for Judicial Officials and Employees." Resolution No. 04-2010 of the Personnel Management Directorate of April 20, 2010 (evidence file, folio 3068).

<sup>196</sup> This decision appears in Minutes No. 24 of the session initiated by the plenum of the Supreme Court of Justice on May 5, 2010, and ended on May 7, 2010. These minutes were not notified to the presumed victims; rather a certified copy was issued at the request of Ramón Enrique Barrios and Tirza Flores Lanza on June 25, 2010 (evidence file, folios 5640 and 5641). The decision of the Supreme Court was ratified on June 1, 2010. *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2834).

<sup>197</sup> *Cf.* Resolution of the Supreme Court of Justice of May 5, 2010 (evidence file, folios 3070 to 3077).

<sup>198</sup> The victims and their representatives have repeatedly asserted that the said resolutions were not notified. The State has not contested this assertion and there is no record in the disciplinary files that these resolutions were notified.

<sup>199</sup> *Cf.* Brief of the request for reconsideration received on May 21, 2011, signed by Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Ramón Enrique Barrios and Tirza Flores Lanza and addressed to the Supreme Court of Justice (evidence file, folios 1127 and 1128).

319, 322 and 323 of the Constitution of the Republic; XXXIII of the Universal Declaration of the Rights and Duties of Man; 1, 3, 4(i), 44, 45, 51, 53(g), 54(c), 55, 56(3), 60, 64(a), 65, 66, 73, 74, 83 and 84 of the Judicial Service Act; 1, 3, 4, 7, 9(1), 149, 157, 160, 161, 171, 172(f), 173(c), 174, 180(3), 184, 186, 187(a), 188, 189, 190, 206, and 214 of the Regulations governing the Judicial Service Act; 3(6) and 108 of the Law on the Organization, Functions and Authorities of the Courts; 53 of the Ibero-American Model Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge; and 1(1), 2(d), 8(a) and 9 of the Code of Ethics for Judicial Officials and Employees.<sup>200</sup>

116. As a result of this decision, on June 30, 2010, Ms. Flores Lanza filed an appeal before the Judicial Service Council requesting reinstatement in her post as a justice.<sup>201</sup> Five permanent or substitute members of the Council disqualified themselves from this proceeding, as they had heard the proceedings on the dismissal of Ms. Flores Lanza as members of the Supreme Court of Justice or based on relationship or friendship.<sup>202</sup> On February 17, 2011, a hearing was held before the Judicial Service Council, during which Ms. Flores Lanza indicated that she was unaware of the composition of the Judicial Service Council and the identity of the members who would examine her appeal. In addition, she referred, *inter alia*, to the presumed violations of due process in the processing of the disciplinary proceedings and offered evidence to substantiate this.<sup>203</sup>

117. In view of the fact that several of its members had disqualified themselves, and the similarity with what had occurred in the proceedings concerning Mr. López Lone (*supra* para. 97), on March 22, 2011, it was considered that **"the Judicial Service Council had been disbanded"** and the President of the Supreme Court of Justice was asked to provide guidance. Following the latter's indications, the President of the Council appointed a lawyer to incorporate the Council so that the proceedings could continue.<sup>204</sup> Subsequently, another four members of the Council disqualified themselves and substitutes were appointed.<sup>205</sup>

118. On August 24, 2011, the Council declared that the claim filed by Ms. Flores Lanza was inadmissible.<sup>206</sup> Regarding the alleged lack of competence, independence and impartiality of the

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<sup>200</sup> Note of June 4, 2010, signed by the Secretary General of the Supreme Court of Justice, transcribing the dismissal decision of the same date (evidence file, folios 2303 and 2304).

<sup>201</sup> *Cf.* Complaint received on June 30, 2010, signed by Tirza del Carmen Flores Lanza and addressed to the Judicial Service Council (evidence file, folios 2291 to 2302).

<sup>202</sup> *Cf.* Disqualification dated November 25, 2010, signed by Edith María López Rivera, Permanent Member of the Judicial Service Council (evidence file, folio 2329); disqualification dated December 9, 2010, signed by Rosa Lourdes Paz Haslam, Substitute Member of the Judicial Service Council (evidence file, folio 2331); disqualification dated of January 12, 2011, signed by Gustavo Enrique Bustillo Palma, Substitute Member of the Judicial Service Council (evidence file, folio 2333); disqualification dated February 2, 2011, signed by Raúl Antonio Henríquez Interiano, Permanent Member of the Judicial Service Council (evidence file, folio 2337), and disqualification dated February 23, 2011, signed by Léster Ilich Mejía Flores, Substitute Member of the Judicial Service Council (evidence file, folio 2539).

<sup>203</sup> *Cf.* Minutes of the hearing of the Judicial Service Council of February 17, 2011 (evidence file, folios 2348 and 2349).

<sup>204</sup> *Cf.* Decision of the Judicial Service Council of March 22, 2011 (evidence file, folio 2759); decision of the President of the Supreme Court of Justice of April 14, 2011 (evidence file, folio 2764), and decision of the Judicial Service Council of April 26, 2011 (evidence file, folio 2767).

<sup>205</sup> *Cf.* Disqualification dated April 26, 2011, signed by Zoe Celeste Vásquez Ordoñez, Permanent Member of the Judicial Service Council (evidence file, folio 2769); decision of the Judicial Service Council of April 29, 2011 (evidence file, folio 2770); disqualification dated June 22, 2011, signed by Sixto Aguilar Cruz (evidence file, folio 2782); decision of the Judicial Service Council of June 23, 2011 (evidence file, folio 2784); disqualification dated June 24, 2011, signed by Danery Antonio Medal Raudales (evidence file, folio 2787); decision of the Judicial Service Council of June 29, 2011 (evidence file, folio 2789); disqualification dated July 25, 2011, signed by Jorge Alberto Zelaya Zaldaña (evidence file, folios 2792 and 2793), and decision of the Judicial Service Council of August 1, 2011 (evidence file, folio 2794).

<sup>206</sup> This decision was adopted "in application of the provisions of Articles 8 of the Universal Declaration of Human Rights; 3 of the American Convention on Human Rights, 72, 74, 82, 90, 319 of the Constitution of the Republic; 1, 3, 4(1), 6(1), 9(e)(1), 44, 45, 53(b), 56, 67, 69 amended and 85 of the Judicial Service Act; 20(1), 23, 28(d)(1), 54, 171(b), 173(c), 179, 190, 191 and 192 of the Regulations governing the Judicial Service Act; 3, 7(e)(1), 21, 24, 26, 31 and 34 of the rules of

Judicial Service Council, the Council responded with the same considerations that were described in relation to the proceedings against Mr. López Lone (*supra* para. 99).<sup>207</sup>

119. Regarding the merits of the matter, the Council considered that it had been proved that, on June 30, 2009, Ms. Flores Lanza has "been absent from her work without proving that she had the corresponding permission from her superior [...] and that, on another occasion, [...] she only stated that she had a permission granted by the President of the Criminal Chamber of the Supreme Court of Justice, [without providing] the name of this officer or producing the permission."<sup>208</sup> It **emphasized that this conduct was contrary to her obligation not "to absent herself from her office during working days and hours, without permission," which is "contrary to the effectiveness of the administration of justice" and, according to** article 179 of the regulations governing the Judicial Service Act, constitutes a serious offense.<sup>209</sup>

120. The Council also indicated that it had been proved that Ms. Flores Lanza had violated her obligation not to exercise the practice of law.<sup>210</sup> It pointed out that the argument that Ms. Flores Lanza "was not exercising acts of the practice of law, evaporates because it had been proved that, **subsequently, [...] she filed a request for a declaration of nullity [...] before the Constitutional Chamber of the Supreme Court of Justice [...] and it has also been proved that she came forward to file a complaint against two Branches of the State (Executive and Legislative) and against the Honduran Armed Forces.**"<sup>211</sup>

121. In **addition, "as regards commenting on judicial acts of other jurisdictional bodies," the Council indicated that "the precise nature of these comments that** [Ms. Flores Lanza was alleged to have made] had not been established, [so that] these grounds had not been proved sufficiently to justify her dismissal."<sup>212</sup>

122. Article 31 of the rules of procedure of the Judicial Service Council established that this decision was not subject to appeal (*supra* paras. 26 and 85). On December 12, 2011, the Judicial Service Council placed on record that the sixty days that the Constitutional Justice Act granted the parties had elapsed, and no appeal had been filed; it therefore proceeded to archive the proceedings.<sup>213</sup>

### **C.3) Luis Alonso Chévez de la Rocha**

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procedure of the Judicial Service Council; 64 of the Civil Code, and 202 of the Code of Civil Procedure." Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2842).

<sup>207</sup> Cf. Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2828 and 2829).

<sup>208</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2836).

<sup>209</sup> According to the decision, this obligation was established in "article 45 of the Judicial Service Act in relation to article 54 of the said Act. Cf. Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2836).

<sup>210</sup> In this regard, it cited "article 319 [of the Constitution] and, by supplementary application [...] articles 85 of the Judicial Service Act, 215 of the Regulations governing the Judicial Service Act and 51 of the rules of procedure of the Judicial Service Council, referred to article 108 of the Law on the Organization and Faculties of the Courts," as well as articles 50 of the Judicial Service Act and 157 of its Regulations. Cf. Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2837 and 2838).

<sup>211</sup> In this regard, it indicated that "article 12 of the Organic Law of the Honduran Lawyers' Professional Association established that "[t]he practice of law corresponds exclusively to lawyers and graduates in legal and social sciences, members of the Association." Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2838).

<sup>212</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2840 and 2841).

<sup>213</sup> Cf. Decision of the Judicial Service Council of December 12, 2011 (evidence file, folio 2888).

123. Luis Alonso Chévez de la Rocha was born on December 23, 1957.<sup>214</sup> From March 27, 2008, to September 23, 2010, he was a Special Judge of cases involving domestic violence in San Pedro Sula.<sup>215</sup> At the time of the facts he was a member of the AJD.<sup>216</sup>

124. In the afternoon of August 12, 2009, he was near the Multiplaza Mall located in the Circunvalación Avenue of San Pedro Sula. That day, a march against the *coup d'état* was being held in this avenue. Mr. Chévez **went to observe the march and noted that "they were throwing tear gas bombs." Upon questioning the actions taken by the police, he was made to get into a patrol car**<sup>217</sup> and taken to the First Police Station of San Pedro Sula.<sup>218</sup> According to Mr. Chévez, he **"was physically and verbally attacked by the station's police agents,"** who also failed to inform him of his rights.<sup>219</sup>

125. The same day, an application for *habeas corpus* was filed in favor of Mr. Chévez and the other persons arrested with him.<sup>220</sup> As a result, the places where they were detained in San Pedro Sula were ordered to **"immediately bring [all those arrested that day], before the corresponding Executing Magistrate,"** and that those who had arrested them should present **"the arrest warrant and [provide] a detailed report of the events that led to the arrest."**<sup>221</sup> The Executing Magistrate observed that, in the logbook of the station where he was detained **"there was no record of why he had been detained, or indeed a report of the detention of anyone by that police station that day."**<sup>222</sup> In addition, the officer in charge told her that the said persons were not detained; rather, they were **at the police station "because of the investigation and to be checked by a forensic physician."**<sup>223</sup> The Executing Magistrate ordered their immediate release **at 8.20 p.m. considering that "no warrant existed for their arrest" and there was not even "circumstantial evidence against them."**<sup>224</sup>

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<sup>214</sup> Cf. Curriculum vitae of Luis Alonso Chévez de la Rocha (evidence file, folio 5680).

<sup>215</sup> Cf. Brief received on June 30, 2010, signed by Luis Alonso Chévez de la Rocha and addressed to the Judicial Service Council (evidence file, folio 1786), and **salary certification issued by the Head of the Judiciary's Personnel Department on June 20, 2014** (evidence file, folio 5777).

<sup>216</sup> Cf. Minutes covering the election of the ADJ Board of Directors, period 2008-2010, dated September 27, 2008 (evidence file, folio 5628).

<sup>217</sup> In this regard, in a statement of August 12, 2009, Mr. Chévez declared that, during the protest, he asked a police officer **"why they had suppressed the protest, considering that it was peaceful, and the [officer] said that this was not true and [...] ordered his arrest."** In another statement of September 14, 2009, Mr. Chévez indicated that a police officer asked him if he was taking part in the march; Mr. Chévez told him that he was not and pointed out that **"they were acting improperly, and asked why they were throwing [tear gas] bombs with no prior warning."** In the affidavit he submitted to this Court, Mr. Chévez stated that he went over to the police and **"asked them why they had launched an attack with tear gas bombs with no prior warning; that this harmed innocent people; [he] told them clearly that [he] was a judge" and, as a result, he was arrested.** Cf. Record of interview with Luis Alonso Chévez de la Rocha at the First Police Station on August 12, 2009 (evidence file, folio 5696); statement made by Luis Alonso Chévez de la Rocha on September 14, 2009, before the Inspectorate of Courts and Tribunals (evidence file, folio 1201), and affidavit made by Luis Alonso Chévez de la Rocha on January 8, 2015 (evidence file, folios 6638 and 6639).

<sup>218</sup> Cf. Record of inspection by the Executing Magistrate of August 12, 2009 (evidence file, folio 5692), and record of interview with Luis Alonso Chévez de la Rocha in the First Police Station on August 12, 2009 (evidence file, folio 5696).

<sup>219</sup> Cf. Record of inspection by the Executing Magistrate of August 12, 2009 (evidence file, folios 5692 and 5693), and affidavit made by Luis Alonso Chévez de la Rocha on January 8, 2015 (evidence file, folio 6639).

<sup>220</sup> Cf. Application for *habeas corpus* filed by Tirza Flores Lanza on August 12, 2009, before the San Pedro Sula District Appellate Court (evidence file, folio 1226).

<sup>221</sup> Cf. Decision of the District Appellate Court of August 12, 2009 (evidence file, folio 1226).

<sup>222</sup> Record of inspection by the Executing Magistrate of August 12, 2009 (evidence file, folio 5692).

<sup>223</sup> Record of inspection by the Executing Magistrate of August 12, 2009 (evidence file, folio 5692).

<sup>224</sup> Decision of the Executing Magistrate of August 12, 2009 (evidence file, folio 1241), and Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2233).



126. On September 10, the District Appellate Court of San Pedro Sula declared the application for *habeas corpus* admissible, considering that Mr. Chévez de la Rocha and the other persons who had been arrested had not been advised “of the reasons for their arrest [and nor was] their right to advise that they had been arrested respected.” In addition, it took into account that, “according to his testimony, Luis Alonso Chévez de la Rocha [...] had been subjected to verbal abuse by the police authorities, and that the detention [...] had not been recorded in the police station logbook.”<sup>225</sup> In addition, the decision ordered that a copy of the document be sent “to the city’s Ombudsman so that he could file the corresponding criminal actions” and that “when the [...] ruling had been notified, the corresponding proceedings should be forwarded to the Constitutional Chamber.”<sup>226</sup>

127. In parallel, on August 13, 2009, the Inspectorate General of Courts and Tribunals ordered that an investigation be opened, *ex officio*, against Mr. Chévez because a newspaper article had reported on his arrest during a demonstration.<sup>227</sup> On August 19, this investigation was joinded to the investigation against Mr. Barrios and other judicial officials (*infra* paras. 141 to 147).<sup>228</sup>

128. On September 11, Mr. Chévez de la Rocha “was informed of the contents of the complaint” and his statement was postponed to give him time to prepare it.<sup>229</sup> On September 12, 2009, Mr. Chévez de la Rocha asked the Inspectorate to provide him with a photocopy of the file, “in order discover what [he] was accused of.”<sup>230</sup> His request was refused, because Mr. Chévez had “been given verbal information on the matters to be investigated.” In addition, the Inspectorate emphasized that the inspectors had to “observe strict confidentiality in the performance of their duties.”<sup>231</sup> On September 14, Mr. Chévez gave a statement before the Inspectorate. At that time he was questioned about his arrest, whether he had encouraged court employees to strike, and whether he had insulted other administrative employees.<sup>232</sup>

129. On September 16, 2009, the Regional Inspectors of Courts and Tribunals gave their report to the Inspectorate General and indicated that, “from the statements obtained, it is concluded that acts were committed that were inimical to the dignity of the administration of justice, pursuant to the provisions of article 53(b) and 44 of the Judicial Service Act, because [three] employees were slighted [...] and they were encouraged to protest against what he considered a government *de facto*.”<sup>233</sup> The report contained no conclusions with regard to Mr. Chévez de la Rocha’s arrest. On September 17, the Inspector General ratified this report and added that the fact that “he had been arrested by the National Police, owing to his presence in acts that disrupted public order,” was inimical to “the dignity and decorum of his function”; she therefore decided to forward the file to the Personnel Management Directorate, with a copy to the Supreme Court of Justice.<sup>234</sup>

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<sup>225</sup> Judgment of the District Appellate Court of September 10, 2009 (evidence file, folios 1250 and 1253).

<sup>226</sup> Judgment of the District Appellate Court of September 10, 2009 (evidence file, folio 1253).

<sup>227</sup> Cf. Decision of the Inspectorate General of Courts and Tribunals of August 13, 2009 (evidence file, folio 1159).

<sup>228</sup> Cf. Decision of the Inspectorate General of Courts and Tribunals of August 19, 2009 (evidence file, folio 1160).

<sup>229</sup> Cf. Record of the Inspector of Courts and Tribunals of September 11, 2009 (evidence file, folio 1200).

<sup>230</sup> Brief of September 12, 2009, signed by Luis Alonso Chévez de la Rocha addressed to the Head of the Regional Inspectorate of Courts and Tribunals (evidence file, folio 1198).

<sup>231</sup> Decision of the Regional Inspectorate of Courts and Tribunals of September 11, 2009 (evidence file, folio 1199).

<sup>232</sup> Cf. Statement made by Luis Alonso Chévez de la Rocha on September 14, 2009, before the Inspectorate of Courts and Tribunals (evidence file, folios 1201 and 1202).

<sup>233</sup> During the investigation, the Inspectorate took statements from individuals who Mr. Chévez de la Rocha had supposedly incited to take part in protests and to whom he had allegedly expressed his shame about how the Supreme Court of Justice had allowed itself to be used. Cf. Report of September 16, 2009, prepared by the Inspectors of Courts and Tribunals for the Northwestern Region and addressed to the Inspector General of Courts and Tribunals (evidence file, folios 1378 and 1379).

<sup>234</sup> Cf. Decision of the Inspectorate General of Courts and Tribunals of September 17, 2009 (evidence file, folios 1382 to 1383).

130. On October 9, 2009, the Personnel Management Directorate opened a disciplinary proceeding against Mr. Chévez and summoned him to answer the charges.<sup>235</sup> On December 3, 2009, a hearing was held where Mr. Chévez presented the corresponding rebuttal and, *inter alia*, proposed evidence that was admitted subsequently.<sup>236</sup> On April 20, 2010, the Personnel Management Directorate issued its final report and recommended that Mr. Chévez be removed:

Based on non-compliance with or serious violation of one of his duties and committing acts that were inimical to the dignity of the administration of justice, by having taken part in a **demonstration, being arrested for [...] executing acts that disrupted public order, [...] and having clashed with other judicial employees on the premises of the Judiciary owing to his political position in relation to the events that had occurred in the country.**<sup>237</sup>

131. On May 5, 2010, the plenum of the Supreme Court of Justice approved the Personnel Management Directorate's **recommendation** to dismiss Mr. Chévez de la Rocha and appointed a committee of three justices **"to draw up the respective resolution and then to issue the corresponding decision on his removal."**<sup>238</sup> The case file contains a resolution with the same date, signed by the President and the Secretary of the Supreme Court that, apparently following up on the order of the plenum **of the Court, sets out "the corresponding grounds, which have been approved, adding the date of the plenary meeting."**<sup>239</sup> Nevertheless, this resolution was not notified to Mr. Chévez de la Rocha.<sup>240</sup> On May 21, 2010, the presumed victims filed a joint request for reconsideration of their sanctions of dismissal before the Supreme Court, pointing out that they had become aware of the May 5 decisions through the media, but they had not received the corresponding resolutions.<sup>241</sup>

132. On June 4, 2010, the Supreme Court issued a ruling on the dismissal; the only justification included was the following:

THE SUPREME COURT OF JUSTICE HEREBY DECIDES: (1) To dismiss attorney LUIS ALONSO CHÉVEZ DE LA ROCHA from the position of judge of the Special Court for cases involving Domestic Violence of the department of Cortés, for non-compliance with or serious violation of some of his duties and engaging in conduct inimical to the dignity of the administration of justice, by having participated in a demonstration in San Pedro Sula, Cortés, on August 12, 2009, near the Monument to the Mother and the downtown area. He was arrested by the National Preventive Police Force for breaching public order, and released when an application for *habeas corpus* was granted. He also clashed with other judicial officers on the premises of the Judiciary owing to his political position in relation to the events that occurred in the country. Articles 80, 82, 90(1), 303, 313(i)(8), 318, 319, 322 and 323 of the Constitution of the Republic; XXXVIII of the Universal Declaration of the Rights and Duties of Man; 1, 3, 4(2),

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<sup>235</sup> Cf. Decision of the Personnel Management Directorate of October 9, 2009 (evidence file, folios 1384 and 1385).

<sup>236</sup> Cf. Record of the rebuttal hearing of the Personnel Management Directorate of December 3, 2009 (evidence file, folios 1421 to 1437), and decision of the Personnel Management Directorate of December 7, 2009 (evidence file, folios 1466 to 1468).

<sup>237</sup> Decision of the Personnel Management Directorate of April 20, 2010 (evidence file, folio 1555).

<sup>238</sup> This decision appears in Minutes No. 24 of the session initiated by the plenum of the Supreme Court of Justice on May 5, 2010, and ended on May 7, 2010. These minutes were not notified to the presumed victims; rather a certified copy was issued at the request of Ramón Enrique Barrios and Tirza Flores Lanza on June 25, 2010 (evidence file, folios 5643 and 5644).

<sup>239</sup> Ruling of the Supreme Court of Justice of May 5, 2010 (evidence file, folios 1564 to 1571).

<sup>240</sup> The victims and their representatives have repeatedly stated that they were not notified of these decisions. The State has not contested this assertion and there is no record in the disciplinary files that the said decisions were notified to them.

<sup>241</sup> Cf. Brief of the request for reconsideration received on May 21, 2011, signed by Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Ramón Enrique Barrios and Tirza Flores Lanza and addressed to the Supreme Court of Justice (evidence file, folio 1127).

44, 51, 53(g), 55, 56(3), 60, 64(a), 65, 66, 73, 74, 83 and 84 of the Judicial Service Act; 1, 7, 9(4), 149, 160, 161, 171, 172(b) and (f), 174, 180(3), 184, 186, 187(a), 188, 189, 190, 206 and 214 of the Regulations governing the Judicial Service Act; 3(1), (4) and (6) of the Law on the Organization and Faculties of the Courts; 43, 44, 53, 55 of the Ibero-American Model Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge, and 1(d), 2(d) and (f), 8(a), and 9 of the Code of Ethics for Judicial Officials and Employees.<sup>242</sup>

133. As a result of this decision, on June 30, 2010, Mr. Chévez de la Rocha filed a complaint before the Judicial Service Council seeking reinstatement in his post as judge.<sup>243</sup> Five permanent or substitute members of the Council disqualified themselves from taking part in this proceeding, because they had heard the case involving the dismissal of Mr. Chévez de la Rocha as members of the Supreme Court of Justice, or due to relationship or friendship.<sup>244</sup> As in the proceedings against Mr. López Lone and Ms. Flores Lanza (*supra* para. 97 and 117), on March 22, 2011, it was **considered that “the Judicial Service Council had been disbanded” and a note was sent to the President of the Supreme Court of Justice asking him to provide guidance. As a result of the latter’s indications, the President of the Council appointed a lawyer to incorporate the Council thus enabling the proceedings to continue.**<sup>245</sup> Subsequently, one more person disqualified themselves from the case and another substitute was appointed.<sup>246</sup>

134. On August 24, 2011, the Judicial Service Council declared the claim filed by Mr. Chévez de la Rocha admissible, but rejected his request to be reinstated in his post. In its decision, vis-a-vis the arguments of the appellant, the Council reiterated the arguments on independence and impartiality that it had presented in other proceedings (*supra* para. 99).<sup>247</sup> Furthermore, it considered that it had been duly proved that, on August 12, 2009, Mr. Chévez de la Rocha had been arrested for **“public scandal” and that three court employees had filed a complaint before the coordinator of the Court for cases involving Domestic Violence “based on the attitude and conduct of Judge Chévez de la Rocha”** because he had encouraged a protest against the government *de facto* and expressed his feelings of shame with regard to the role played by the Judiciary.<sup>248</sup>

135. However, in relation to the events of **August 12, the Council considered that, “although it is true that [Mr. Chévez] was arrested; it is also true that this situation would not be held against him, because the competent authority had already ruled that no warrant had been issued for his arrest.”**<sup>249</sup>

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<sup>242</sup> Note of June 4, 2010, signed by the Secretary General of the Supreme Court of Justice transcribing the dismissal decision of that date (evidence file, folio 1794).

<sup>243</sup> *Cf.* Complaint received on June 30, 2010, signed by Luis Alonso Chévez de la Rocha addressed to the Judicial Service Council (evidence file, folios 1786 to 1793).

<sup>244</sup> *Cf.* Disqualification dated November 25, 2010, signed by Edith María López Rivera, Permanent Member of the Judicial Service Council (evidence file, folio 1813); disqualification dated December 9, 2010, signed by Rosa Lourdes Paz Haslam, Substitute Member of the Judicial Service Council (evidence file, folio 1815); disqualification dated January 12, 2011, signed by Gustavo Enrique Bustillo Palma, Substitute Member of the Judicial Service Council, (evidence file, folio 1817); disqualification dated February 2, 2011, signed by Raúl Antonio Henríquez Interiano, Permanent Member of the Judicial Service Council (evidence file, folio 1821), and disqualification dated February 23, 2011, signed by Léster Ilich Mejía Flores, Substitute Member of the Judicial Service Council (evidence file, folio 1970).

<sup>245</sup> *Cf.* Decision of the Judicial Service Council of March 22, 2011 (evidence file, folio 2171); Decision of the President of the Supreme Court of Justice of April 14, 2011 (evidence file, folio 2176), and Decision of the Judicial Service Council of April 26, 2011 (evidence file, folio 2179).

<sup>246</sup> *Cf.* Disqualification dated July 25, 2011, signed by Jorge Alberto Zelaya Zaldaña (evidence file, folios 2193 and 2194), and Decision of the Judicial Service Council of August 1, 2011 (evidence file, folio 2195).

<sup>247</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2224 and 2225).

<sup>248</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2233 and 2234).

<sup>249</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2236).

136. Regarding the comments made to other court employees, it indicated with regard to Mr. Chévez de la Rocha, that:

His behavior in front of his colleagues was not in accordance with his office as a judge, when executing acts that were inimical to the dignity of the administration of justice, established in articles 53(b) of the Judicial Service Act and 172(b) of the Regulations governing the Judicial Service Act, by uttering offensive or slanderous opinions against the institutions or against any public official or employee. However, no evidence has been provided that the conduct of [Mr. Chévez) occurred as a result of his judicial tasks, or with regard to the content of the deleterious or coarse language that offended his colleagues. Also, based on the principle of proportionality that inspires all labor laws, there must be a correlation between the offense committed and the sanction imposed. Thus, the institution must prove that the judicial officer has committed an offense so serious in nature that it is impossible to continue the relationship due to the harm that his irregular action would cause to the population, and that the offense is expressly cited in the rules of procedure of the Judicial Service as warranting dismissal. Accordingly, what should have been done was to impose on the appellant one of the disciplinary sanctions established in article 56 of the Judicial Service Act, such as [...] a fine or suspension, but not dismissal, which is the maximum sanction; especially if it is considered that this measure entails grave prejudice for a judicial officer, by depriving him of his only means of subsistence. In addition, it is necessary to take into account the nature of the offense, the functions performed by the offender, his degree of participation in the offense, and his appraisal and sanctions record, and the respondent did not provide any evidence concerning the conduct of the official in the course of his jurisdictional activities.<sup>250</sup>

137. Nevertheless, the Council refused to reinstate Mr. Chévez de la Rocha because: (i) it considered proved that Mr. **Chévez** “felt ashamed of belonging to the Judiciary and, if he is employed in the Judiciary, this is by necessity and, in view of such opinions of inconformity, it is not desirable for either **of the parties to continue the employment relationship,**” and (2) **it considered that “there was no possibility of reinstating him, because his substitute had been appointed on September 13, 2010.**<sup>251</sup> Consequently, the Council decided to compensate Mr. Chévez.<sup>252</sup>

138. The sum determined by the Council was given to Mr. Chévez on November 23, 2011.<sup>253</sup>

#### **C.4) Ramón Enrique Barrios Maldonado**

139. Ramón Enrique Barrios Maldonado was born on May 5, 1968.<sup>254</sup> As of June 2, 2003, he was a judge of the First Chamber of the Sentencing Court of the San Pedro Sula Judicial District.<sup>255</sup> He

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<sup>250</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2236 and 2237).

<sup>251</sup> **The Council decided to declare “admissible” the complaint against the dismissal “in application of the provisions of Articles 8 of the Universal Declaration of Human Rights; 3 of the American Convention on Human Rights, 72, 74, 82, 90, 129, 319 of the Constitution of the Republic; 1, 3, 4(1), 6(1), 9(e)(1), 44, 45, 53(b), 56, 67, 69 amended, and 85 of the Judicial Service Act; 20(1), 23, 28(d) (1), 54, 171(b), 173(c), 179 190, 191 and 192 of the Regulations governing the Judicial Service Act; 3, 7(e)(1), 21, 24, 26, 31 and 34 of the rules of procedure of the Judicial Service Council; 64 of the Civil Code, and 202 of the Code of Civil Procedure.”** Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2238, 2239 and 2240).

<sup>252</sup> **The Council decided to compensate him with “one month of salary for each year of the claimant’s service to the Judiciary, up to a maximum of 15 years, [...] to which should be added the sum corresponding to one month of salary for notice, and other compensations to which he is legally entitled, such as any pending leave, the thirteenth month payment and the fourteenth month, plus any salaries he has not received as of the date on which his dismissal came into effect on September 13, 2010, and up until the date of this decision.”** Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 2240).

<sup>253</sup> **Cf. Memorandum of November 8, 2011, signed by the Head of the Judiciary’s Personnel Department and addressed to the Judiciary’s Special Payments Department** (evidence file, folio 6537); certification of payment in settlement of entitlements and back salary issued by the Special Payments Department on June 20, 2014 (evidence file, folio 6539); letter acknowledging receipt of payment dated November 23, 2011, signed by Luis Alonso Chévez de la Rocha (evidence file, folio 2288).

was also a professor of constitutional law at the *Universidad Autónoma de Honduras*.<sup>256</sup> He was a founding member of the AJD and continued to be a member at the time of the events.<sup>257</sup>

140. On August 28, 2009, the newspaper, *El Tiempo*, published an article entitled **"No hubo sucesión constitucional"** [This was not a constitutional succession] citing Mr. Barrios as the author. The article asserted that what had happened was a *coup d'état*. At the end of the article Mr. Barrios Maldonado was identified as a **"sentencing judge and chair of constitutional law."** In addition, it was indicated that **"the article is a summary of a talk** given by [Mr. Barrios Maldonado] to a group of [university] colleagues and employees."<sup>258</sup> According to the testimony of Mr. Barrios, the article was written by the Dean of the School of Journalism.<sup>259</sup>

141. The day the article was published, the Inspector of Courts received a **"telephone call** from the Deputy Inspector of Courts and Tribunals [...] **informing him"** of the publication, and the Inspector incorporated the article into an investigation that had been opened against several judicial officials.<sup>260</sup>

142. On September 16, 2009, three Regional Inspectors of Courts and Tribunals gave a report to the Inspectorate General and indicated that, according to Mr. Barrios, the article published in the newspaper **"reflected a personal opinion of a legal nature given in** his capacity as chair of constitutional law."<sup>261</sup> The report did not reach any conclusions with regard to Mr. Barrios.<sup>262</sup> On September 17, the Inspector General ratified this report and decided to forward the file to the Personnel Management Directorate adding that the publication in which, in addition to identifying Mr. Barrios Maldonado as a professor, he was identified as a sentencing judge, violated the **prohibition "[t]o become involved** in other activities and to exercise powers other than those established by law, [and also to a]ddress congratulations or criticism to the Executive, public

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<sup>254</sup> Cf. Power of attorney granted by Ramón Enrique Barrios Maldonado on June 24, 2014 (evidence file, folio 6017).

<sup>255</sup> Cf. Salary certification issued by the Head of the Judiciary's Personnel Department on June 23, 2014 (evidence file, folio 5813).

<sup>256</sup> Cf. Record of the rebuttal hearing before the Personnel Management Directorate of December 7, 2009 (evidence file, folio 1439)

<sup>257</sup> Cf. Minutes covering the election of the ADJ Board of Directors, period 2008-2010, dated September 27, 2008 (evidence file, folio 5628).

<sup>258</sup> Newspaper article entitled **"No hubo sucesión constitucional"** published in the newspaper, *El Tiempo*, on August 28, 2009 (evidence file, folio 1987).

<sup>259</sup> Cf. Report of September 16, 2009, prepared by the Inspectors of Courts and Tribunals for the Northwestern Region and addressed to the Inspector General of Courts and Tribunals (evidence file, folio 1377), and statement made by Ramón Enrique Barrios on September 16, 2009 before the Inspectorate of Courts and Tribunals (evidence file, folio 3299).

<sup>260</sup> Cf. Report of the Inspector of Courts of August 28, 2009 (evidence file, folio 1988). This investigation was opened on August 10, 2009, following the publication in the newspapers that several judicial officers had filed a complaint before the Public Prosecution Service requiring an investigation into the abduction of José Manuel Zelaya. Subsequently, investigations **against other judicial officials were joindered to this for their actions in relation to the coup d'état.** Mr. López Lone and Ms. Flores Lanza were initially included in this investigation. However, on October 9, 2009, the Personnel Management Directorate decided that **no administrative liability had been found in relation to these two persons, because "the corresponding investigation had already been carried out in the context of another complaint."** Cf. Decision to open an investigation of the Inspectorate General of Courts and Tribunals of August 10, 2009 (evidence file, folio 1142), Note of July 2, 2009, signed by the National Director of Public Defense addressed to the President of the Supreme Court of Justice (evidence file, folio 1138), and Decision of the Personnel Management Directorate of October 9, 2009 (evidence file, folio 1384).

<sup>261</sup> Report of September 16, 2009, prepared by the Inspectors of Courts and Tribunals for the Northwestern Region and addressed to the Inspector General of Courts and Tribunals (evidence file, folio 1377).

<sup>262</sup> Cf. Report of September 16, 2009, prepared by the Inspectors of Courts and Tribunals for the Northwestern Region and addressed to the Inspector General of Courts and Tribunals (evidence file, folios 1378 and 1379).

officials or official bodies with regard to their actions."<sup>263</sup> The Inspector General also found that Mr. **Barrios had committed "acts** that were inimical to the dignity of the administration of justice and incompatible with the exercise of his functions."<sup>264</sup>

143. On October 9, 2009, the Personnel Management Directorate opened a disciplinary proceeding against Mr. Barrios and summoned him to answer the charges.<sup>265</sup> On December 7, 2009, a hearing was held during which Mr. Barrios Maldonado rebutted the charges and, *inter alia*, proposed evidence that was subsequently admitted.<sup>266</sup> On April 20, 2010, the Personnel Management Directorate issued its final decision and recommended that Mr. Barrios Maldonado be dismissed from his post:

[F]or non-compliance with or serious violation of his duties and committing acts that are inimical to the dignity of the administration of justice, having taken part, at the invitation of the University Professors Association and the Labor Union of the *Universidad Nacional Autónoma de Honduras*, as a speaker, in a meeting held at [...] that university, during which those present criticized the actions of the Supreme Court of Justice and other national authorities in relation to the events that took place before and after June 28, 2009, and because, subsequently, with his knowledge and authorization, his opinions were published in the op-ed section of the *El Tiempo* newspaper of San Pedro on August 28, 2009, in an article entitled "This Was Not A Constitutional Succession," in which he was identified as a sentencing judge.<sup>267</sup>

144. On May 5, 2010, the plenum of the Supreme Court of Justice approved the Personnel Management Directorate's **recommendation** that Mr. Barrios Maldonado be dismissed and appointed a committee of **three justices** "to draw up the respective resolution and then to issue [the corresponding decision on his removal]."<sup>268</sup> The case file contains a resolution of the same date signed by the President and the Secretary of the Supreme Court, in which, apparently following up on the orders of the plenum **of the Court, it set out "the corresponding** grounds, which have been approved, adding the date on which the plenary meeting had been held."<sup>269</sup> However, this resolution was not notified to Mr. Barrios Maldonado.<sup>270</sup> On May 21, 2010, the presumed victims filed a joint request before the Supreme Court for reconsideration of their sanctions of dismissal,

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<sup>263</sup> According to this decision, these prohibitions are established in article 3 of the Law on the Organization and Faculties of the Courts, sub-paragraphs (1) and (4), the latter in relation to article 53(f) and (g) and article 55 of the Judicial Service Act, and also article 172(e) and (f), and 174 of its Regulations. *Cf.* Decision of the Inspectorate General of Courts and Tribunals of September 17, 2009 (evidence file, folios 1382 to 1383).

<sup>264</sup> According to the said decision, these prohibitions are established in articles "321, 322 and 323(1) of the Constitution of the Republic; 44, 53(b) and (g) of the Judicial Service Act; 6, 149 and 172(b) of its Regulations, in addition to non-compliance with articles 1(d) and (e) and 2(d) and (f) of the Code of Ethics for Judicial Officials and Employees, and 3, 8, 43 and 55 of the **Ibero-American Code of Ethics.**" Decision of the Inspectorate General of Courts and Tribunals of September 17, 2009 (evidence file, folios 1382 to 1383).

<sup>265</sup> *Cf.* Note of the Personnel Management Directorate of October 9, 2009 (evidence file, folios 1384 and 1385).

<sup>266</sup> *Cf.* Record of the rebuttal hearing before the Personnel Management Directorate of December 7, 2009 (evidence file, folios 1438 to 1461), and decision of the Personnel Management Directorate of December 10, 2009 (evidence file, folios 1469 to 1471).

<sup>267</sup> Decision of the Personnel Management Directorate of April 20, 2010 (evidence file, folio 1555).

<sup>268</sup> This decision appears in Minutes No. 24 of the meeting initiated by the plenum of the Supreme Court of Justice on May 5, 2010, and concluded on May 7, 2010. The minutes were not notified to the presumed victims; rather a certified copy was issued at the request of Ramón Enrique Barrios and Tirza Flores Lanza on June 25, 2010 (evidence file, folios 5643 and 5644).

<sup>269</sup> Ruling of the Supreme Court of Justice of May 5, 2010 (evidence file, folios 1557 to 1563).

<sup>270</sup> The victims and their representatives have repeatedly asserted that they were not notified of these decisions. The State has not contested this assertion and there is no record in the disciplinary files that these decisions were notified to them.

pointing out that they had become aware of the May 5 decisions through the media, but they had not received the corresponding resolutions.<sup>271</sup>

145. On June 16, 2010, the Supreme Court issued a ruling on the dismissal; the only justification included was the following:

THE SUPREME COURT OF JUSTICE HEREBY DECIDES: (1) To dismiss attorney RAMON ENRIQUE BARRIOS from the post of judge on the District Sentencing Court of San Pedro Sula, department of Cortés, for non-compliance with or serious violation of his duties and for engaging in acts inimical to the dignity of the administration of justice, by accepting an invitation to give a lecture at [...] the *Universidad Nacional Autónoma de Honduras*, Valle de Sula, for professors, employees and the general public. The lecture related to the events of June 28, 2009, and, since this activity overstepped his teaching functions and he emitted value judgments, it became political. Moreover, under the Constitution of the Republic, the Judicial Service Act, the Law on the Organization and Faculties of the Courts and the Code of Ethics for Judicial Officials and Employees judicial officials are prohibited from engaging in such activities and must refrain from participating in political events or expressing political views, either in private or in public, even though other citizens are permitted to do so. Academic freedom allows a university professor, who is also a judge, to discuss and analyze current national events with his students from an eminently legal standpoint; however this freedom does not extend to any other talk or lecture for an audience other than duly enrolled students, precisely because he is restricted by his status as a judge and, as such, must refrain from airing political views. This action is incompatible with the decorum required by his office, because he did not seek to avoid participating in events that could lead to the disruption of public order. Furthermore, subsequent to the lecture and with his knowledge and authorization, on Friday, **August 28, 2009, his views were published in an article that appeared in the "op-ed" section of the newspaper *El Tiempo* which circulates in San Pedro Sula, where he is identified as a sentencing judge. [...] Articles 80, 82, 83 and 84 of the Judicial Service Act; 1, 3, 4, 7, 9(1), 149, 157, 160, 161, 171, 172(f), 173(c), 174, 180(3), 184, 186, 187(a), 188, 189, 190, 206 and 214 of the Regulations governing the Judicial Service Act; 3(6) and 108 of the Law on the Organization and Faculties of the Courts; 53 of the Model Ibero-American Code of Judicial Ethics; 10 and 20 of the Statute of the Ibero-American Judge; and 1(1), 2(d), 8(a) and 9 of the Code of Ethics for Judicial Officials and Employees.**<sup>272</sup>

146. **The ruling indicated that "it shall** come into effect on the date of the entry into functions of the substitute."<sup>273</sup> On this basis, on June 30, 2010, Mr. Barrios filed a complaint before the Judicial Service Council requiring reinstatement in his post as judge.<sup>274</sup> Five permanent or substitute members of the Council disqualified themselves from the proceeding, because they had heard the proceedings on the dismissal of Mr. Barrios as members of the Supreme Court of Justice or based on relationship or friendship<sup>275</sup> as in the preceding cases (*supra* para. 97, 117 and 133). On March

<sup>271</sup> Cf. Brief of the request for reconsideration received on May 21, 2011, signed by Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Ramón Enrique Barrios and Tirza Flores Lanza and addressed to the Supreme Court of Justice (evidence file, folio 1127).

<sup>272</sup> Note of June 16, 2010, signed by the Secretary General of the Supreme Court of Justice transcribing the decision on dismissal of that date (evidence file, folios 3097 and 3098).

<sup>273</sup> Note of June 16, 2010, signed by the Secretary General of the Supreme Court of Justice transcribing the ruling on dismissal of this date (evidence file, folio 3098).

<sup>274</sup> Cf. Complaint received on June 30, 2010, signed by Adán Guillermo López Lone and addressed to the Judicial Service Council (evidence file, folios 3088 to 3095).

<sup>275</sup> Cf. Disqualification dated November 25, 2010, signed by Edith María López Rivera, Permanent Member of the Judicial Service Council (evidence file, folio 3116); disqualification dated December 9, 2010, signed by Rosa Lourdes Paz Haslam, Substitute Member of the Judicial Service Council (evidence file, folio 3118); disqualification dated of January 12, 2011, signed by Gustavo Enrique Bustillo Palma, Substitute Member of the Judicial Service Council, (evidence file, folio 3120); disqualification dated February 2, 2011, signed by Raúl Antonio Henríquez Interiano, Permanent Member of the Judicial Service Council (evidence file, folio 3125), and disqualification dated of March 3, 2011, signed by Léster Ilich Mejía Flores, Substitute Member of the Judicial Service Council (evidence file, folio 3313).

22, 2011, it was considered that **“the Judicial Service Council had been disbanded”** and the **President of the Supreme Court of Justice was asked to provide guidance.** Following the latter’s indications, the President of the Council appointed a lawyer to incorporate the Council so that the proceeding could continue.<sup>276</sup> Subsequently, another person disqualified himself from the case and a substitute was appointed.<sup>277</sup>

147. On August 24, 2011, the Council decided to annul the dismissal of Mr. Barrios decided by the Supreme Court of Justice on June 16, 2010, and to keep him in the post of sentencing judge.<sup>278</sup> In its decision, the Council, in response to the arguments of the appellant, reiterated the arguments on independence and impartiality that it had already presented in other proceedings (*supra* paras. 99, 118 and 134).<sup>279</sup> However, it indicated that it had been proved that Mr. Barrios had not written the newspaper article.<sup>280</sup> Also, taking into account the right to freedom of expression, the Council **considered that “the investigation carried out by** the Inspectorate of Courts and Tribunals [...] was insufficient to substantiate the grounds for dismissal beyond a reasonable doubt with other types of evidence.”<sup>281</sup> In addition, the Council decided to declare inadmissible the claim for reinstatement in office and reimbursement of salaries that had not been perceived, because Mr. Barrios was working at the date the decision was issued,<sup>282</sup> as his dismissal had not taken effect (*supra* para. 146).

## VII MERITS

148. Taking into considering the context of this case (*supra* paras. 44 to 69) and the facts that it has considered proved, the Court finds that the disciplinary proceedings against the presumed victims were instituted based on their actions in defense of democracy. These actions corresponded not only to the exercise of a right, but also to compliance with the obligation to defend democracy, based on the provisions of the American Convention, and on the obligation under international law that the State of Honduras acquired by becoming a party to the American Convention and which is stipulated in instruments such as the Inter-American Democratic Charter. The grounds to substantiate this assertion are set out below.

149. As a starting point, it is worth emphasizing that representative democracy is one of the pillars of the system that the Convention forms part of, and constitutes a principle reaffirmed by the States of the Americas in the OAS Charter, a basic instrument of the inter-American system.<sup>283</sup> Thus, the OAS Charter, a constituent treaty of the organization to which Honduras has been a party

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<sup>276</sup> *Cf.* Decision of the Judicial Service Council of March 22, 2011 (evidence file, folio 3457); Decision of the President of the Supreme Court of Justice of April 14, 2011 (evidence file, folio 3462), and Decision of the Judicial Service Council of April 26, 2011 (evidence file, folio 3465).

<sup>277</sup> *Cf.* Disqualification dated July 25, 2011, signed by Jorge Alberto Zelaya Zaldaña (evidence file, folios 3477 and 3478), and Decision of the Judicial Service Council of August 1, 2011 (evidence file, folio 3479).

<sup>278</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 3519 and 3520).

<sup>279</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 3508 and 3509).

<sup>280</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 3515).

<sup>281</sup> Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 3516).

<sup>282</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 3517, 3518 and 3520). According to information provided by the representatives, on March 26, 2014, Mr. Barrios Maldonado was dismissed from his judicial functions by a decision of that date of the Council of the Judiciary and the Judicial Service, for reasons unrelated to the facts of this case (merits file, folio 596).

<sup>283</sup> *Cf. The Word “Laws” in Article 30 of the American Convention on Human Rights.* Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34, and *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 6, 2008. Series C No. 184, para. 141.



since February 7, 1950, establishes as one of its essential purposes, “[t]o promote and consolidate representative democracy, with due respect for the principle of non-intervention.”<sup>284</sup>

150. Under the inter-American system, the relationship between human rights and representative democracy and political rights, in particular, was established in the Inter-American Democratic Charter, adopted at the first plenary meeting held on September 11, 2001, of the twenty-eighth special session of the OAS General Assembly.<sup>285</sup> Articles 1, 2 and 3 of this instrument indicate that:

Article 1

The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.

Article 2

The effective exercise of representative democracy is the basis for the rule of law and of the constitutional regimes of the member states of the Organization of American States. Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.

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.

151. Thus the Inter-American Democratic Charter refers to the **peoples’ right to democracy**, and also stresses the importance, under representative democracy, of the permanent participation of the citizenry within the framework of the legal and constitutional order in force. Furthermore, it indicates that one of the constituent elements of representative democracy is **“the access to and the exercise of power in accordance with the rule of law.”** The Court underlines that the facts of this case occurred in the context of a grave democratic crisis and the breakdown of the rule of law, as a **result of which the OAS General Assembly was “convened urgently by** the Permanent Council in accordance with Article 20 of the Inter-American Democratic Charter.”<sup>286</sup> On that occasion, the OAS General Assembly, in exercise of its competence, expressly declared that “no government arising

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<sup>284</sup> Article 2(b) of the Charter of the Organization of American States.

<sup>285</sup> *Cf. Case of Castañeda Gutman v. Mexico, supra*, para. 142, citing the Inter-American Democratic Charter. Adopted at the first plenary meeting held on September 11, 2001, of the twenty-eighth special session of the OAS General Assembly, Article 3.

<sup>286</sup> Resolution of the OAS General Assembly on the Political Crisis in Honduras of July 1, 2009. OEA/Ser.P AG/RES 1 (XXXVII-E/09). Available at: [https://www.oas.org/consejo/sp/AG/Documentos/AG04665E04\\_doc](https://www.oas.org/consejo/sp/AG/Documentos/AG04665E04_doc), and *Cf.* Resolution of the Permanent Council of the OAS, Current situation in Honduras, June 28, 2009, CP/RES. 953 (1700/09). Article 20 of **the Democratic Charter establishes that**: “In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate. The Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy. If such diplomatic initiatives prove unsuccessful, or if the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly. The General Assembly will adopt the decisions it deems appropriate, including the undertaking of diplomatic initiatives in accordance with the Charter of the Organization, international law, and the provisions of this Democratic Charter. The necessary diplomatic initiatives, including good offices, to foster the restoration of democracy, will continue during the process.”

from this unconstitutional interruption will be recognized.”<sup>287</sup> Subsequently, for the first time since the adoption of the Inter-American Democratic Charter, the OAS General Assembly, pursuant to Article 21 of this instrument, decided to suspend Honduras from the exercise of its right to participate in the OAS as of July 4, 2009, and this suspension continued until June 1, 2011 (*supra* paras. 56 to 60). When suspending Honduras, the General Assembly resolved:

1. To suspend the Honduran state from the exercise of its right to participate in the Organization of American States, in accordance with Article 21 of the Inter-American Democratic Charter. The suspension shall take effect immediately.
2. To reaffirm that the Republic of Honduras must continue to fulfill its obligations as a member of the Organization, in particular with regard to human rights; and to urge the Inter-American Commission on Human Rights to continue to take all necessary measures to protect and defend human rights and fundamental freedoms in Honduras.<sup>288</sup>

152. The Court notes that, under international law, the events that occurred in Honduras starting on June 28, 2009, constituted an internationally wrongful act. During this situation of the international illegitimacy of the government *de facto*, disciplinary proceedings were instituted against the presumed victims for conducts that, basically, constituted actions against the *coup d'état* and in favor of the rule of law and democracy. In other words, for conducts established in the Inter-American Democratic Charter, insofar as they constituted the exercise of the participation of the citizenry to defend the constituent elements of representative democracy. In this regard, the Court observes that, following its visit to Honduras in August 2009, the Inter-American Commission noted that “political authorities, community leaders and public officials who voiced opposition to the *coup d'état* experienced situations that endangered their lives and personal integrity, as did members of the family of President Zelaya. They were threatened, pursued, beaten, harassed and/or investigated by the courts” (*supra* para. 51). Likewise, the United Nations High Commissioner for Human Rights indicated that, following the *coup d'état*:

The Attorney General's Office, the judges and the Supreme Court of Justice have, in general, supported the *de facto* authorities by defending restrictive measures at the expenses of protection of human rights and respect for the rule of law.<sup>289</sup>

153. In this case, the four presumed victims, three judges and a justice of the Republic of Honduras, protested against the *coup d'état* and in favor of the re-establishment of democracy and the rule of law, by taking part in a protest, by filing judicial complaints or actions, by an opinion emitted in the context of a university lecture, or in conversations with colleagues. Furthermore, they expressed their opinions through the AJD, of which they were all members, because this organization issued communiqués calling for the need to re-establish the rule of law (*supra* para. 69). Accordingly, under international law and the decisions of the OAS organs with jurisdiction in this matter, the actions of the presumed victims enjoyed international legitimacy, contrary to those undertaken by the authorities of the government *de facto*. Consequently, this Court understands that the actions taken by the presumed victims during this “unconstitutional interruption” constituted not only a right but rather form part of the obligation to defend democracy,<sup>290</sup> based on

<sup>287</sup> Cf. Resolution of the OAS General Assembly on the Political Crisis in Honduras of July 1, 2009. OEA/Ser.P AG/RES 1 (XXXVII-E/09). Available at: <http://www.oas.org/consejo/sp/AG/37SGA.asp#inf>.

<sup>288</sup> Resolution of the OAS General Assembly on the Suspension of the right of Honduras to participate in the OAS of July 4, 2009. OEA/Ser.P AG/RES 2 (XXXVII-E/09). Available at: <https://www.oas.org/consejo/sp/AG/Documentos/ag04682e07.doc>.

<sup>289</sup> Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the *coup d'état* on 28 June 2009. Doc. UN A/HRC/13/66, March 3, 2010, para. 68 (merits file, folio 1292).

<sup>290</sup> This obligation is embodied in Article XXXIII of the American Declaration of the Rights and Duties of Man which establishes that: “It is the duty of every person to obey the law and other legitimate commands of the authorities of his country and those of the country in which he may be.” Furthermore, Article 21(1) and 21(3) of the Universal Declaration of

the provisions of the American Convention<sup>291</sup> and the international legal obligations that the State of Honduras assumed when it became a part to that treaty and to the OAS Charter; obligations expressly stated in instruments such as the Inter-American Democratic Charter.

154. Thus, the said instrument establishes that:

Article 6

It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.

Article 7

Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments.

Article 8

Any person or group of persons who consider that their human rights have been violated may present claims or petitions to the inter-American system for the promotion and protection of human rights in accordance with its established procedures.

Member states reaffirm their intention to strengthen the inter-American system for the protection of human rights for the consolidation of democracy in the Hemisphere.

155. The Court notes that, given this context, the facts of this case evidently infringed a series of rights of the presumed victims. In the following chapters, the Court will examine the specific violations suffered by the presumed victims, owing to the institution of disciplinary proceedings against them for their actions in defense of democracy and the rule of law.

## VII-1

### **POLITICAL RIGHTS, FREEDOM OF EXPRESSION, THE RIGHT OF ASSEMBLY AND FREEDOM OF ASSOCIATION, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE RIGHTS AND THE OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS**

156. Taking into account the arguments of the parties and the Commission, in this chapter the Court will analyze, together, the alleged violations of political rights,<sup>292</sup> the right to freedom of

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**Human Rights stipulates that:** "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. [...] The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

<sup>291</sup> The preamble to the Convention establishes as one of its purposes "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." Furthermore, 29 of the Convention stipulates that: "No provision of this Convention shall be interpreted as: [...] (c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government."

<sup>292</sup> The relevant part of Article 23 of the Convention establishes that: "1. Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; [...] 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."

expression,<sup>293</sup> and the right of assembly;<sup>294</sup> it will then examine the alleged violation of the right to freedom of association<sup>295</sup> and the alleged indirect violation of freedom of expression.

### **A. Arguments of the Commission and of the parties**

157. The Commission pointed out that the presumed victims were subject to disciplinary administrative proceedings because they revealed their opposition to the *coup d'état*. In this regard, it indicated that **"ownership of the right to freedom of expression cannot be confined to a specific profession or group of persons, or to the realm of freedom of the press,"** and that judges, as public officials, also enjoy this right. However, **"the exercise of [their] freedom of expression [...] has specific connotations and distinctive characteristics."** In this regard, it asserted that judicial officials **"have a special duty to maintain discretion and exercise prudence [...] to safeguard the principles of independence and impartiality."** It also emphasized that the exercise of freedom of expression **"has become the main means by which illegal or abusive acts [...] of state authorities are exposed,"** and that, in conditions characterized by an institutional and democratic crisis, **"social protest [...] can become the only available tool for effective and inclusive citizen participation."** In this regard, it underscored that opinions relating to a *coup d'état* are of great public interest and have the highest level of protection under the American Convention. From this perspective, it stated that the **"legitimate protection** of the principles of judicial independence and impartiality cannot be premised on the notion that a judge must remain silent on public issues; [r]ather any restrictions must strike a proper balance between the right of judges to express their opinions and their duty to exercise **the discretion and prudence necessary to protect the independence and autonomy of their office."** The Commission also considered that **"the legal framework of disciplinary proceedings in Honduras was characterized by its breadth and ambiguity [...] and it was difficult to determine, with the certainty that strict legality demands, what type of conduct was prohibited in relation to the right to freedom of expression and participation of judges."**

158. The representatives argued that the fact that the presumed victims in this case were judges **"did not in any way deprive them of their rights to freedom of expression and assembly"** and the exercise of such rights could only have been restricted in order to uphold the dignity, impartiality and independence that should characterize the exercise of their functions. They also indicated that, **"no right inherent to the judicial function were harmed in any of the cases in which the victims exercised those rights."** In addition, they stressed that, in their capacity as public officials, **"they had a special duty of loyalty to the democratically elected government that was deposed by means of the *coup d'état*."** Furthermore, they underlined that, when emitting their opinion, the presumed victims **"merely [...] defended the country's democratic institutional framework,"** and they did this in their capacity as citizens and human rights defenders. The representatives affirmed that the dismissals constituted interference in the exercise of freedom of expression and, in the case of Guillermo López Lone, also of the right to freedom of assembly. **They also argued that "the norms applied in order to dismiss the victims [could] not be considered laws in the formal sense, because they were not legal norms adopted by a legislative organ and promulgated by the Executive Branch, pursuant to the procedure required by the domestic law of each State."** In this regard, they explained that **"some of the norms that established the punishable conducts and their sanctions**

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<sup>293</sup> Article 13(1) of the Convention stipulates that: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

<sup>294</sup> Article 15 of the Convention establishes that: "The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others."

<sup>295</sup> Article 16(1) of the Convention establishes that: "Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."

were contained in regulations or norms of a lower rank that did not possess these characteristics.” They stated that the purpose of the institution of disciplinary proceedings and the subsequent dismissals was “to sanction the [presumed] victims for expressing an opinion contrary to the *coup d’état* [...] and thus create an inhibiting effect on the other members of the Judiciary” in order to prevent any further questioning of the role that the Supreme Court played in this context and, “thus, harming judicial independence.” Regarding the situation of Justice Flores, they argued that “the filing of complaints can be considered a form of exercising freedom of expression, [so that] the dismissal of the justice [...] constituted an inference with that right.” Lastly, the representatives argued the violation of Article 23(1)(a) as part of the presumed right to defend human rights (*infra* para. 284).

159. The State argued that “no actions have been taken to restrict freedom of thought and expression, [because] both the Judicial Service Council and the actual [...] Council of the Judiciary and the Judicial Service have upheld all the judicial guarantees of the petitioners, giving them the opportunity to defend themselves in the different instances to prove that they had not incurred administrative responsibility.” It indicated that “there are limitations to the exercise of any right, and although it is argued that external influences should be avoided in jurisdictional decision, this means that the organs that impart justice must function correctly; that, in accordance with the norms in force, judicial officials should not perform any act that compromises the necessary impartiality in the exercise of their functions.” It also stressed that “the Supreme Court of Justice did not carry out any dismissal for political reasons,” but rather the dismissals were the result of wrongful acts. Lastly, it pointed out that Mr. Barrios continued in his functions earning a salary as a judge, during the proceedings in which it was decided that the Inspectorate General of Courts and Tribunals had not substantiated the grounds for his dismissal beyond any reasonable doubt.

### **B. Considerations of the Court**

160. The Court has recognized the relationship that exists between political rights, freedom of expression, the right of assembly and freedom of association, and that these rights, taken as a whole, make the democratic process possible.<sup>296</sup> In situations where there is a breakdown of institutional order following a *coup d’état*, the relationship between these rights is even clearer, especially when they are all exercised at the same time in order to protest against actions by the public authorities that are contrary to the constitutional order, and to reclaim the return to democracy. Protests and related opinions in favor of democracy should be ensured the highest protection and, depending on the circumstances, may be related to all or some of the said rights.

161. Article 23 of the Convention, with regard to political rights, recognizes rights of the citizen that are exercised by each particular individual. Paragraph 1 of this article recognizes that every citizen has the right: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and (c) to have access, under general conditions of equality, to the public service of his country.<sup>297</sup>

162. The effective exercise of political rights constitutes an end in itself and, also, an essential means that democratic societies have to ensure the other human rights established in the Convention.<sup>298</sup> Moreover, according to its Article 23, the holders of these rights – in other words, the

<sup>296</sup> Cf. *Case of Castañeda Gutman v. Mexico, supra*, para. 140.

<sup>297</sup> Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, paras. 195 to 200, and *Case of Argüelles et al. v. Argentina, supra*, para. 221.

<sup>298</sup> Cf. *Case of Castañeda Gutman v. Mexico, supra*, para. 143, and *Case of López Mendoza v. Venezuela. Merits, reparations and costs*. Judgment of September 1, 2011 Series C No. 233, para. 108.

citizens – should enjoy not only rights, but also “opportunities.” The latter term entails the obligation to ensure, by taking positive measures, that anyone who is the formal holder of political rights has the real possibility of exercising them.<sup>299</sup> Political rights and their exercise promote the strengthening of democracy and political pluralism.<sup>300</sup>

163. Consequently, the State must facilitate the ways and means to ensure that these political rights can be exercised effectively, respecting the principles of equality and non-discrimination.<sup>301</sup> Political participation may include diverse and wide-ranging activities that the population carries out individually or on an organized basis in order to intervene in the appointment of those who will govern a State or who will be in charge of managing public affairs, as well as to influence the development of State policies through direct participation mechanisms<sup>302</sup> or, in general, to intervene in matters of public interest, such as the defense of democracy.

164. From this perspective, the right to defend democracy referred to in the preceding section of this judgment constitutes a specific manifestation of the right to take part in public affairs and also includes, at the same time, the exercise of other rights such as freedom of expression and the right of assembly, as will be explained below.

165. Freedom of expression, particularly in matters of public interest, “is a cornerstone of the very existence of a democratic society.”<sup>303</sup> Without an effective guarantee of freedom of expression the democratic systems is weakened and there is a breakdown of pluralism and tolerance; the mechanisms of control and complaint that citizens have may become inoperable and, indeed, a fertile ground is created for authoritarian systems to take root.<sup>304</sup> Freedom of expression must be guaranteed not only as regards the dissemination of information and ideas that are received favorably or considered inoffensive or indifferent, but also those that the State or any sector of the population consider objectionable.<sup>305</sup> Articles 3 and 4 of the Inter-American Democratic Charter also stress the importance of freedom of expression in a democratic society, when establishing that: “[e]ssential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms” and “[t]ransparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.”

166. The Court’s case law has provided extensive content to the right to freedom of thought and expression established in Article 13 of the Convention. The Court has indicated that this norm protects the right to seek, receive and impart ideas and information of all kinds, as well as to know

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<sup>299</sup> Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 195, and *Case of López Mendoza v. Venezuela*, *supra*, para. 108.

<sup>300</sup> Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 192, and *Case of López Mendoza v. Venezuela*, *supra*, para. 26.

<sup>301</sup> Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 195, and *Case of Reverón Trujillo v. Venezuela*, *supra*, para. 139.

<sup>302</sup> Cf. *Case of Yatama v. Nicaragua*, *supra*, para. 195.

<sup>303</sup> 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, of November 13, 1985. Series A No. 5, para. 70, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2015. Series C No. 293, para. 140.

<sup>304</sup> Cf. *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 116, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 140.

<sup>305</sup> Cf. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*. Merits, reparations and costs. Judgment of February 5, 2001. Series C No. 73, para. 69, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 140.

and receive information and ideas disseminated by others.<sup>306</sup> In addition, it has indicated that freedom of expression has both an individual dimension and a social dimension and, thus, has concluded that a series of rights are protected under this article.<sup>307</sup> The Court has stated that both dimensions are equally important and must be fully guaranteed simultaneously in order to provide full effect to the right to freedom of expression in the terms of Article 13 of the Convention.<sup>308</sup> For ordinary citizens, knowing other opinions or the information that others possess is as important as the right to impart their own opinions and information.<sup>309</sup> Consequently, in light of both dimensions, freedom of expression requires that no one be arbitrarily impaired or prevented from imparting his own thoughts and, thus, represents a right of each individual, but also signifies a collective right to receive any information and to know the thoughts expressed by others.<sup>310</sup>

167. Similarly, Article 15 of the American Convention recognizes “[t]he right of peaceful assembly, without arms.” **This right includes private meetings and also meetings in public places, whether they are static or involve movement.**<sup>311</sup> The ability to protest publicly and peacefully is one of the most accessible ways to exercise the right to freedom of expression, and can contribute to the protection of other rights.<sup>312</sup> Therefore, the right of assembly is a basic right in a democratic society and should not be interpreted restrictively.<sup>313</sup> In this regard, the European Court of Human Rights (hereinafter “the European Court”) has indicated that the right of assembly is of such importance that a person cannot be penalized, even by a minor disciplinary penalty, for participating in **“a demonstration that has not been prohibited, [...] so long as the person concerned does not himself commit any reprehensible act on such occasion.”**<sup>314</sup>

168. Nevertheless, according to the Convention itself, the right to participate in government, freedom of expression and the right of assembly are not absolute rights and may be subject to restrictions. This Court has established in its case law that a right may be restricted provided that the interference is not abusive or arbitrary. Therefore, it must be established by law, pursue a

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<sup>306</sup> Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, *supra*, para. 30, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 135.

<sup>307</sup> Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, *supra*, paras. 31 and 32, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 135.

<sup>308</sup> Cf. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*, *supra*, para. 67, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 135.

<sup>309</sup> Cf. *Case of “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile*, *supra*, para. 66, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 136.

<sup>310</sup> Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, *supra*, para. 30, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 136.

<sup>311</sup> Cf. ECHR, *Case of Djavit An v. Turkey*, No. 20652/92. Judgment of February 20, 2003, para. 56, and *Case of Yilmaz Yildiz et al. v. Turkey*, No. 4524/06. Judgment of October 14, 2014, para. 41.

<sup>312</sup> Cf. United Nations, Resolution of the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests. A/HRC/RES/19/35, March 23, 2012; Resolution of the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests. A/HRC/RES/22/10, March 21, 2013, and Resolution of the Human Rights Council on the promotion and protection of human rights in the context of peaceful protests. A/HRC/25/L.20, March 24, 2014.

<sup>313</sup> Cf. ECHR, *Case of Djavit An v. Turkey*, No. 20652/92. Judgment of February 20, 2003, para. 56, and *Case of Yilmaz Yildiz et al. v. Turkey*, No. 4524/06. Judgment of October 14, 2014, para. 41.

<sup>314</sup> Cf. ECHR, *Case of Ezelin v. France*, No. 11800/85. Judgment of April 26, 1991, para. 53, and *Case of Yilmaz Yildiz et al. v. Turkey*, No. 4524/06. Judgment of October 14, 2014, para. 41.

legitimate purpose, and comply with the requirements of suitability, necessity and proportionality.<sup>315</sup>

169. Previously the Court has never ruled on the right to take part in government, the freedom of expression and the right of assembly of individuals who exercise judicial functions, as in this case. In this regard, it is important to underline that the American Convention guarantees these rights to everyone, irrespective of any other consideration, so that the Convention cannot be considered or restricted for a specific profession or group of persons.<sup>316</sup> However, as indicated above, these rights are not absolute, thus they may be subject to restrictions that are compatible with the Convention (*supra* para. 168). Owing to their functions in the administration of justice, under normal conditions of the rule of law, judges may be subject to different restrictions, and in different ways, that would not affect other individuals, including other public officials.

170. The United Nations Basic Principles on the Independence of the Judiciary (hereinafter "the United Nations Basic Principles") recognize that "members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary."<sup>317</sup> In addition, the Bangalore Principles of Judicial Conduct establish **that:** "[a] judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary."<sup>318</sup> Similarly, the European Court has indicated that certain restrictions to freedom of expression of judges are necessary "in all cases where the authority and impartiality of the Judiciary are likely to be called into question."<sup>319</sup>

171. The general purpose of guaranteeing independence and impartiality is, in principle, a legitimate reason for restricting certain rights of judges. Article 8(1) of the American Convention **establishes that** "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal." **Thus,** the State is obliged to ensure that its judges and courts comply with these precepts. Therefore, the restriction of certain conduct by judges in order to protect independence and impartiality in the imparting of justice is in keeping with the American Convention, **as a "right or freedom of others."**

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<sup>315</sup> Cf. *The Word "Laws" in Article 30 of the American Convention on Human Rights*, *supra*, paras. 35 and 37, and *Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, para. 273. See also, on the right to freedom of expression: *Case of Herrera Ulloa v. Costa Rica*, *supra*, para. 120; *Case of Fontevecchia and D'Amico v. Argentina. Merits, reparations and costs*. Judgment of November 29, 2011. Series C No. 238, para. 43, and *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 127. And, on political rights: *Case of Yatama v. Nicaragua*, *supra*, para. 206; *Case of Castañeda Gutman v. Mexico*, *supra*, para. 149, and *Case of López Mendoza v. Venezuela*, *supra*, para. 107.

<sup>316</sup> Regarding freedom of expression, see, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, *supra*, paras. 81 and 84, and *Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs*. Judgment of January 27, 2009. Series C No. 193, para. 114.

<sup>317</sup> United Nations Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, principle 8.

<sup>318</sup> Bangalore Principles of Judicial Conduct adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25 and 26, 2002, para. 4.6.

<sup>319</sup> Cf. ECHR, *Case of Wille v. Liechtenstein* [GS], No. 28396/95. Judgment of October 28, 1999, para. 64, and *Case of Kudeshkina v. Russia*, No. 29492/05. Judgment of February 26, 2009, para. 86.



172. In this regard, a regional consensus exists concerning the need to restrict the participation of judges in party political activities;<sup>320</sup> however, in some States any type of participation in politics is prohibited with the exception of voting in the elections.<sup>321</sup> Nevertheless, the power of the State to regulate or restrict these rights is not discretionary and any limitation of the rights recognized in the Convention must be interpreted restrictively.<sup>322</sup> The prohibition of judges from participating in activities of a party nature should not be interpreted broadly, in a way that prevents judges from taking part in any discussion of a political nature.<sup>323</sup>

173. Thus, there may be situation in which a judge, as a citizen who is a member of society, considers that he or she has a moral duty to speak out.<sup>324</sup> In this regard, expert witness Leandro Despouy **pointed out that it may constitute an obligation for judges to speak out “in a context in which democracy is being impaired, because they are the public officials – specifically the judicial agents – who are the guardians of the basic rights, in the face of abuses of power by other public officials or other power groups.”**<sup>325</sup> Furthermore, expert witness Martin Federico Böhmer asserted that, during a *coup d'état*, judges “are obliged to support and ensure that the population knows that **they support the constitutional system.**” He also emphasized that “[i]f one can call any opinion non-partisan, it is the opinion emitted by the citizens of a constitutional democracy when they strongly

<sup>320</sup> The Court notes that, in the region, there are different degrees of restriction for judges. In Argentina, judges are prohibited from engaging in activities of political proselytism. In Brazil, they are prohibited from engaging in politics. In Bolivia and Dominican Republic, they are prohibited from activism in a political party. In Chile, they are prohibited from attending meetings, demonstrations or other acts of a political nature; while in El Salvador, judges are prohibited from occupying directorial positions in political parties. *Cf.* Argentina (Rules of Procedure for the National Judiciary, article 8. Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/165000-169999/167638/norma.htm>, and Law 24,937 on the Council of the Judiciary, article 14. Available at: [http://www.infojus.gov.ar/legislacion/ley-nacional-24937-consejo\\_magistratura.htm?6](http://www.infojus.gov.ar/legislacion/ley-nacional-24937-consejo_magistratura.htm?6).); Brazil (Constitution, article 95. Available at: [http://www.planalto.gov.br/ccivil\\_03/constitucao/constitucao.htm](http://www.planalto.gov.br/ccivil_03/constitucao/constitucao.htm)); Bolivia (Law on the Judiciary of June 24, 2010, articles 19 and 22. Available at: <http://magistratura.organojudicial.gob.bo/index.php/institucion/2013-05-07-16-03-21/finish/3-leyes/1-ley-del-organo-judicial>); Dominican Republic (Law No. 327-98 on the Judicial Service, articles 45 and 65. Available at: <http://ojd.org.do/Normativas/General/Ley%20No.%20327-98,%20sobre%20Carrera%20Judicial,%20del%2011%20de%20agosto%20de%201998%20G.O.%209994.pdf>); Chile (Organic Code of the Courts, article 323. Available at: <http://www.leychile.cl/Navegar?idNorma=25563>), and El Salvador (Judicial Service Act of July 12, 1990, articles 26 and 53. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-la-carrera-judicial>).

<sup>321</sup> Colombia (Statutory Law on the administration of justice of March 15, 1996, article 154. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6548>, and Consolidated Disciplinary Code, Available at: [http://www.procuraduria.gov.co/relatoria/media/file/Codigo\\_Disciplinario\\_Unico\\_2011.pdf](http://www.procuraduria.gov.co/relatoria/media/file/Codigo_Disciplinario_Unico_2011.pdf)); Costa Rica (Organic Law of the Judiciary of July 1, 1993, articles 9 and 192. Available at <https://www.tse.go.cr/pdf/normativa/leyorganicapoderjudicial.pdf>); Nicaragua (Judicial Service Act, Articles 43 and 66. Available at: [http://www.poderjudicial.gob.ni/carrerajudicial/ley\\_de\\_carrera\\_judicia\\_su\\_normativa.pdf](http://www.poderjudicial.gob.ni/carrerajudicial/ley_de_carrera_judicia_su_normativa.pdf)); Panama (Constitution of the Republic of Panama of October 1972, articles 212 and 284. Available at: <http://www.ilo.org/dyn/travail/docs/2083/CONSTITUTION.pdf>); Peru (Constitution of Peru, article 153. Available at: <http://www4.congreso.gob.pe/ntley/Imagenes/Constitu/Cons1993.pdf>, and Judicial Service Act, article 48. Available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_per\\_ley29277.pdf](http://www.oas.org/juridico/PDFs/mesicic4_per_ley29277.pdf)), and Venezuela (Constitution, article 256. Available at: <http://www.mp.gob.ve/LEYES/constitucion/constitucion1.html>, and Code of Ethics of the Venezuelan Judge, articles 26, 32 and 33. Available at: [http://www.mp.gob.ve/c/document\\_library/get\\_file?uuid=949621c5-5d93-436e-b0ac17a7312faef6&groupId=10136](http://www.mp.gob.ve/c/document_library/get_file?uuid=949621c5-5d93-436e-b0ac17a7312faef6&groupId=10136)).

<sup>322</sup> The power of States to regulate or restrict rights is not discretionary; rather it is limited by international law, and this requires compliance with specific imperatives, and if these are not respected the restriction is unlawful and contrary to the American Convention. According to Article 29(a) *in fine* of this treaty, no provision of this instrument may be interpreted as restricting rights to a greater extent than is provided for therein. *Cf. Case of Castañeda Gutman v. Mexico, supra*, para. 174.

<sup>323</sup> Similarly, see, ECHR, *Wille v. Liechtenstein* [GS], No. 28396/95. Judgment of October 28, 1999, para. 67.

<sup>324</sup> *Cf.* United Nations, Commentary on the Bangalore Principles of Judicial Conduct, prepared by the United Nations Office on Drugs and Crime, 2013, paras. 65 and 140. In this regard, the Ibero-American Model Code of Judicial Ethics establishes that “[j]udges have the right and the obligation to denounce any attempt to interfere with their independence.” 2006 Ibero-American Model Code of Judicial Ethics, article 6. Available at: <http://www.poderjudicial.gob.hn/CUMBREJUDICIALIBEROAMERICANA/ Documents/CodigoEtico.pdf>.

<sup>325</sup> Affidavit made by Leandro Despouy on January 8, 2015 (evidence file, folio 6722). Similarly, see Expert opinion provide by Perfecto Andrés Ibáñez during the public hearing held in this case.

assert their loyalty to this."<sup>326</sup> Similarly, expert witness Perfecto Andrés Ibáñez indicated that, even for judges, "it is a legal obligation, a civic duty, to oppose [*coups d'état*]."<sup>327</sup>

174. It can therefore be concluded that, at times of grave democratic crises, as in this case, the norms that ordinarily restrict the right of judges to participate in politics are not applicable to their actions in defense of the democratic order. Thus, it would be contrary to the independence inherent in the branches of State, as well as the international obligations of the State derived from its membership of the OAS, that judges could not speak out against a *coup d'état*. Consequently, in view of the particular circumstances of this case, the conducts of the presumed victims on the basis of which disciplinary proceedings were instituted against them cannot be considered contrary to their obligations as judges and, thus, violations of the disciplinary regime that was applicable to them under ordinary circumstances. To the contrary, such conducts should be understood as a legitimate exercise of their rights as citizens to take part in politics, to freedom of expression, to the right of assembly and to protest, as applicable to the specific action taken by each of these presumed victims.

175. On this point, the Honduran Constitution stipulates that:

Article 3. No one owes obedience to a government that has usurped power or to those who assume public functions or employments by force of arms or using means or procedures that violate or disregard the provisions of this Constitution and the law. Acts carried out by such authorities are null. The population has the right to resort to insurrection in defense of the constitutional order.

[...]

Article 375. This Constitution does not cease to apply or require compliance based on the use of force or if it were supposedly derogated or amended by a means or procedure other than the one provided for herein. In such cases, any citizen, whether or not he holds a position of authority, has the duty to collaborate in maintaining or re-establishing its application.

176. Additionally, **this Court has indicated that criminal proceedings may have "an intimidating or inhibiting effect on the exercise of freedom of expression, contrary to the state obligation to ensure the free and full exercise of this right in a democratic society."**<sup>328</sup> The application of this consideration depends on the specific facts of each case.<sup>329</sup> In the instant case, even though criminal proceedings are not involved, the Court considers that the mere fact of instituting disciplinary proceedings against the judges and the justice based on their actions against the *coup d'état* and in favor of the rule of law could have had this intimidating effect and, therefore, constituted an undue restriction of their rights.

177. Based on the above, the Court will now examine the events that occurred with regard to each of the presumed victims in order to determine whether the said restriction affected their rights to take part in politics, to freedom of expression and/or to the right of assembly. Subsequently, it will analyze jointly the alleged violation of freedom of association in relation to all the presumed victims.

### **B.1) Adán Guillermo López Lone**

<sup>326</sup> Affidavit made by Martin Federico Böhmer on January 12, 2015 (evidence file, folio 6888).

<sup>327</sup> Expert opinion provided by Perfecto Andrés Ibáñez during the public hearing held in this case.

<sup>328</sup> *Case of Uzcátegui et al. v. Venezuela. Merits and reparations*. Judgment of September 3, 2012. Series C No. 249, para. 189.

<sup>329</sup> Thus, for example, in the *Case of Uzcátegui et al.* criminal proceedings had been instituted against Mr. Uzcátegui, in which the plaintiff was a high-ranking officer (Commander General of Armed Police Forces of Falcón state), a context of violence existed, and the victim had been subjected to threats, harassment and unlawful detentions. *Cf. Case of Uzcátegui et al. v. Venezuela, supra*, para. 189.

178. The proceeding instituted against Mr. López Lone and his subsequent dismissal resulted from his participation in the demonstration held near Toncontin Airport while awaiting the return of President Zelaya, several days after the *coup d'état* (*supra* paras. 87 to 103). His participation constituted an exercise of his rights to participate in politics, to freedom of expression and to the right of assembly. Even though some individuals in the demonstration carried flags of political parties, the Court finds that the relevant fact is that it was a protest and a demonstration in favor of the return to the democratic institutional structure represented by the return of President Zelaya, unlawfully deposed from the presidency according to international law. Therefore, this Court concludes that the disciplinary proceeding against Mr. López Lone and his subsequent dismissal constituted a violation of Articles 13(1), 15 and 23 of the Convention, in relation to Article 1(1) of this instrument, to his detriment.

### **B.2) Luis Alonso Chévez de la Rocha**

179. The proceeding instituted against Mr. Chévez de la Rocha was based on his presumed participation in a protest against the *coup d'état* and his resulting arrest. Subsequently, comments made by Mr. Chévez de la Rocha to his judicial colleagues concerning the actions of the Judiciary vis-à-vis the *coup d'état* were included in the proceeding (*supra* paras. 124 to 134). The Supreme Court of Justice ruled to dismiss Judge Chévez on June 4, 2010, and he was removed from office on September 23, 2010 (*supra* paras. 123 and 132). **After the Supreme Court's decision had been contested, the Judicial Service Council considered that the appeal filed against this decision was admissible (*supra* para. 134). Nevertheless, the Judicial Service Council rejected the request to reinstate him in his post, because: (i) it was considered proved that Mr. Chévez was "ashamed of belonging to the Judiciary and, if he [was] employ[ed] in the Judiciary, this [was] by necessity and, in view of such opinions of inconformity, it [was] not desirable for either of the parties to continue the employment relationship," and (ii) it was considered that his reinstatement was impossible because someone had been appointed to substitute him on September 13, 2010. Consequently, the Council decided to compensate Mr. Chévez (*supra* para. 137).**

180. The Court notes that the alleged participation of Mr. Chévez de la Rocha in a protest against the *coup d'état* and the comments that he made against the actions of the Judiciary vis-à-vis the *coup d'état*, constituted the exercise of his right to participate in politics, to freedom of expression and to the right of assembly. Therefore, the Court concludes that the disciplinary proceeding against Mr. Chévez de la Rocha, as well as the refusal to reinstate him in his post of judge, constituted a violation of Articles 13(1), 15 and 23 of the Convention, in relation to Article 1(1) of this instrument, to his detriment.

### **B.3) Tirza del Carmen Flores Lanza**

181. The proceeding instituted against Ms. Flores Lanza was based on the filing of an application for *amparo* in favor of President Zelaya, as well as the filing of a criminal complaint before the Prosecutor General, and comments on the actions of other judicial organs, including the Supreme Court of Justice (*supra* paras. 106 to 121). In this regard, the Court considers that, in specific circumstances, the filing of judicial remedies may be considered an exercise of the right to freedom of expression.<sup>330</sup> Indeed, judicial remedies and criminal complaints may be an appropriate mechanism to disseminate ideas or thoughts, for example, in the context of a *coup d'état*, because it reveals positions taken to protect the rule of law or constitutional rights, matters of evident public relevance. Although, under normal conditions, certain restrictions to the exercise of the practice of

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<sup>330</sup> Similarly, see, ECHR, *Case of Kayasu v. Turkey*, Nos. 64119/00 and 76292/01. Judgment of November 13, 2008 paras. 59 and 61, 81 and 107; *Case of Heinsich v. Germany*, No. 28274/08. Judgment of July 21, 2011, para. 45, and *Case of Baka vs. Hungary*, No. 20261/12. Judgment of May 27, 2014, para. 102.

law could be reasonable in order to ensure the independence and impartiality of judges,<sup>331</sup> in the actual circumstances of this case, a restriction of this type should not have been applied, because **the defense of democracy and the rule of law correspond to the legitimate exercise of a citizen's political rights.**

182. By filing the application for *amparo* and the criminal complaint, Ms. Flores Lanza revealed her inconformity with what had happened and sought to obtain judicial protection for President Zelaya's rights. Accordingly, the Court finds that these actions, as well as the comments made by Ms. Flores Lanza, constituted an exercise of her right to freedom of expression and to participate in politics. Consequently, the Court concludes that the disciplinary proceeding against Ms. Flores Lanza, and her subsequent dismissal constituted a violation of Articles 13(1) and 23 of the Convention, in relation to Article 1(1) of this instrument, to her detriment.

#### **B.4) Ramón Enrique Barrios Maldonado**

183. Mr. Barrios was subjected to a disciplinary proceeding on the basis of a newspaper article that outlined the opinion on the *coup d'état* that he had given during a university lecture (*supra* paras. 140 and 141). The Supreme Court of Justice ordered his dismissal (*supra* paras. 143 to 145), indicating **that the dismissal would be "effective on the date that the substitute took office."**<sup>332</sup> Nevertheless, this order was not executed. Subsequently, the Judicial Service Council, taking into account the right to freedom of expression, **considered that "the investigation carried out by the Inspectorate of Courts and Tribunals [...] was insufficient to prove the grounds for his dismissal beyond a reasonable doubt with other evidence."**<sup>333</sup> As explained above, the mere existence of a disciplinary proceeding against Mr. Barrios Maldonado based on his statements against the *coup d'état*, constituted a violation of his rights to participate in politics and to freedom of expression (*supra* para. 176). Therefore, the Court concludes that the institution of the disciplinary proceeding against him constituted a violation of Articles 13(1) and 23 of the Convention, in relation to Article 1(1) of this instrument, to his detriment.

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<sup>331</sup> In this regard, the Court notes the existence of a regional consensus as regards the prohibition for judges to practice law. *Cf.* Argentina (Rules of Procedure for the National Judiciary, articles 8 and 14. Available at: <http://www.infoleg.gov.ar/infolegInternet/anexos/165000-169999/167638/norma.htm>); Bolivia (Law of the Judiciary of June 24, 2010, articles 22 and 188. Available at: <http://magistratura.organojudicial.gob.bo/index.php/institucion/2013-05-07-16-03-21/finish/3-leyes/1-ley-del-organo-judicial>); Brazil (Constitution, article 95. Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)); Colombia (Statutory Law of the administration of justice of March 15, 1996, article 151. Available at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6548>, and Consolidated Disciplinary Code, article 50. Available at: [http://www.procuraduria.gov.co/relatoria/media/file/Codigo\\_Disciplinario\\_Unico\\_2011.pdf](http://www.procuraduria.gov.co/relatoria/media/file/Codigo_Disciplinario_Unico_2011.pdf)); Chile (Organic Code of the Courts, article 316. Available at: <http://www.leychile.cl/Navegar?idNorma=25563>); Costa Rica (Organic Law of the Judiciary of July 1, 1993, article 9. Available at: <https://www.tse.go.cr/pdf/normativa/leyorganicapoderjudicial.pdf>); Ecuador (Constitution of the Republic of Ecuador of October 20 2008, articles 109 and 174. Available at: [http://www.asambleanacional.gov.ec/documentos/constitucion\\_de\\_bolsillo.pdf](http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf)); El Salvador (Judicial Service Act of July 12, 1990, articles 24 and 52. Available at: <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-la-carrera-judicial>); Guatemala (Judicial Service Act, articles 29 and 41. Available at: [http://www.mingob.gob.gt/images/legislacion/m\\_Ley\\_de\\_la\\_carrera\\_judicial\\_Guatemala.pdf](http://www.mingob.gob.gt/images/legislacion/m_Ley_de_la_carrera_judicial_Guatemala.pdf)); Mexico (Constitution of the United Mexican States, article 101. Available at: <http://www.diputados.gob.mx/LeyesBiblio/htm/1.htm>); Peru (Judicial Service Act, articles 40(1) and 48. Available at: [http://www.oas.org/juridico/PDFs/mesicic4\\_per\\_ley29277.pdf](http://www.oas.org/juridico/PDFs/mesicic4_per_ley29277.pdf)); Dominican Republic (Law No. 327-98 of the Judicial Service, articles 44 and 66. Available at: <http://ojd.org.do/Normativas/General/Ley%20No.%20327-98,%20sobre%20Carrera%20Judicial,%20del%2011%20de%20agosto%20de%201998%20G.O.%209994.pdf>); Uruguay (Constitution of the Oriental Republic of Uruguay, article 252. Available at: <http://www.presidencia.gub.uy/normativa/constitucion-de-la-republica>, and Organic Law of the Judiciary and of the Organization of the Courts, article 91. Available at: <http://www.parlamento.gub.uy/leyes/ley15750.htm>), and Venezuela (Code of Ethics of the Venezuelan Judge, articles 22 and 33. Available at: [http://www.mp.gob.ve/c/document\\_library/get\\_file?uuid=949621c5-5d93-436e-b0ac-17a7312faef6&groupId=10136](http://www.mp.gob.ve/c/document_library/get_file?uuid=949621c5-5d93-436e-b0ac-17a7312faef6&groupId=10136)). Also, for example, the Bangalore Principles of Judicial Conduct establish that, "[a] judge shall not practise law whilst the holder of judicial office." Bangalore Principles of Judicial Conduct, Principle 4.12.

<sup>332</sup> *Cf.* Note of June 16, 2010, signed by the Secretary General of the Supreme Court of Justice transcribing the dismissal decision of the same date (evidence file, folio 3098).

<sup>333</sup> *Cf.* Decision of the Judicial Service Council of August 24, 2011 (evidence file, folio 3516).

### **C. Freedom of association and alleged indirect violation of freedom of expression**

184. In addition to the violations examined in the preceding section, the Commission and the representatives alleged that the disciplinary proceedings to which the presumed victims were subjected constituted indirect methods or means of limiting their freedom of expression. In this regard, the Court notes that, in the preceding section, it examined the possible violation of the **presumed victims'** freedom of expression as a result of the disciplinary proceedings used to restrict that right, under Article 13(1) of the Convention. In the instant case, the Court does not consider that a situation of indirect restrictions to freedom of expression exists. The arguments of the Commission and the representatives are substantially the same as those analyzed under Article 13(1) of the Convention. Therefore this Court does not find it appropriate to rule on the alleged violation of Article 13(3) of the Convention, based on facts that have already been analyzed.

185. The Commission and the representatives also asserted that the disciplinary proceedings and the consequent dismissal of the presumed victims from the Judiciary prevented them from continuing to be members of the AJD, and thus their freedom of association was violated. The Court has indicated that Article 16(1) of the American Convention establishes that those who are subject to the jurisdiction of the States Parties have the right and the freedom to associate freely with other persons, without the intervention of the public authorities limiting or obstructing the exercise of this right. In other words, this is the right to associate in order to achieve a legitimate common objective, without pressure or interference that could alter or denature this objective.<sup>334</sup> In the same way that freedom of association has these negative obligations, the Inter-American Court has observed that it also gives rise to positive obligations to prevent any attacks on it, to protect those who exercise it, and to investigate any violations thereof.<sup>335</sup>

186. At the time of the *coup d'état*, the four presumed victims were members of the AJD; moreover, three of them were founding members or held directorial positions within the Association (*supra* paras. 68, 86, 105, 123 and 139). The Court has verified that the AJD issued a press communiqué in which it clearly indicated the position of the Association and its members against the *coup d'état* (*supra* para. 69). According to its statutes, only judges and justices on active duty can be members of the Association.<sup>336</sup> The dismissal of Mr. López Lone, Mr. Chévez de la Rocha and Ms. Flores Lanza affected their possibility of belonging to the AJD and, therefore, also constituted an undue restriction of the right to freedom of association. Consequently, the Court concludes that the State violated Article 16 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Mr. López Lone, Mr. Chévez de la Rocha and Ms. Flores Lanza. In the case of Mr. Barrios Maldonado, the Court considers that, since his dismissal was not put into effect, his freedom of association was not restricted.<sup>337</sup>

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<sup>334</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72, para. 156, and *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012 Series C No. 258, para. 116.

<sup>335</sup> Cf. *Case of Huilca Tecse v. Peru. Merits, reparations and costs*. Judgment of March 3, 2005. Series C No. 121, para. 76, and *Case of García and family members v. Guatemala, supra*, para. 116.

<sup>336</sup> Cf. Statutes of the Association of Judges for Democracy (AJD), published in Official Gazette No. 31,528 of October 10, 2007. Articles 8 and 12. Available at: <http://www.poderjudicial.gob.hn/asociaciones/Documents/Estatutos%20Asociaci%C3%B3n%20de%20Judges%20por%20la%20Democracia.pdf> (cited in the Merits Report, merits file, folio 17).

<sup>337</sup> The representatives advised that, following the events of this case, Mr. Barrios Maldonado was dismissed from his judicial functions (*supra* nota 282). Nevertheless, the Court notes that, since that proceeding does not form part of the factual framework of the instant case, it is not appropriate to examine a possible violation of the American Convention as a result of that fact.

**VII-2**  
**JUDICIAL GUARANTEES, JUDICIAL PROTECTION AND POLITICAL RIGHTS, IN RELATION TO THE OBLIGATION TO RESPECT AND ENSURE RIGHTS AND THE OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS**

187. The Commission and the representatives alleged a series of violations of the judicial guarantees (Article 8 of the Convention),<sup>338</sup> the right to judicial protection (Article 25 of the Convention),<sup>339</sup> and the political rights (Article 23 of the Convention)<sup>340</sup> of the presumed victims, in the context of the disciplinary proceedings to which they were subjected.

188. Notwithstanding the Court's findings in relation to the violations of the political rights, freedom of expression, right of assembly and freedom of association of the presumed victims analyzed in Chapter VII-1 *supra*, in this Chapter the Court will determine whether, in the context of the said disciplinary proceedings, there were violations of the presumed victims' guarantees of due process and right to judicial protection, established in Articles 8(1) and 25 of the Convention, as well as their right to have access, under general conditions of equality, to public service, recognized in Article 23(1)(c) of the American Convention.

189. Based on the arguments presented by the parties and the Commission, the Court will first make some (A) general considerations on the guarantees of due process and judicial protection in the context of disciplinary proceedings against judges; it will then analyze, specifically, (B) the guarantees of competence, independence and impartiality of the disciplinary authorities, and (C) the right to tenure, under general conditions of equality, in order to establish its (D) conclusions with regard to the guarantees of due process and the political rights of the presumed victims. The Court will then include some pertinent considerations on (E) the other violations that have been alleged concerning due process in the disciplinary proceedings instituted against the presumed victims, and (F) the right to judicial protection.

**A. General considerations of the Court on the guarantees of due process and judicial protection in the context of disciplinary proceedings against judges**

190. The Court's case law has indicated that the scope of judicial guarantees and effective judicial protection for judges must be analyzed in relation to the standards for judicial independence. In the case of *Reverón Trujillo v. Venezuela*, the Court specified that judges, contrary to other public officials, have specific guarantees owing to the necessary independence of the Judiciary, which the Court has understood to be "essential for the exercise of judicial functions."<sup>341</sup>

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<sup>338</sup> Article 8(1) of the American Convention (judicial guarantees) establishes that: "[e]very 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."

<sup>339</sup> Article 25(1) of the American Convention establishes that: "[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties".

<sup>340</sup> Article 23(1)(c) of the American Convention establishes that: "[e]very citizen shall enjoy the following rights and opportunities: [...] to have access, under general conditions of equality, to the public service of his country."

<sup>341</sup> Cf. *Case of Reverón Trujillo v. Venezuela, supra*, para. 67, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2013. Series C No. 268, para. 188.

191. According to **this Court's case law, the following** assurances arise from judicial independence: an appropriate selection process,<sup>342</sup> guaranteed tenure<sup>343</sup> and the guarantee against external pressures.<sup>344</sup>

192. Bearing in mind the foregoing, the Court has established that: (i) respect for judicial guarantees entails respecting judicial independence; (ii) the scope of judicial independence results in the subjective right of judges to be dismissed exclusively for the reasons permitted, either by a proceeding that complies with judicial guarantees or because their mandate has terminated, and **(iii) when a judge's** tenure is arbitrarily impaired, the right to judicial independence recognized in Article 8(1) of the American Convention is violated, as is the right of access to public service and tenure, under general conditions of equality, established in Article 23(1)(c) of the American Convention.<sup>345</sup>

193. In the cases of the *Supreme Court of Justice (Quintana Coello et al.)* and the *Constitutional Tribunal (Camba Campos et al.)*, both against Ecuador, this Court clarified that judicial independence should not only be analyzed in relation to the defendant, because the judge also should have a series of guarantees to ensure judicial independence. In those cases, the Court asserted that the violation of the guarantee of judicial independence, **as regards a judge's tenure**, should be analyzed in light of the treaty-based rights of judges when they have been affected by a state decision that arbitrarily interferes with the length of their mandate. Thus, the institutional guarantee of judicial independence is directly related to the right of the judge to remain in office as a result of the guarantee of tenure.<sup>346</sup>

194. The Court has pointed out that the State must guarantee the autonomous exercise of the judicial function as regards both its institutional aspect, that is, in relation to the Judiciary as a system, and also as regards its individual aspect, that is, in relation to the person of the specific judge. The Court finds it pertinent to clarify that the institutional dimension is related to aspects that are essential for the rule of law, such as the principle of the separation of powers, and the important role played by the judicial function in a democracy. Consequently, this institutional dimension goes beyond the office of the judge and has a collective impact on society as a whole. Furthermore, there is a direct relationship between the institutional dimension of judicial independence and the right of judges to accede to and remain in their posts under general conditions of equality, as an expression of their guarantee of tenure.<sup>347</sup>

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<sup>342</sup> Cf. *Case of the Constitutional Court v. Peru. Merits, reparations and costs*. Judgment of January 31, 2001, para. 75, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para.188. See also: ECHR, *Case of Campbell and Fell v. The United Kingdom*, Judgment of June 28, 1984, para. 78; *Case of Langborger v. Sweden*, Judgment of January 22, 1989, para. 32, and Principle 10 of the United Nations Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985).

<sup>343</sup> Cf. *Case of the Constitutional Court v. Peru, supra*, para. 75, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para.188. See also Principle 12 of the United Nations Basic Principles.

<sup>344</sup> Cf. *Case of the Constitutional Court v. Peru, supra*, para. 75, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para.188. See also, Principles 2 and 4 of the United Nations Basic Principles.

<sup>345</sup> Cf. *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2013. Series C No. 266, para. 155, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 199.

<sup>346</sup> Cf. *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 153, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 197.

<sup>347</sup> Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 5, 2008, para. 55, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 198.

195. The guarantee of an appropriate selection process, of tenure, and against external pressures, all derived from judicial independence, have also been affirmed by the European Court of Human Rights, and are established in the United Nations Basic Principles.<sup>348</sup>

196. Among the relevant features of tenure, the United Nations Basic Principles establish that “[t]he term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law,”<sup>349</sup> and also that “[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.”<sup>350</sup> In addition, the Human Rights Committee of the International Covenant on Civil and Political Rights (hereinafter “the Human Rights Committee”) has indicated that “[j]udges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law.”<sup>351</sup> This Court has adhered to these Principles and has affirmed that the authority responsible for the procedure to dismiss a judge must conduct itself with independence and impartiality in the procedure established for this purpose, and permit the exercise of the right of defense.<sup>352</sup> This is because the free removal of judges gives rise to objective concerns about the real possibility of judges deciding specific disputes without fear of reprisals.<sup>353</sup>

197. Regarding the guarantee against external pressures, the United Nations Basic Principles provides that: “[t]he Judiciary shall decide matters before them impartially, 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.”<sup>354</sup> In addition, the Principles establish that: “[t]here shall not be any inappropriate or unwarranted interference with the judicial process.”<sup>355</sup>

198. One of the essential components of the guarantee of tenure for judges is that they may only be dismissed for conducts that are clearly inexcusable. In its General Comment No. 32, the Human Rights Committee established that “judges may be dismissed only on serious grounds of misconduct or incompetence.”<sup>356</sup> Furthermore, the Basic Principles stipulate the following with regard to discipline, suspension and removal:

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<sup>348</sup> Cf. The United Nations Basic Principles.

<sup>349</sup> Principle 11 of the United Nations Basic Principles.

<sup>350</sup> Principle 12 of the United Nations Basic Principles.

<sup>351</sup> Cf. Human Rights Committee. General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 20. In addition, in this same General Comment, the Committee stated that: “[t]he dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary” (para. 20). In addition, the United Nations Basic Principles establish that “[j]udges shall be subject to suspension or removal only for reasons of incapacity or behaviour 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, respectively, of the United Nations Basic Principles.

<sup>352</sup> Cf. *Case of the Constitutional Court v. Peru*, *supra*, para. 74, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra*, para. 198.

<sup>353</sup> Cf. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, *supra*, para. 44, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, *supra*, para. 189. See also: Principles 2, 3 and 4 of the United Nations Basic Principles.

<sup>354</sup> Principle 2 of the United Nations Basic Principles.

<sup>355</sup> Principle 4 of the United Nations Basic Principles.

<sup>356</sup> Cf. Human Rights Committee, General Comment No. 32: Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 20. See also Human Rights Committee, Communication No. 1376/2005, Soratha Bandaranayake v. Sri Lanka, CCPR/C/93/D/1376/2005, para. 7.3.



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 behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.<sup>357</sup>

199. Other standards differentiate between the applicable sanctions. Tenure implies that dismissal is due to fairly serious conducts, while the other sanctions may be used in the case of negligence or incapacity.<sup>358</sup>

200. Taking the above considerations into account, this Court establishes that the guarantee of tenure for judges means that: (i) their removal must be exclusively the result of the permitted reasons, either by means of a procedure that respects judicial guarantees or because their mandate has ended; (ii) judges may only be dismissed owing to serious disciplinary offenses or incompetence; (iii) any disciplinary procedure against a judge must be decided in accordance with the established norms for judicial conduct in fair proceedings that ensure objectivity and impartiality pursuant to the Constitution or the law (*supra* paras. 196, 198 and 199).

201. Furthermore, the Court underscores that Article 3 of the Inter-American Democratic Charter **establishes that “[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 of powers and independence of the branches of government.”**<sup>359</sup> The arbitrary dismissal of judges, especially professional judges, in the absence of prior disciplinary offenses, based on their actions against the *coup d’état* and the actions of the Supreme Court in that regard, as in this case, constitute an attack on judicial independence and harm the democratic order. The Court stresses that judicial independence, including within the Judiciary, is closely related not only to the consolidation of the democratic system, but also seeks to preserve the human rights and freedoms of every citizen.

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<sup>357</sup> Principles 17, 18 and 19 of the United Nations Basic Principles.

<sup>358</sup> *Cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 148, citing the Recommendation of the Council of Europe on the Independence, Efficiency and Role of Judges, which stipulate: 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. When 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 reduction in salary for a temporary period; (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, 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 which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organs, or which is a superior judicial organ itself. The law should provide for appropriate procedures to ensure that judges in question are given 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.” European Union, Committee of Minister. Recommendation No. R (94) 12 on the Independence, Efficiency and Role of Judges, October 13, 1994.

<sup>359</sup> Inter-American Democratic Charter, article 3.

202. Without prejudice to the findings in Chapter VII-1 *supra*, a series of irregularities existed in the disciplinary proceedings against the presumed victims that the Court will now examine.

**B. Guarantees of the competence, independence and impartiality of the disciplinary authorities in cases involving judges**

**B.1) Arguments of the Commission and of the parties**

203. The Commission concluded that the State had "violated the right to a hearing by a competent, independent and impartial authority established in Article 8(1) of the American Convention in relation to the obligations established in Article 1(1) of this instrument, to the detriment of Guillermo López Lone, Ramón Barrios [Maldonado], Luis Alonso Chévez de la Rocha and Tirza Flores Lanza." Regarding the competence of the disciplinary authorities, it pointed out that the action of **the Judicial Service Council as an appeal court was "contrary to the provisions of article 313 of the Constitution, according to which, first, the Judicial Service Council should recommend the dismissal to the Supreme Court of Justice and, then, it is the Supreme Court that takes the respective decision."** Regarding the principle of judicial independence, the Commission indicated that **"the action of the Judicial Service Council was incompatible with the guarantee of independence."** It also noted that, after **the Council's members** had disqualified themselves, **"neither the case file nor the applicable norms clarify the criteria used by the President of the Council to select and appoint the members of the Council for the specific case and whether the criteria were made public."** The Commission also considered that it had insufficient evidence to rule on the alleged lack of independence of the Supreme Court. With regard to impartiality, it argued that the Supreme Court **"did not meet the objective elements of impartiality to hear the presumed victims [...], given that their interests were evidently contrary to those of the Court" as regards the *coup d'état*; added to the fact that "the presumed victims were unable to challenge the lack of impartiality of the members of the [Supreme Court of Justice]." In addition, it indicated that **"the Supreme Court is the judicial organ that makes a final ruling on appeals contesting the decisions taken by judges, [but also,] it has the disciplinary authority to sanction judges of lower courts."** The Commission added that **"[t]his lack of impartiality also permeated all the authorities who ruled on the responsibility of the [presumed] victims, in view of their relationship of dependence vis-à-vis the Supreme Court."****

204. The representatives argued that **"the disciplinary authorities who decided the dismissal of the [presumed] victims did not meet the requirements of competence, independence and impartiality."** They underlined that there are three disciplinary regimes in Honduras: a constitutional regime, a **legal regime** and **"a third regime [applied to the presumed victims] that was not established in either the Constitution or by law."** They asserted that, owing to these normative contradictions, the presumed victims were in a situation of **"absolute legal uncertainty,"** which restricted their right of defense, **"because they could not be certain about which organ would hear their proceedings."** In this regard, they argued that **"the authority that finally decided their dismissal – namely, the plenum of the [Supreme Court of Justice], was not the authority that obtained and assessed the evidence presented during the proceedings, and failed to give a hearing to the persons who were subject to the disciplinary proceedings"; and even though the latter had alleged violations of due process in their appeals, "the [Judicial Service Council] declared all the appeals inadmissible without ruling on their merits."**

205. The representatives also asserted that the concentration of judicial and administrative powers in the Supreme Court of Justice had impaired judicial independence. Furthermore, they indicated that the Judicial Service Council could not be considered independent for three reasons: (1) the irregularities and defects in the process of appointing council members; (2) that there was no legal provision concerning the appointment of substitute members, and **"there is no information on the criteria and procedure used by the President of the Council to appoint substitute members to**

incorporate **the Council when hearing the appeals filed,** and (3) "the fact that it acted as a reviewing body of [...] its superior in hierarchy." **As regards impartiality, they underscored** that, in general, the Supreme Court of Justice had defended the lawfulness of the actions that led to the **overthrow of the President at the time, so that "it was unthinkable that the said Court and its dependent organs could act impartially in the disciplinary proceedings of the [presumed] victims."**<sup>360</sup> They added that the notes relating to the transfer of the charges "asserted – before the corresponding proceedings had been held – **that, during the investigations [...], the presumed victims] had been found responsible."** They indicated that, "of the 81 applications for *amparo* filed during the *coup d'état*, the Supreme Court decided two very rapidly, and these two related to the reinstatement of the head of the Armed Forces; meanwhile, the 79 appeals filed in relation to arbitrary detentions and a series of other abuses **were not decided."**

206. The State affirmed that the Constitution attributed to the Supreme Court of Justice the authority to organize and direct the Judiciary, to appoint and to remove judges, and also justices of the appellate courts, upon the recommendation of the Judicial Service Council. It underlined that, following a ruling of the Supreme Court, "all judicial officials and employees go before the Judicial Service Council **to file their appeals,**" and **this is what** the presumed victims did in this case. It also indicated that, in the administrative procedures held by the Judicial Service Council, none of the justices intervened who had heard the dismissal proceedings, and the Council "was composed of outstanding officials who had entered the Judiciary by means of a competitive procedure and who had enjoyed a long and unblemished professional career, in order to ensure the principles of **impartiality and objectivity."**

## **B.2) Considerations of the Court**

207. This Court has indicated that the guarantees contemplated in Article 8(1) of the Convention are also applicable in the event that a non-judicial authority adopts decisions that affect the determination of the rights of the individual,<sup>361</sup> although such an authority cannot be required to comply with the guarantees inherent in a judicial organ, it must still provide those aimed at ensuring that its decisions are not arbitrary.<sup>362</sup> The Court considers that the organs for the administration and regulation of the judicial service that intervened in the disciplinary proceedings of the presumed victims should have adopted their decisions fully respecting the guarantees of due process established in Article 8(1) of the American Convention. The Court will now examine the different violations of due process alleged by the presumed victims, bearing in mind these considerations, as well as its conclusions in Chapter VII-1 of this judgment.

208. In this case, the four presumed victims were subjected to disciplinary proceedings under a procedure that was not established by law. In point of fact, Honduran law provided for two procedures: (1) the one established by the Constitution, according to which the Supreme Court appointed and removed judges following a recommendation by the Judicial Service Council,<sup>363</sup> and (2) the one established in the Judicial Service Act and its Regulations, according to which the Personnel Management Directorate took the initial decision, or the decision of first instance, on the

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<sup>360</sup> The Court notes that the representatives also presented arguments regarding a presumed infringement of the judicial independence of the Supreme Court, due to the procedure used to appoint its justices. These facts are outside the factual framework submitted to the Court by the Commission. Therefore, the Court will not take them into account in its decision in this case.

<sup>361</sup> Cf. *Case of the Constitutional Court v. Peru*, *supra*, para. 71, and *Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 119.

<sup>362</sup> Cf. *Case of Claude Reyes et al. v. Chile*, *supra*, para. 119, and *Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 6, 2009. Series C No. 200, para. 208.

<sup>363</sup> This power of the Supreme Court was also established in the Law on the Organization and Faculties of the Courts (*supra* para. 82).

removal of a judge or justice, and this could then be appealed before the Judicial Service Council<sup>364</sup> (*supra* para. 82). However, these legally established procedures were not applied to the presumed victims in this case, but rather a hybrid or combination of the two.<sup>365</sup> Thus, in the case of the presumed victims, although it was the Supreme Court that decided on their dismissal in first instance, as established in the Constitution, it did so following a recommendation by the Personnel Management Directorate, while the Judicial Service Council, which should act as an advisory organ to the Supreme Court in these decision pursuant to the provisions of the Constitution, acted as an appellate or second instance body. In addition, in the appeals against the dismissals filed before the Judicial Service Council, the Personnel Management Directorate, **which had "recommended" the respective dismissals, acted as "respondent party," rather than** the Supreme Court which had decided on the dismissals, even though the appeal was against the dismissal, and not against the recommendation made by the Personnel Management Directorate.<sup>366</sup>

209. According to information provided by the State itself, the procedure established in the Judicial Service Act and its Regulations was applicable to the presumed victims. Nevertheless, this had to be reconciled with the exclusive competence granted to the Supreme Court by the Constitution to remove judges or justices. The Court understands that it is not contrary to the Convention and is a common practice of the States Parties to the inter-American human rights system that, when analyzing a complete legal system, certain procedural norms are tacitly derogated by a subsequent norm or, as in this case, even a higher ranking norm, as the Honduran Constitution was. However, when harmonizing its laws, the State should ensure respect for the applicable guarantees and the legal certainty of defendants.

210. Based on the above (*supra* para. 208), the Court notes that, in this case, there was a total lack of clarity as regards the applicable procedure and the authorities that should hold the disciplinary proceedings against the presumed victims. In addition, the Court underscores that the judges and the justice, presumed victims in this case, alleged before this Court and before the domestic proceedings that there was a lack of certainty as regards the applicable procedure and the body that should process and decide their disciplinary proceedings.<sup>367</sup>

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<sup>364</sup> In this regard, the Regulations governing the Judicial Service Act established that: "[t]he Personnel Management Directorate w[ould] taken the final decision on whether or not to ratify the disciplinary sanction against the employee, giving written notice of its decision to the person concerned. The dismissal [was] final once the appeals filed by the person concerned had been exhausted and decided. [...] The judicial employee affected by a disciplinary measure or by dismissal m[ight], within ten working days from the date of notification of the disciplinary measure or the dismissal, appeal before the Judicial Service Council." **Regulations governing the Judicial Service Act, articles 188 and 190 (evidence file, folio 201).**

<sup>365</sup> Expert witness Perfecto Andrés Ibáñez also referred to this when he indicated that "the Honduran system, at that time, provided for or established two alternative and, I would say, contradictory procedures," and "a third procedure, which was not established either by law or in the Constitution, is the one that was used [in this case], under which there was a complaint by the Inspectorate, the Personnel Management Directorate held the preliminary hearing, the Supreme Court took the decision, and an appeal, which was legally inexistent, was heard by the Council of the Judiciary." **Expert opinion provided by Perfecto Andrés Ibáñez during the public hearing in this case.**

<sup>366</sup> In this regard, see decisions of the Judicial Service Council of August 24, 2011, with regard to Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Tirza del Carmen Flores Lanza and Ramón Enrique Barrios Maldonado (evidence file, folio 1057, 2218, 2817 and 3499). In these proceedings, in addition to indicating the Personnel Management Directorate as the respondent party, the Judicial Service Council justified the transfer of the appeal to the Personnel Management Directorate, prior to holding the hearing, contrary to the provisions of the Judicial Service Act and its Regulations, in **application of complementary provisions so that, respecting the principle of "equality of arms, it was guaranteeing the right of the Personnel Management Directorate to defend itself."** **Decisions of the Judicial Service Council of August 24, 2011, with regard to Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Tirza del Carmen Flores Lanza and Ramón Enrique Barrios Maldonado (evidence file, folios 1064 and 1065, 2224, 2826 and 3506).**

<sup>367</sup> **Thus, Mr. López Lone testified before the Court that "throughout the processing of the disciplinary procedure my colleagues and I endured a situation of complete uncertainty; we did not know against whom we were litigating; we did not know in which instances we were litigating; we were completely unaware of who would hear our statements, who would receive the evidence, who would assess the evidence; we were litigating before bodies that were hierarchically dependent on the Supreme Court of Justice." Statement made by Adán Guillermo López Lone during the public hearing held in this case. Judge Chévez de la Rocha testified similarly, when indicating that he "was never able to be certain about the norms and**

211. At the domestic level, during the rebuttal hearings before the Personnel Management Directorate, the presumed victims indicated that “[t]here is an absolute lack of precision as to who is the ordinary judge in the disciplinary proceedings against judicial officials and employees.”<sup>368</sup> Furthermore, in the hearings on the appeal filed before the Judicial Service Council, they pointed out that “[t]he Council does not have powers to hear appeals against the rulings of the Supreme Court of Justice, because the law only grants them powers to hear appeals against the decisions of the Personnel Directorate [and t]he procedure that concluded with the dismissals was illegitimate and contrary to the law.”<sup>369</sup>

212. Nevertheless, the bodies that intervened in the disciplinary proceedings against the presumed victims did not respond to these arguments duly and sufficiently (notwithstanding the response of the Judicial Service Council with regard to its competence to decide appeals against rulings of the Supreme Court which will be examined below, para. 220). Even though it could be understood that, based on the principle of the primacy of the Constitution, the procedures established in that instrument should have been applied, as verified previously, such procedures were not followed (*supra* paras. 208 and 209). Indeed, the procedure applied was the result of a practice that was not reflected in either a law or a judicial decision or in any other document, law or norm of a public of general nature that would have guaranteed the requirements of due process to the presumed victims in the determination of disciplinary sanctions against them.

213. Furthermore, Article 2 of the Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms protected by the Convention.<sup>370</sup> This obligation entails the adoption of two types of measures. On the one hand, the elimination of norms and practices of any nature that entail a violation of the guarantees established in the Convention,<sup>371</sup> either because they ignore those rights and freedoms or they

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procedures that were being applied to us,” and also, “[w]hen the case was in the hands of the Judicial Service Council, [he] was unaware of the procedure to follow, because the Judicial Service Act was fairly ambiguous and imprecise as regards the procedure, and [they] were not given sufficient information.” Affidavit made by Luis Alfonso Chévez de la Rocha on January 8, 2015 (evidence file, folios 6643 and 6644). Justice Flores Lanza also stated that: “[a]t the time, the regulatory framework of the disciplinary procedure contained many defects and omissions and that, together with the arbitrary and authoritarian attitude of some of the judicial employees who were in charge of it, resulted in the proceedings being plagued by numerous violations of due process.” Affidavit made by Tirza del Carmen Flores Lanza on January 7, 2015 (evidence file, folio 6665).

<sup>368</sup> They also asserted that: “This ‘diffuse ordinary judge’ limits or prevents the defendants from alleging grounds for recusal. Moreover, the administrative official is in a situation of administrative subordination in relation to his superior, and in frank dependence, which does not allow him to form his opinions independently. But, the most serious factor is that, subsequently, the body that will impose the sanction – the President or the plenum of justices of the Supreme Court of Justice – has already prejudged the facts owing to his direct or indirect participation in the investigation. In these conditions, it is difficult to be able to conceive the existence of the mechanism of the ordinary judge and his independent function.” Statements made by Guillermo López Lone and Luis Chévez de la Rocha before the Personnel Management Directorate at the rebuttal hearing of the disciplinary proceedings against Mr. Barrios Maldonado and Mrs. Flores Lanza on December 3 and 7, 2009 (evidence file, folios 305, 1456, 1948 and 2464).

<sup>369</sup> Hearings before the Judicial Service Council on September 29, 2010, and on February 24, 2011, in the disciplinary proceedings against Adán Guillermo López Lone and Ramón Barrios Maldonado (evidence file, folios 534, 3163 and 3164).

<sup>370</sup> Cf. *Case of Gangaram Panday v. Suriname. Preliminary objections*. Judgment of December 4, 1991. Series C No. 12, para. 50 and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela, supra*, para. 389.

<sup>371</sup> 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 Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 270.

impede their exercise.<sup>372</sup> On the other hand, the enactment of laws and the implementation of practices leading to the effective observance of such guarantees.<sup>373</sup>

214. As this Court has indicated on other occasions, the provisions of domestic law that are adopted for such purposes must be effective (principle of the practical effects or *effet utile*), which means that the State is obliged to adopt and incorporate into its domestic law all necessary measures to ensure that the provisions of the Convention are truly implemented and complied with.<sup>374</sup>

215. **The State's failure to harmonize** its domestic law resulted in a situation of uncertainty as to the procedure to be followed and the competent bodies to decide the disciplinary proceedings against the presumed victims. In addition, the consequent application to the presumed victims of a procedure that was not established by law, but rather was the result of a combination of the procedures established by law, due in part to this legislative omission, infringed legal certainty and the rights of the presumed victims when disciplinary sanctions against them were decided. Based on the foregoing considerations, and bearing mind the findings in Chapter VII-1 *supra*, the Court concludes that subjecting the four presumed victims to disciplinary proceedings and organs that were not established by law constituted a violation of Article 8(1) of the Convention, in relation to Articles 1(1) and 2 of the Convention, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado.

216. Notwithstanding this general violation as regards the disciplinary proceedings to which the presumed victims were subjected, owing to the circumstances of this case, the Court finds it necessary to analyze other aspects of the violation of Article 8(1) of the Convention, particularly (i) the lack of competence and independence of the Judicial Service Council to decide the appeals against the rulings of the Supreme Court; (ii) the lack of impartiality of the Judicial Service Council, and (iii) the lack of impartiality of the Supreme Court of Justice.

#### B.2.a) Lack of competence and independence of the Judicial Service Council

217. The Judicial Service Council, the entity that reviewed the dismissal decisions issued by the Supreme Court, lacked due independence to act as an organ of review or appeal with regard to the Supreme Court, because it was an auxiliary body of the Supreme Court and depended on it. According to the Judicial Service Act, its Regulations, and the rules of procedure of the Judicial Service Council, the latter "**depend[ed] on the Supreme Court of Justice**" and its "**essential function [...] shall be to assist the Supreme Court of Justice as regards personnel management policy, and to decide, in its respective instance, any conflicts that occur as a result of the application of this law and its regulations.**"<sup>375</sup>

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<sup>372</sup> Cf. *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 113, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 270.

<sup>373</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru, supra*, para. 207, and *Case of Expelled Dominicans and Haitians v. Dominican Republic, supra*, para. 270.

<sup>374</sup> Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, supra*, para. 87; and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 124.

<sup>375</sup> **The Judicial Service Act establishes that:** "Article 7. The Judicial Service Council shall depend on the Supreme Court of Justice. Article 8. The essential function of the Judicial Service Council shall be to assist the Supreme Court of Justice, as regards personnel management policy, and to decide, within its respective instance, any conflicts that occur as a result of the **application of this law and its regulations**" (evidence file, folio 4152). These provisions are reiterated in articles 22 and 23 of the Regulations governing the Judicial Service Act (evidence file, folios 163 and 164). In addition, article 3 of the rules of procedure of the Judicial Service Council establishes that "[t]he Judicial Service Council is the highest organ of the judicial service regime, depending on the Supreme Court of Justice; it shall have as an essential function to assist the latter as regards personnel management policy, and to decide, in its respective instance, any conflicts that occur as a result of the **application of the Judicial Service Act and its Regulations**" (evidence file, folio 4208).

218. The independence of judges must be guaranteed, including within the Judiciary. This autonomous exercise must be guaranteed by the State as regards both its institutional aspect – that is, in relation to the Judiciary as a system – and also in connection with its individual aspect – that is, in relation to the person of each specific judge. The purpose of the protection is to avoid the judicial system in general, and its members in particular, being subjected to possible undue restrictions in the exercise of their function by bodies outside the Judiciary or even by those justices who exercise functions of review or appeal.<sup>376</sup> Defendants have the right, derived from the American Convention, to the judges who decide their disputes being and appearing to be independent.<sup>377</sup>

219. Expert witness Perfecto Andrés Ibáñez asserted that the “independence [of the judicial authorities from those who exercise disciplinary control] is essential because decisions are at stake **that will affect the independence of the courts.**” According to this expert, those responsible for disciplinary control must be “given a special status [...] in which there is no room for political interference or, evidently, for hierarchical interference, and that permits [them] to function with a system of guarantees that allow them to operate independently and with what, ultimately, will be judicial independence, which is what is at stake in a disciplinary case.”<sup>378</sup> When examining the disciplinary regime applied to the presumed victims, the expert indicated that there was no “internal independence, because the [Supreme] Court was the organ with higher administrative rank than all the other judges and courts, given that the said court dealt with both judicial and regulatory matters.”<sup>379</sup> This Court finds that the hierarchical relationship and the functional dependence of the Judicial Service Council on the Supreme Court (*supra* para. 79),<sup>380</sup> whose decisions it was reviewing, affected its independence when deciding the appeals filed by the presumed victims.

220. Furthermore, according to the domestic norms, the Judicial Service Council was competent to hear and decide appeals filed against the decisions of the Personnel Management Directorate<sup>381</sup>

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<sup>376</sup> Cf. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra*, para. 55, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 188.

<sup>377</sup> Cf. *Case of Reverón Trujillo v. Venezuela, supra*, para. 114 and *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2011. Series C No. 227, para. 103.

<sup>378</sup> Expert opinion provided by Perfecto Andrés Ibáñez during the public hearing in this case.

<sup>379</sup> Written report of expert witness Perfecto Andrés Ibáñez presented during the public hearing held in this case (merits file, folio 1335). In similar terms to those used by this Court *supra* para. 218, according to the said expert, the principle of independence has an external aspect (faced with possible interference from other organs of power) and an internal aspect; **and each of these aspects has an institutional and a functional facet. According to the expert: “the internal independence of the institutional facet requires a horizontal model of organization, so that the interrelationship between judges and courts responds only to a judicial criterion, inherent in the chain of authority; so that the relationships of supra- and subordination between them is exclusively procedural in nature and not hierarchic and administrative, [... while] the internal independence in the functional order, [...] seeks to avoid possible interference in the judicial activity by other judges, over and above legitimate interference owing to interventions based on legally established remedies.”** Written report of expert witness Perfecto Andrés Ibáñez presented during the public hearing held in this case (merits file, folios 1300 and 1301).

<sup>380</sup> In addition to articles 7 and 8 of the Judicial Service Act (*supra* nota 375), **article 9 established that: “The Judicial Service Council has the following authority: (a) To elaborate and approve its rules of procedure; (b) To recommend to the Supreme Court of Justice the policy that it should follow as regard personnel management; (c) To examine general problems related to the personnel management system and to make any recommendations it deems appropriate to the Directorate to resolve them; (d) To propose the regulations referred to in paragraphs (c), (d) and (f) of article 12 of this Act to the Supreme Court of Justice for its approval; (e) To examine and decide: 1. Any problems, disputes and claims presented with regard to personnel management and those that arise between the Directorate and the personnel as a result of the application of this Act. 4(2) The admissible remedies filed against the decisions of the Personnel Management Directorate.”** Judicial Service Act (evidence file, folios 4152 and 4153).

<sup>381</sup> According to article 7(e)(1) of the rules of procedure of the Judicial Service Council: “[t]he powers of the [Judicial Service] Council are to examine and decide [...] admissible appeals established in the Judicial Service Act and its Regulations that are filed against the decisions of the Personnel Management Directorate” (evidence file, folio 211).

(*supra* paras. 79 and 84), but had not been accorded the competence to decide appeals filed against rulings or decisions of the Supreme Court of Justice, **the country's highest judicial organ, on** which it depended and of which it was an auxiliary entity, as mentioned above. In response to the respective arguments of the presumed victims during the domestic proceedings, the Judicial Service Council affirmed that:

Although it is true that, in the provisions [of a legal and regulatory nature of the Judicial Service] it is established that the admissible remedies under the Judicial Service Act and its Regulations filed against the decisions of the Personnel Management Directorate [would be decided by the Judicial Service Council]; it is also true that there is a norm of constitutional rank, specifically article 313 of the Constitution which establishes that, among the powers granted to the Supreme Court of Justice, is that of organizing and directing the Judiciary, appointing and removing justice and judges on the recommendation of the Judicial Service Council [...]; the Director of Personnel Management is not empowered to apply sanctions, fines, dismissals or suspensions to judicial officials; consequently the Personnel Management Directorate does not have the authority to issue decisions on appointments and, in particular, on dismissals, because if the decisions were issued by the Personnel Management Directorate of the Judicial Service, it would become both judge and party. Consequently, under the Constitution, this action corresponds to the Supreme Court of Justice alone and, therefore, when they are the subject of a decision by this branch of the State, officials or employees who consider themselves affected have recourse to the Judicial Service Council to file their appeals.<sup>382</sup>

221. Notwithstanding these considerations, and bearing in mind the findings in Chapter VII-1 *supra*, the Court concludes that the Judicial Service Council lacked the competence, established by law, to decide appeals against decisions of the Supreme Court of Justice. Moreover, owing to its nature as a dependent and auxiliary organ of the Supreme Court, it was not an autonomous and independent entity.

#### B.2.b) Lack of impartiality of the Judicial Service Council

222. The Court takes note that the presumed victims have indicated that they were unaware of the composition of the Judicial Service Council that decided their appeals against the dismissal rulings of the Supreme Court, until they received notification of the respective decisions. In this regard, Mr. López Lone indicated: "the day I appeared [before the Judicial Service Council] there were only two members of the Council, the President and the Secretary, and I did not know, either that day or afterwards, who were the other members of the Council. I only found out when the decision was issued declaring that the appeal I had filed was inadmissible."<sup>383</sup> In addition, Mr. Chévez de la Rocha **asserted that they "did not know who the members of that Council were, or the way in which they had been appointed. [They] supposed that this was done by the Supreme Court itself with people in whom it had complete confidence, which revealed even more [their] defenselessness."**<sup>384</sup> Meanwhile, Ms. Flores Lanza stated that:

[T]he Council was left headless; in other words, without anyone who could legally preside it; then, without anyone being aware how, or on the basis on which law, a justice of the Appellate Court presided it and she called on different judges to incorporate the Council, some of whom also disqualified themselves from incorporating it. Ultimately, a Judicial Service Council was

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<sup>382</sup> Decision of the Judicial Service Council of August 24, 2011, with regard to Tirza del Carmen Flores Lanza (evidence file, folios 2827 and 2828). See also, Decisions of the Judicial Service Council of August 24, 2011, with regard to Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado (evidence file, folios 1066 and 1067, 2225 and 2226, 3507 and 3508).

<sup>383</sup> Statement by Adán Guillermo López Lone provided during the public hearing held in this case.

<sup>384</sup> Cf. Affidavit made by Luis Alfonso Chévez de la Rocha on January 8, 2015 (evidence file, folio 6646).



formed without any legal basis that, in [her] opinion, was totally spurious and without any legitimacy, and this was the organ that took the final decision on the appeal filed.<sup>385</sup>

223. Owing to the way that the Judicial Service Council was composed<sup>386</sup> and the way the disciplinary proceedings to decide the appeals filed by all the presumed victims were held, an *ad hoc* Judicial Service Council had to be set up, without the justices of the Supreme Court who had taken part in the dismissal rulings (*supra* paras. 79, 96 to 98, 116 to 117, 133 and 146). However, it is unclear what norms or procedures were followed by the President of the Council to incorporate this organ, after most of its members had disqualified themselves. The disciplinary files contain the disqualifications and also the appointments of the new members of the Judicial Service Council. These appointments were apparently notified to the presumed victims by means of “notice boards” [*tablas de aviso*].<sup>387</sup> According to the decisions of the Judicial Service Council, the acts appointing new members of the Council were considered to be merely procedural in nature, so that they could be notified by this “notice board” mechanism.<sup>388</sup> The Court observes that, regardless of the nature of these appointments as merely procedural, the norms and selection procedure used, and the final composition of the Judicial Service Council are unclear from the files. The records on the appointment of those who finally incorporated the Council do not reveal the position or office of these persons in the Judiciary or the Public Prosecution Service, if applicable, or the criteria or procedures that the lawful President of the Council used to select them. This situation prevented the presumed victims from being able to assess their suitability and competence, and to determine if there were grounds for recusal, in order to be able to exercise their right of defense.

224. In this regard, it should be pointed out that the mechanism of recusal has a dual purpose: on the one hand it acts as a guarantee for the parties to the proceedings and, on the other hand, it seeks to grant credibility to the functions of the jurisdiction. Indeed, recusal gives the parties the right to call for the separation of a judge when, above and beyond the personal conduct of the judge questioned, demonstrable facts or convincing evidence exist that give rise to well-founded fears or legitimate suspicions of his lack of impartiality, thus leading to his decision being seen as motivated by reasons above and beyond the law and that, consequently, the functioning of the

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<sup>385</sup> Affidavit made by Tirza del Carmen Flores Lanza on January 7, 2015 (evidence file, folios 6668 and 6669).

<sup>386</sup> According to article 8 of the Judicial Service Act, the Council should be composed of five permanent members and three substitute members appointed by the Supreme Court of Justice at the proposal of its President: two justices of the Supreme Court, one justice of the Appellate Courts, one ordinary judge, and one member of the Public Prosecution Service. In addition, **this article established that: “[t]he substitute members shall be freely appointed by the court. [...] The justice of the Supreme Court of Justice appointed to the Council who has served the longest in the Judiciary shall be its President.”** Judicial Service Act, article 8 (evidence file, folio 4152).

<sup>387</sup> *Cf.* Notifications using the notice board, signed by the Council’s Secretary in the disciplinary proceedings instituted against Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Tirza del Carmen Flores Lanza and Ramón Enrique Barrios Maldonado dated February 4 and 10, March 30, May 4, June 4 and August 3, 2011 (evidence file, folios 618 to 621, 1013, 1014, 1029 to 1031, 1036, 1825 to 1830, 2173, 2174, 2186, 2187, 2197, 2198, 2341, 2342, 2346, 2761, 2762, 2776 to 2778, 2786, 2791, 2797, 3128 to 3130, 3133, 3459, 3460, 3468, 3469 and 3481).

<sup>388</sup> The decisions of the Judicial Service Council in the proceedings held against the presumed victims indicate: “an examination of the [claimant’s] request to be reinstated reveals that it does not include an email address, or telephone number and does not indicate the place where notifications may be made, so that the provisions of article 33 of the rules of procedure of the Judicial Service Council were applied. These relate to notifications and establish how they shall be made, as follows: (1) Personally, to the head of the entity against which the claim has been made, of the decision in which it is decided to process the claim, or to advise him of the first decision that has been taken; (2) Orally, decisions issued at the hearings. It shall be understood that these notifications shall have all the desired effects, from the moment they are issued, and (3) By means of the Notice Board, decisions that are merely procedural, when they were not issued during a hearing. And an examination of the case file reveals that, on the date of the hearing for proposing evidence, the claimant was notified of the decisions taken at that hearing, and that the other notifications were executed by means of the court order affixed to the Council’s Notice Board, because they were merely procedural decisions; thus, the celerity of the proceedings is ensured, by not being left to the discretion of parties who intervene in them.” *Cf.* Decisions of the Judicial Service Council in the disciplinary proceedings against Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Tirza del Carmen Flores Lanza and Ramón Enrique Barrios Maldonado (evidence file, folios 1069, 1070, 2228, 2229, 2830, 2831 and 3510), and Rules of procedure of the Judicial Service Council, article 33 (evidence file, folio 218).

judicial system is perverted. Recusal should not necessarily be seen as a judgment on the moral rectitude of the official recused, but rather as a tool that inspires confidence in those who have recourse to the State requiring the intervention of organs that must be, and seem to be, impartial.<sup>389</sup>

225. Thus, recusal is a procedural instrument designed to protect the right to be tried by an impartial organ and does not constitute or define that right. In other words, a judge who cannot be recused is not necessarily biased – or will act in a biased manner; in the same way that a judge who can be recused is not necessarily impartial – or will act in an impartial manner.<sup>390</sup>

226. In this case, the State has argued that impartiality was ensured in the disciplinary proceedings, because those permanent or substitute members of the Council who could have jeopardized this impartiality disqualified themselves, and substitute members were appointed to replace them (*supra* para. 99). Nevertheless, the Court considers that, even when domestic law allows this, such disqualifications are not sufficient to ensure the impartiality of the prosecuting body, because it is necessary to prove that the defendant is able to question the suitability and competence of a judge who, although he should have disqualified himself, did not do so.

227. In its decision, the Judicial Service Council indicated that the substitute members of the **Council appointed by its President were “officials who had not intervened in any of the decisions issued by the Supreme Court of Justice in its rulings against the appellants, in order to ensure [...] impartiality and objectivity in the case submitted to its consideration.” It also asserted that they were “officials who had entered the Judiciary and been appointed to their functions through a competitive procedure and who had enjoyed a long and unblemished career within it,”**<sup>391</sup> so that their independence cannot be questioned (*supra* para. 99, 118, 134 and 146). In response to a request for useful information from the President of this Court, the State affirmed that all the members of the Judicial Service Council that decided the cases of the presumed victims “were judges or justices performing their judicial functions in the context of their professional career.”<sup>392</sup> However, the representatives indicated that the **Council “was not composed solely of individuals who were judges or justices.” In this regard, they provided probative documentation according to which at least one of the individuals who ultimately composed the Judicial Service Council in the proceedings against all the presumed victims was not a judge but rather an expert attached to the Supreme Court.**<sup>393</sup>

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<sup>389</sup> Cf. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra*, para. 64, and *Case of Norín Catrimán et al. (Leaders, members and activity of the Mapuche Indigenous People) v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 30.

<sup>390</sup> Cf. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra*, para. 64.

<sup>391</sup> Decisions of the Judicial Service Council of August 24, 2011, with regard to Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Tirza del Carmen Flores Lanza and Ramón Enrique Barrios Maldonado (evidence file, folios 1011, 1068, 2227, 2269, 2829, 3508, 3509, 3537, 3561 and 3584).

<sup>392</sup> Brief of the State received on August 7, 2015 (merits file, folio 1886).

<sup>393</sup> Specifically, the representatives indicated that Silvia Trinidad Santos Moncada, who was a member of the Judicial Service Council that decided the appeals of the four presumed victims in this case was employed as a “Level II expert of the Supreme Court of Justice,” as recorded in a contract for professional services provided to the case file. According to the representatives, the text establishes that the contract is for an employment relationship under the terms of “excluded service” [*servicio excluido*], which means that the Supreme Court was “free to appoint, hire and remove her, and terminate or rescind her contract.” Cf. Brief of the representatives of August 21, 2015 (merits file, folio 1927); decisions of the Judicial Service Council of August 24, 2011, with regard to Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Tirza del Carmen Flores Lanza and Ramón Enrique Barrios Maldonado (evidence file, folios 1080, 2241, 2843 and 3520), and Professional services contract signed by the President of the Supreme Court, on behalf of the Court, and Silvia Trinidad Santos Moncada on April 1, 2011 (evidence file, folios 7283 and 7284).

228. The impossibility of requesting a review of the impartiality of the trial court constitutes a violation of the obligation to ensure this right.<sup>394</sup> *A contrario sensu*, if it were revealed that the court acted in a biased manner, this would constitute a violation of the obligation to respect rights, which will be examined *infra* in relation to the actions of the Supreme Court of Justice. The absence of clarity as regards the way in which the Council was composed prevented the presumed victims from questioning the suitability and competence of its members. Consequently, in addition to the findings in Chapter VII-1 of this judgment, the Court concludes that, in this case, the impartiality of the Judicial Service Council was not ensured adequately.

#### B.2.c) Bias of the Supreme Court of Justice

229. The Truth and Reconciliation Commission concluded that the Supreme Court “became a protagonist” of the *coup d’état* (*supra* para. 65). In this regard, this Court recalls that the Supreme Court of Justice justified the *coup d’état* as a “constitutional succession” (*supra* para. 63). In addition, the Court reiterates its findings in paragraphs 148 to 155 of this judgment, when it concluded that the *coup d’état* in Honduras constituted an internationally wrongful act (*supra* para. 152), on the basis of which, in July 2009, the OAS General Assembly, in exercise of its competence and in application of Articles 21 of the Inter-American Democratic Charter and 9 of the OAS Charter, suspended its right to participate in the Organization (*supra* para. 151). The Court has concluded that the disciplinary proceedings against the four presumed victims were instituted owing to their actions in defense of democracy and the rule of law (*supra* para. 155).

230. The State argued that “the sanctions and dismissals of [the presumed victims] were based solely on the fact that they carried out acts that were expressly prohibited to judges by Honduran law.”<sup>395</sup> However, in addition to its findings in Chapter VII-1 *supra*, this Court notes that all the conducts penalized by the Supreme Court and which gave rise to the disciplinary proceedings of the presumed victims were related to the 2009 *coup d’état* and the actions taken by the presumed victims against **what happened, in open contradiction to the position adopted by the country’s highest judicial organ**. Thus, the Supreme Court of Justice ordered the dismissal of the judges and the justice, presumed victims in this case, among other reasons, for taking part in a protest against the *coup d’état* (Adán Guillermo López Lone, *supra* para. 95), for presumably having taken part in a demonstration against the *coup d’état* (Luis Alonso Chévez de la Rocha, *supra* para. 132), for practicing law and filing a criminal complaint against the *coup d’état* (Tirza Flores Lanza, *supra* para. 115) and for offering a legal and academic opinion calling what happened a *coup d’état* (Ramón Barrios Maldonado, *supra* para. 145).

231. To the contrary, as revealed by the proven facts (*supra* paras. 61 to 65), the plenum of the Supreme Court participated in the *coup d’état* defending the legality of the deprivation of liberty of former President Zelaya and his overthrow. The Supreme Court of Justice, in a court order of June 25, 2009, responded to the request to indict former President Zelaya, and appointed an ordinary judge to hear the case.<sup>396</sup> On June 26, 2009, through the ordinary judge it had appointed, the Supreme Court issued an order to search the home of the then President, presuming that he was responsible for perpetrating wrongful acts against the public administration and the State of Honduras.<sup>397</sup> On June 9, 2009, a judge, “[o]n the instructions of that court of justice,” ordered the

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<sup>394</sup> Cf. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, *supra*, para. 66.

<sup>395</sup> Brief of the State before the Commission dated October 14, 2010 (evidence file, folios 53 and 54)

<sup>396</sup> Cf. Supreme Court of Justice. Record No. 34 of June 25, 2009. Available at: <https://www.oas.org/es/sap/docs/DSDME/2011/CVR/Honduras%20-%20Informe%20CVR%20-%20TOMO-II-4.pdf>, and Communiqué of the Supreme Court of Justice of June 28, 2009 (evidence file, folios 11 and 12).

<sup>397</sup> Cf. Supreme Court of Justice. Warrant for the arrest of José Manuel Zelaya. June 26, 2009. Available at: <https://www.oas.org/es/sap/docs/DSDME/2011/CVR/Honduras%20-%20Informe%20CVR%20-%20TOMO-II-4.pdf>

immediate capture of former President Zelaya<sup>398</sup> (*supra* paras. 49 and 62). In addition, between June 28, 2009, and August 21, 2009, the Supreme Court of Justice issued five press communiqués justifying the legality of what had happened (*supra* para. 65).

232. Specifically, regarding the need to provide guarantees of impartiality in the proceedings, the Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the *coup d'état* asserted that “[t]he public stance of the Supreme Court, defining the coup as a “constitutional succession” and declaring its legality, cast doubt on its impartiality and commitment to the rule of law,” and also “the lack of independence of the judiciary and the unequal and discriminatory application and interpretation of the law have been evident.”<sup>399</sup> In July 2011, the General Assembly of the United Nations recommended to Honduras that it “[u]ndertake all necessary measures to ensure the independence of the judiciary, including by putting an end to any intimidation or unjustified disciplinary procedures against judges perceived as critical of the coup.”<sup>400</sup>

233. This Court has indicated that impartiality requires that the judge who intervenes in a dispute must approach the facts of the case subjectively, without any prejudice, and also offering sufficient guarantees of an objective nature that permit the elimination of any doubt that the defendant or the community could harbor as to the absence of impartiality.<sup>401</sup> The European Court of Human Rights has explained that personal or subjective impartiality is presumed unless there is evidence to the contrary.<sup>402</sup> Meanwhile, so-called objective impartiality consists in determining whether the judge in question provided sufficient elements of conviction to eliminate any legitimate fears or well-founded suspicion about his partiality.<sup>403</sup> This is because the judge must act without being subject to improper influences, inducements, pressures, threats or interferences, direct or indirect,<sup>404</sup> and only and exclusively according to – and based on – the law.<sup>405</sup>

234. Based on the above, and added to the findings in paragraphs 148 to 155 of this judgment, the Court considers that the Supreme Court did not meet the objective requirements of impartiality to decide the disciplinary proceedings of the victims in this case.

### **C. Right to remain in office on general terms of equality**

235. The Court has indicated that the guarantee of stability or tenure of the judge is related to the right to remain in public office, on general terms of equality.<sup>406</sup> Indeed, in the case of *Reverón*

<sup>398</sup> Cf. Supreme Court of Justice. Search order. June 29, 2009. Available at: <https://www.oas.org/es/sap/docs/DSDME/2011/CVR/Honduras%20-%20Informe%20CVR%20-%20TOMO-II-4.pdf>

<sup>399</sup> Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the *coup d'état* on 28 June 2009. Doc. UN A/HRC/13/66, March 3, 2010, paras. 68 and 73 (merits file, folios 1292 and 1293).

<sup>400</sup> United Nations, General Assembly. Report of the Working Group on the Universal Periodic Review. Honduras, A/HRC/16/10, 4 January 2011. Recommendation 82.56. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/100/65/PDF/G1110065.pdf?OpenElement>

<sup>401</sup> Cf. Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 56, and Case of the *Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 220.

<sup>402</sup> Cf. Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 56, citing: ECHR, Case of *Daktaras v. Lithuania*, No. 42095/98. Judgment of October 10, 2000, para. 30.

<sup>403</sup> Cf. Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 56, citing: ECHR, Case of *Piersack v. Belgium*, No. 8692/79. Judgment of October 1, 1982, and Case of *De Cubber v. Belgium*, No. 9186/80. Judgment of October 26, 1984.

<sup>404</sup> Principle 2 of the United Nations Basic Principles.

<sup>405</sup> Cf. Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 56.

<sup>406</sup> Cf. Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra*, para. 43; and Case of the *Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 135.

*Trujillo* it indicated that “access, under equal conditions would constitute an insufficient guarantee if it were not accompanied by the effective protection of tenure in the post held.”<sup>407</sup>

236. Regarding the protection granted by Article 23(1)(c) of the American Convention,<sup>408</sup> in the cases of *Apitz Barbera et al.* and *Reverón Trujillo*, this Court clarified that Article 23(1)(c) does not establish the right to have access to public service, but rather to do so “under general conditions of equality.” This means that respect for and the guarantee of this right is complied with when “the criteria and procedures for the appointment, promotion, suspension and dismissal are reasonable and objective” and that “those concerned are not subject to discrimination”<sup>409</sup> in the exercise of this right. In this regard, the Court has indicated that equal opportunities in access and tenure ensures freedom from any political interference or pressure.<sup>410</sup>

237. The Human Rights Committee has considered, in cases of the arbitrary dismissal of judges,<sup>411</sup> that, if the basic requirements of due process are not respected, there is a violation of this right established in Article 14<sup>412</sup> of the International Covenant on Civil and Political Rights (corresponding to Article 8 of the American Convention), together with the right to have access under equal conditions to the public service of the country recognized in Article 25(c)<sup>413</sup> of the International Covenant on Civil and Political Rights (corresponding to Article 23(1)(c) of the American Convention).<sup>414</sup>

238. As a result of the disciplinary procedure to which they were subjected, three of the presumed victims were dismissed and removed from the Judiciary. The Court considers that these dismissals constituted arbitrary measures in view of the circumstances under which the presumed victims were sanctioned and the violations of due process verified in the disciplinary proceedings in this

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<sup>407</sup> *Case of Reverón Trujillo v. Venezuela, supra*, para. 138, and *Cf. Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 195.

<sup>408</sup> The relevant part of Article 23(1) establishes that: “[e]very citizen shall enjoy the following rights and opportunities: [...] (c) to have access, under general conditions of equality, to the public service of his country.”

<sup>409</sup> *Cf. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra*, para. 206, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 194.

<sup>410</sup> *Cf. Case of Chocrón v. Venezuela, supra*, para. 135; and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 194.

<sup>411</sup> In the case of *Soratha Bandaranayake v. Sri Lanka*, the Committee concluded that the “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.” Human Rights Committee. *Communication No. 1376/2005, Soratha Bandaranayake v. Sri Lanka*, July 24, 2008. CCPR/C/93/D/1376/2005, para. 7.3.

<sup>412</sup> Article 14(1) of the International Covenant on Civil and Political Rights establishes that: “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 (ordre public) 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 judgement 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.”

<sup>413</sup> Article 25(c) of the International Covenant on Civil and Political Rights establishes that: “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.”

<sup>414</sup> 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*, 2 July 4, 2008. CCPR/C/93/D/1376/2005, para. 7.2.

case. The Court considers that the dismissal of the presumed victims, under a procedure that was not established by law and that did not respect the guarantees of competence, independence and impartiality, unduly affected the right to remain in office under conditions of equality of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Alonso Chévez de la Rocha, in violation of Article 23(1)(c) of the American Convention. This violation did not occur in the case of Ramón Enrique Barrios Maldonado, who, ultimately, was not dismissed from his post as a result of the facts of this case; consequently, the Court will not declare this right violated in his case.

#### **D. Conclusion on the guarantees of due process and political rights**

239. Based on all the above, the Court concludes that: the disciplinary proceedings to which the presumed victims were subjected were not instituted in accordance with the law; the Judicial Service Council did not have competence and lacked the necessary independence to decide appeals against dismissal rulings by the Supreme Court of Justice; the way in which the Judicial Service Council was incorporated to decide the appeals filed by the presumed victims did not provide a sufficient guarantee of its impartiality, and the Supreme Court of Justice did not provide objective guarantees of impartiality to rule on the presumed disciplinary offenses of the presumed victims, insofar as all the said conducts related to the *coup d'état*.

240. Consequently, taking into account the findings in paragraphs 148 to 155 of this judgment, the State violated Article 8(1) of the Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, as well as in relation to Article 23(1)(c) and 1(1) of the same instrument, owing to the arbitrary impairment of tenure in their judicial functions and the consequent harm to judicial independence, of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Alonso Chévez de la Rocha, who were dismissed from the Judiciary.

#### **E. Other alleged violations of due process in the disciplinary proceedings instituted against the presumed victims**

241. Considering that the Court has determined that the procedure used in the disciplinary proceedings against the presumed victims was not established by law, and that the organs that held them did not comply with the guarantees of competence, independence and impartiality at any stage of the proceedings, it is not necessary to analyze the other guarantees established in Article 8 of the Convention.<sup>415</sup> Therefore, the Court finds that it is unnecessary to rule on the alleged violations of the obligation to indicate the grounds for the decisions, the right of defense, the presumption of innocence, and the effectiveness of the remedy before the Judicial Service Council.

#### **F. Right to judicial protection**

##### **F.1) Arguments of the Commission and of the parties**

242. The Commission argued that: "in view of the lack of impartiality of the Supreme Court of Justice and the prohibition established in article 31 of the [internal] rules of procedure [of the Judicial Service Council], the victims did not have access to a remedy designed to protect them from the violations of due process committed by the Judicial Service Council pursuant to Article 25 of the American Convention." Regarding the application for *amparo*, the Commission indicated that the said rules of procedure indicated expressly that, there was no appeal against the decisions of **the Judicial Service Council, which "constitutes further proof of the lack of access to judicial protection."** According to the Commission, "the State confirmed that, if an application for *amparo*

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<sup>415</sup> Similarly, *cf. Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador, supra*, para. 181; and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 223.

had been filed, a series of interpretations would have been required in order to overcome the prohibition contained in article [31] of the rules of procedure.” It also indicated that the application for *amparo* would not be effective because it would be decided by the Supreme Court of Justice, and there were no clear rules concerning the way in which its *ad hoc* members would be appointed to hear the cases of the presumed victims.

243. The representatives argued that Honduran law did not establish an adequate and effective remedy against the Judicial Service Council’s **decisions on disciplinary matters**, because article 31 of the rules of procedure of the Judicial Service Council prevented filing appeals against its decisions. **Regarding the State’s argument that**, this article had already been derogated at the time, they **indicated that this “does not correspond to what happened in this case, because the [Judicial Service Council] applied this norm against the four victims [...]; if it had not been in force, the organ regulated by this instrument should have abstained from invoking this article, or even proceeded to amend the corresponding rules of procedure.”** They added that the State was basing itself on a false assumption, which was that the situation in Honduras was normal. According to the representatives, the application for *amparo* was illusory because the Judiciary lacked the necessary independence to take an impartial decision in view of the fact that **“it corresponded to the Constitutional Chamber to hear the [application for *amparo*]”** and the justices who composed that Chamber were part of the Supreme Court of Justice. **They also refuted the State’s argument that recusal could have been used, because “the incorporation of a new chamber does not offer the guarantees of independence and impartiality necessary for access to effective judicial protection.”** According to the representatives, **“Honduran law does not establish the procedure to be applied when a recusal is filed against the whole deliberative body” because “there is no procedure for substitution when all the members of a chamber are recused and, above all, when the whole of the Supreme Court of Justice is recused.”**

244. The State responded that the presumed victims “did not file a judicial remedy, such as the application for *amparo*, to establish their innocence and achieve, if possible, what they are now requesting before the Inter-American Court.” **It indicated that article 31 of the rules of procedure “was derogated at the time,” so that “the filing of the application for *amparo* was fully possible.”** According to the State, article 320 of the Constitution stipulated that **“in cases of incompatibility between a constitutional norm and an ordinary legal norm, the former [would] apply [and] during the course of the administrative proceeding and to date, none of [the presumed victims] used this right granted to them by the Constitution and the laws of Honduras.”** **In addition, it argued that “they had the option to file a judicial action to achieve their reinstatement or to obtain the legal compensation that they believe or consider corresponds to them.”** The State added that **“[a]lthough what the Inter-American Commission indicates is true as regards the procedure in the case of a possible recusal of the justices of the Constitutional Chamber who would be called on to hear an application for *amparo*, this does not mean that, in this case, those appointed would act in a biased manner. That is a groundless pre-judgment made by the petitioners that is offensive to all [their] country’s lawyers.”**

## **F.2) Considerations of the Court**

245. The Court has indicated that Article 25(1) of the Convention establishes the obligation of the States Parties to ensure, to all persons subject to their jurisdiction, a simple, prompt and effective judicial remedy before a competent judge or court. The Court recalls its consistent case law that this remedy must be adequate and effective.<sup>416</sup> Regarding effectiveness, for this effective remedy to exist it is not sufficient that it is established in the Constitution or the law, or that it is formally admissible; rather, it must be truly appropriate to establish whether a human rights violation has

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<sup>416</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 63; and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela, supra*, para. 282.

been committed and stipulate what is required to redress this. Thus, the procedure must be aimed at implementing the protection of the right recognized in the judicial ruling by applying the ruling appropriately.<sup>417</sup>

246. The representatives and the Commission argued that the presumed victims did not have access to a remedy to counter the violations of due process committed by the Judicial Service Council, owing to the prohibition to appeal against the decisions of this organ established in article 31 of the rules of procedure of the Judicial Service Council, as well as the supposed ineffectiveness of the application for *amparo*, in the context of the facts of this case.

247. This Court has indicated that remedies that are illusory, owing to the general situation of a country or even the specific circumstances of a particular case, cannot be considered effective.<sup>418</sup> This can occur, for example, when their futility has been revealed in the practice, because there is no way of executing decisions or due to any other situation that constitutes a denial of justice.<sup>419</sup> The situations that lead to a remedy being illusory include that in which the Judiciary lacks the necessary independence to rule with impartiality.<sup>420</sup>

248. The Court has already determined that the availability of the application for *amparo* to contest the decisions of the Judicial Service Council was unclear owing to article 31 of the rules of procedure of the Judicial Service Council, which made it impossible to file ordinary or special appeals against such decisions (*supra* para. 28). Nevertheless, the Court notes that, even if it had been available owing to the constitutional norms alleged by the State, the context in which the facts of this case occurred and the characteristics of the procedure that would have had to be followed reveal that it would have been ineffective.

249. The facts of this case occurred following a *coup d'état* and the actions of the presumed victims against this internationally wrongful act (*supra* paras. 148 and 152). In addition, the Court has already emphasized the role played by the Supreme Court of Justice in this regard, as well as its lack of impartiality (*supra* paras. 229 and 234). As explained by the parties and the Commission, any application for *amparo* against the decisions of the Judicial Service Council would have had to be decided by the Constitutional Chamber of the Supreme Court.<sup>421</sup> Given that the plenum of the Supreme Court had participated in the disciplinary proceedings against the presumed victims, by law, the members of its Constitutional Chamber could not have ruled on the applications for *amparo* in the same proceedings.<sup>422</sup> However, the norms and procedures that would have been applied in

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<sup>417</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. 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.

<sup>418</sup> Cf. *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, and *Case of Brewer Carías v. Venezuela. Preliminary objections*. Judgment of May 26, 2014. Series C No. 278, para. 100.

<sup>419</sup> Cf. *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90, 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.

<sup>420</sup> 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 19 Traders v. Colombia. Merits, reparations and costs*. Judgment of July 5, 2004. Series C No. 109, para. 192.

<sup>421</sup> The Commission, the representatives and the State all agree on this point.

<sup>422</sup> As indicated by the State, article 7 of the Law on the Organization and Faculties of the Courts established that: "No judge or justice may occupy this position in different courts in one and the same case," and, based on this rule, none of the justices that had taken part in the dismissals of the presumed victims could have decided the applications for *amparo* filed by the presumed victims against the decisions of the Judicial Service Council (merits file, folio 1790). Furthermore, article 303 of the Constitution of the Republic of Honduras stipulates that: "There shall be no more than two instances in any trial: the judge or justice who has exercised jurisdiction in one of them may not sit on the bench in the other, or in any special appeal on the same matter, without being held responsible." 1982 Constitution of the Republic of Honduras (as amended up until January 20, 2006), article 303. Available at:



order to substitute all the justices are unclear.<sup>423</sup> This uncertainty about the procedure to follow in order to compose the Constitutional Chamber responsible for deciding the eventual applications for *amparo* against the Judicial Service Council's **decision** undermines the possible effectiveness of the remedy because it does not allow the impartiality of the judge to be guaranteed.

250. In addition to the findings in paragraphs 148 to 155 of this judgment, the Court concludes that it was foreseeable that, even if the application for *amparo* had been filed, it would have been ineffective. Therefore, the Court finds that the State violated Article 25(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Adán Guillermo López Lone, Ramón Enrique Barrios Maldonado, Luis Alfonso Chévez de la Rocha and Tirza del Carmen Flores Lanza.

### **VII-3 PRINCIPLE OF LEGALITY**

251. The Commission and the representatives argued the violation of Article 9<sup>424</sup> of the American Convention, in relation to Articles 1(1) and 2 of this instrument, based on the facts relating to the proceedings to dismiss Judges Adán Guillermo López Lone, Ramón Enrique Barrios Maldonado and Luis Alfonso Chévez de la Rocha, and also Justice Tirza del Carmen Flores Lanza. In this chapter, the Court will set out their arguments and then proceed to examine the alleged violations of this article.

#### **A. Arguments of the Commission and of the parties**

252. The Commission concluded that, in this case, the principle of legality has been violated owing to: (i) the lack of precision and clarity of the norms cited in the dismissal decisions; (ii) the absence of any relationship between the grounds cited and the conducts penalized; (iii) the lack of clarity as regards the normative sources of the sanctions applied; (iv) the lack of predictability of the sanctions applied, and (v) the application of grounds that restricted the lawful exercise of other rights. As regards (i), the absence of clarity and precision of the norms cited in the dismissal decisions, it considered that **"several of the articles cited lack[ed] a clear and precise definition of the punishable conduct, [...] thereby preventing judges from conducting themselves in such a way**

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<http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CONSTITUCI%C3%93N%20DE%20LA%20REP%C3%9ABLICA%20%2809%29.pdf>

<sup>423</sup> According to article 76 of the Law on the Organization and Faculties of the Courts: "[t]he Supreme Court shall have three substitute justices. Their constitutional term of office shall be six years, counted from the January 1 closest to the date on which they take office." In addition, article 103 established that: "[i]f none of the appointed substitutes is able to take office in the Supreme Court, other lawyers shall be called on, in the capacity of members and, in each case, they shall be designated by the justices who remain on the court, provided they comply with the requirements to be justices. The parties shall be advised of the call for members referred to in the preceding paragraph before the latter take office. If there are no lawyers, other persons who meet the other characteristics required to be justices may be called as members" (merits file, folio 1546). Additionally, article 193 of the law establishes that: "[t]he Court itself shall examine the recusal of the justices of the Supreme Court and of the Appellate Courts, with the exclusion of the member or members who have been recused, and when the recusal is denied, the remedy of cassation alone shall be admissible, when applicable" (merits file, folio 803). Law on the Organization and Faculties of the Courts Available at: <http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/LEY%20DE%20ORGANIZACI%C3%93N%20Y%20ATRIBUCIONES%20DE%20LOS%20TRIBUNALES%20%28ACTUALIZADA-07%29.pdf> (cited by the Inter-American Commission on Human Rights in the Merits Report, merits file, folio 14). Likewise, the law referred to above, article 8 of the rules of procedure of the Supreme Court of Justice, in relation to article 15 of these rules and article 5 of the rules of procedure of the Constitutional Chamber establish that, it shall be the President of the Supreme Court of Justice or, if this is not possible, the President of the Constitutional Chamber, who has the power to constitute the chambers when there has been a disqualification or recusal; also, these norms establish that members of other chambers will be called on to substitute the justice who has been recused.

<sup>424</sup> Article 9 of the Convention establishes that: "[n]o one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom."

as not to incur any of the grounds for dismissal, [...] and giving the authorities charged with applying them a large margin of discretion, [thus failing to] meet the standards of predictability required by Article 9 of the Convention." Regarding (ii), the absence of any relationship between the grounds cited and the conducts penalized, the Commission argued that the decisions to dismiss the presumed victims cited and transcribed, indistinctly, articles with contents of the most diverse nature and with the most diverse content, without justifying the relationship between the conduct and the norm applied. Thus, it considered that "the non-specific use of disciplinary provisions, without clear rules referring one to the others and without providing the corresponding statement of reasons, [resulted in] a lack of clarity as to how the specific acts were adapted to each of the provisions; thus, constituting a violation of the principle of legality."

253. Regarding (iii), the lack of clarity as regards the normative sources of the sanctions applied, the Commission remarked that "grounds were used that were established in laws of different normative levels, including codes of ethics and norms issued by international summits such as those from the Statute of the Ibero-American Judge and the Model Ibero-American Code of Judicial Ethics." It also indicated that, in this case, "it ended up by imposing sanctions established in the Judicial Service Act as a legal consequence of supposed non-compliance with ethical standards for which, owing to their inherent nature, the text did not establish any sanction." Regarding (iv) the lack of predictability of the sanctions applied, it explained that, "from the point of view of the domestic legal system, imposing a sanction on the victims for conduct established in instruments other than the Judicial Service Act would be contrary to article 51 of the Judicial Service Act which establishes that officials may only be removed for conduct that constitutes grounds for dismissal." According to the Commission, "the fact that no sanctions were established in these instruments for the grounds invoked in the proceedings against the presumed victims (with no clear rules concerning the referral of one legal system to another, and without this being justified by the disciplinary authority), was contrary to the principle of legality protected by Article 9 of the Convention". Lastly, the Commission argued that (v) grounds were applied that were incompatible with the principle of legality, in order to establish disciplinary sanctions against the presumed victims, which unduly restricted the lawful exercise of other rights, such as freedom of expression and the right of assembly.

254. The representatives argued that the principle of legality had been violated in this case because: (i) "a series of imprecise and vague norms had been applied in the disciplinary proceedings that prejudiced the presumed victims"; (ii) "there is no clear relationship between the grounds that gave rise to disciplinary responsibility and the consequences that corresponded to this [under the laws of Honduras]," and (iii) disciplinary sanctions against judges must be established by law. They agreed that "the provisions of the disciplinary regime [...] were drawn up in a vague and imprecise way, facilitating arbitrariness and the consequent violation of the human rights of those subject to them." They added that the use of certain terms "entailed subjective assessments that offered no clarity as regards the definition of the conduct to be sanctioned," and that the wording of some norms was "very broad and general." Therefore, they asserted that "the grounds cited against the victims did not respect the characteristics of clarity and precision required to comply with the principle of legality, and this allowed for an arbitrary interpretation of their content." Thus, "it was not possible for the [presumed] victims to understand clearly that their protests against the breakdown of the democratic institutional framework and in favor of the re-establishment of the rule of law constituted expressions and manifestations of a political nature susceptible of being sanctioned." Furthermore, in the case of Justice Flores Lanza, they argued that the norms applied in her proceeding were "not clear either as regards acts that [could] be considered forming part of the practice of law, which grant[ed] broad discretion to interpret its content."

255. They indicated that "given the diverse norms that established punishable conduct in judges, and the omissions that existed in those norms, it was not possible for the [presumed] victims in this case to be clear about the framework that regulated their acts, the conducts that could be

sanctioned and, above all, how those conduct would be classified or the possible consequences for the [presumed victims].” They emphasized that several of the disciplinary grounds applied to the presumed victims were not established by law, but by norms of a lower level, such as regulations and administrative decisions. They also asserted that “in order to found the dismissals of the victims, eight different legal instruments were applied, citing 55 to 59 articles, of which less than half were in the Constitution or in a law, and also intermingling rights, obligations, procedural matters, sanctions and faculties of the different bodies.” They argued that “ethical codes can be a very valuable instruments to guide and encourage agents of justice to perform their tasks with the highest quality and excellence, but not to sanction them.”

256. The State did not refer to specific elements of this aspect, but mentioned, in general, that “in the spirit of the Convention, [the principle of legality] should be understood as the principle under which legal norms of a general nature [will] be created pursuant to the procedures and by the organs established in the Constitution of each State Party and, all the public authorities must adapt their conduct strictly to the Constitution.” It added that “in a democratic society, the principle of legality is bound inseparably to that of legitimacy, according to the international standard recognized as the basis of the Convention itself relating to the effective exercise of representative democracy, that translates into election by the people of the bodies that create laws, respect for the participation of the citizenry, and attainment of the common good.” Thus, it concluded that “only the law adopted by bodies that have been democratically elected and authorized by the Constitution, and designed to achieve the common good, can restrict the enjoyment and exercise of the rights and freedoms of the individual.”

### **B. Considerations of the Court**

257. The Court has established that Article 9 of the American Convention, which establishes the principle of legality, is applicable to matters pertaining to administrative sanctions.<sup>425</sup> In this regard, it should be recalled that, administrative sanctions, like criminal sanctions, are an expression of the punitive powers of the State and, at times, they are of a similar nature to criminal sanctions because both of them entail impairment, deprivation or alteration of human rights. Consequently, in a democratic system, it is necessary to take special care to ensure that such measures are adopted strictly respecting the basic rights of the individual and following a careful verification of the effective existence of a wrongful conduct. Furthermore, in the interest of legal certainty, it is essential that the norm establishing the sanction exists and is known or can be known, before the act or omission occurs that violates it and that it is sought to sanction. Accordingly, the Court considers that the principle of legality also applies to disciplinary matters, even though its scope depends greatly on the matter regulated.<sup>426</sup> The precision of a norm establishing a sanction of a disciplinary nature may be different from that required by the principle of legality in a criminal matter, owing to the nature of the disputes that each one is designed to resolve.

258. In this case, it is clear that the disciplinary proceedings were of a punitive nature; thus, the guarantees under Article 9 of the Convention apply.<sup>427</sup> Based on the arguments of the parties and of the Commission, the Court will examine the principle of legality with regard to: (i) the sanctions imposed on the presumed victims, and (ii) punishable conducts in the disciplinary norms of Honduras.

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<sup>425</sup> Cf. *Case of Baena Ricardo et al. v. Panama. Merits, reparations and costs, supra*, para. 106, and *Case of Vélez Loor v. Panama. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2010 Series C No. 218, para. 183.

<sup>426</sup> *Mutatis mutandis, Case of Fontevecchia and D’Amico v. Argentina, supra*, para. 89.

<sup>427</sup> The expert witnesses who testified before this Court all agree on this. Cf. Expert opinion provided by Perfecto Andrés Ibáñez during the public hearing in this case; affidavit made by Param Kumaraswamy on January 29, 2013 (merits file, folios 247 to 249), and affidavit made by Leandro Despouy on January 8, 2015 (evidence file, folios 6717, 6718 and 6731).

259. Regarding the first aspect, the Court reiterates that the guarantee of tenure for judges requires that they may not be dismissed or removed from office, unless they commit acts that are clearly punishable; in other words, based on the most serious grounds of misconduct or incompetence (*supra* paras. 196, 198 and 199). Therefore, the Court considers that, based on the guarantee of judicial tenure, the grounds for removing judges from their posts must be clear and established by law. Taking into account that dismissal or removal from office is the most restrictive and severe disciplinary measure that can be adopted, the possibility of its application must be predictable, either because the punishable conduct is expressly and clearly established, precisely, clearly and previously, by law, or because the law delegates its imposition to the judge or to an infra-legal norm, under objective criteria that limit the scope of discretion. Moreover, the possibility of dismissal must abide by the above-mentioned principle of extreme gravity. Indeed, the protection of judicial independence requires that the dismissal of judges be considered as the *ultima ratio* in judicial disciplinary matters.

260. The Court underlines that the principle of tenure for judges is established in the domestic law of Honduras. Thus, article 51 of the Judicial Service Act stipulates that:

Judicial officials shall enjoy the right of tenure when they enter the service in the appropriate manner and may only be removed when they give cause for dismissal under this law and its regulations.<sup>428</sup>

261. Furthermore, the Court notes that the disciplinary regime applied to the presumed victims, established mainly in the Judicial Service Act and its Regulations, *prima facie* was adapted to this, because the removal of a judge was considered the most severe sanction and, in principle, was reserved for the most serious conduct.<sup>429</sup> In this regard, the Court notes that the Judicial Service Act **specified a series of disciplinary offenses, considered as acts that "are inimical to the dignity of the administration of justice" in its article 53 (which the Regulations to this Act referred to as "less serious offenses") and "acts contrary to the effectiveness of the administration of justice," defined in its article 54 (which the Regulations to this Act referred to as "serious offenses").**<sup>430</sup> The Act did not establish clearly the sanctions that corresponded to each of these offenses, but rather established that the penalties (reprimand, fine, suspension from office, and dismissal) should be applied in keeping with the severity of the offense and taking into account the background to the case<sup>431</sup> (*supra* paras. 74 and 75). However, by classifying the severity of the different offenses (as minor, less serious and serious offenses), the Regulations to the Act did establish the sanctions

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<sup>428</sup> Judicial Service Act, article 51 (evidence file, 4162).

<sup>429</sup> This is revealed by the Act and its Regulations, as well as in the decision of the Judicial Service Council in the proceedings against Mr. Chévez de la Rocha in which the Council indicated that "based on the principle of proportionality, [...] there must be a correlation between the offense committed and the sanction imposed; thus, the institution must prove that the judicial official has committed an offense of such a serious nature that it is impossible to sustain the relationship owing to the prejudice that the irregular activity of the official would cause to the citizenry; and an offense that is expressly mentioned in the rules of procedure of the Judicial Service as warranting dismissal; [...] dismissal [...] is the highest penalty, especially taking into account the serious prejudice that this measure causes to a judicial official." Decision of the Judicial Service Council of August 24, 2011 (evidence file, folios 2236 and 2237).

<sup>430</sup> The acts that are inimical to the dignity of the administration of justice were also included in article 172 of the Regulations governing the Judicial Service Act, while the acts contrary to the effectiveness of the administration of justice were included in article 173 of the Regulations. *Cf.* Regulations governing the Judicial Service Act (evidence file, folios 196 and 197), and Judicial Service Act (evidence file, folios 4163 to 4166).

<sup>431</sup> Articles 57 and 59 of the Judicial Service Act established that: "When, in the opinion of the superior, the offense does not give rise to another sanction, the superior shall summarily and in writing reprimand the offender," and that "Suspension from office for up to three months may be imposed for serious offenses or repetition of minor offenses" and could be accompanied by "exclusion from the service after the first time and, of necessity, will produce this if the offense is repeated." Judicial Service Act, article 59 (evidence file, folio 4166). However, these articles do not establish which offenses were considered minor or serious, and also constitutes a different classification from the one established in the Regulations to the Act.

corresponding to each type of offense.<sup>432</sup> In this way, in principle, the disciplinary regime applicable to the presumed victims established the possibility of dismissal for the perpetration of serious offenses or repetition of less serious ones, in addition to the grounds for dismissal expressly established in article 64 of the Judicial Service Act (*supra* para. 74).<sup>433</sup> Also, with regard to the sanction of dismissal, both the Act and its Regulations established that this was only possible "on the grounds and according to the procedure established" in the said Act.<sup>434</sup>

262. However, the Court notes that article 64(a) of the Act established among the grounds for dismissal that:

Judicial officials may be dismissed from office on any of the following grounds: (a) non-compliance with or serious or reiterated violation of any of the obligations, incompatibilities and conducts established in Chapters X and XI of this Act.<sup>435</sup>

263. Thus, although, in principle, the Act and its Regulations established a progressive system of sanctions, under which dismissal was applied for serious offenses, article 64(a) of the Act extended this sanction to offenses classified as minor or less serious in case of non-compliance with or serious or reiterated violation of certain obligations. This Court underlines that all the presumed victims in this case were dismissed by the Supreme Court based on these grounds, among numerous other norms (*supra* paras. 95, 115, 132 and 145).

264. The Court considers that this regulatory framework affected the predictability of the sanction because it permitted the dismissal of a judge based on non-compliance with any of the obligations or incompatibilities of his office when the court understood that it was serious non-compliance; thus it granted excessive discretionary power to the body responsible for applying the sanction. This Court finds that some degree of imprecision does not result, *per se*, in a violation of the Convention; in other words, the fact that a law grants some discretionary power is not incompatible with the degree of predictability required, provided that the scope of the discretion and the way in which it should be exercised are indicated with sufficient clarity in order to provide adequate protection against arbitrary interference.<sup>436</sup> Consequently, the Court considers that the disciplinary norms applicable to the cases of the presumed victims granted excessive discretionary powers to the court in the establishment of the sanction of dismissal.

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<sup>432</sup> The Regulations classify offenses as minor, less serious and serious, while the Act only refers to minor or serious offenses. *Cf.* Regulations governing the Judicial Service Act, articles 175, 177 and 178 (evidence file, folio 198), and Judicial Service Act, article 59 (evidence file, folio 4166).

<sup>433</sup> Article 64 of the Judicial Service Act established the causes for "dismissal" (evidence file, folios 4166 and 4167). According to article 186 of the Regulations governing the Judicial Service Act "[b]y Dismissal Regime shall be understood the body of norms that regulate the removal or dismissal of judicial officials from regular service for justifiable causes." Regulations governing the Judicial Service Act, article 186 (evidence file, folio 200).

<sup>434</sup> Judicial Service Act, articles 5(3), 64, 65 and 66 (evidence file, folios 4166 to 4168), and Regulations governing the Judicial Service Act, articles 180, 186, 187, 188 and 189 (evidence file, folios 199 to 201).

<sup>435</sup> In this regard, the Regulations governing the Judicial Service Act establish that: "Article 175. The following shall be considered minor offenses: (a) Absenting oneself from one's post, without authorization, in regulatory working hours; (b) Mistreatment, by word or deed, of subordinate employees; (c) Involuntary errors in performing one's work; (ch) Lack of attention to personal appearance and tidiness in the workplace. Article 176. Minor offenses shall merit a verbal reprimand. If the official commits a second minor offense, a written reprimand shall be applied as a sanction. Article 177. The offenses indicated in Article 172 of these Regulations shall be considered less serious offenses [equivalent to the offenses established in article 53 of the Judicial Service Act and corresponding to the acts that "are inimical to the dignity of the administration of justice"] and shall be sanctioned with a fine of no less than five days or more than 30 days salary. Article 178. Repetition of a less serious offense shall constitute a serious offense and shall be sanctioned with suspension from office; the same sanction shall be applied to serious offenses, without exceeding three months. Article 179. The offenses established in article 173 of these Regulations shall constitute serious offenses [equivalent to the offenses established in article 54 of the Judicial Service Act and corresponding to the acts contrary to the effectiveness of the administration of justice"], without prejudice to the provisions relating to the Dismissal Regime indicated in article 187 hereof [equivalent to article 64 of the Judicial Service Act on the grounds for dismissal]." Regulations governing the Judicial Service Act (evidence file, folios 198 and 199).

<sup>436</sup> *Cf. Case of López Mendoza v. Venezuela, supra*, para. 202.

265. In addition, regarding the definition of the punishable conducts, the Court points out that the presumed victims received disciplinary sanctions based on numerous norms. The Court recalls that the presumed victims were initially dismissed by means of a decision of the plenum of the Supreme Court of Justice (*supra* paras. 95, 115, 132 and 145).<sup>437</sup> In this regard, this Court notes that, each decision included a short description of the acts or conducts that were being punished, and then enumerated the norms that had supposedly been infringed, without explaining sufficiently the relationship between the acts and the norms indicated (*supra* paras. 95, 115, 132 and 145). The Court notes that the mere enumeration of the norms that could be applicable to the acts or conducts does not meet the requirements of an adequate reasoning.

266. However, in the two cases in which the dismissals were confirmed by the Superior Council of the Judicial Service (Adán Guillermo López Lone and Tirza del Carmen Flores Lanza), the decisions issued by this body contained a more detailed legal and factual analysis of the conducts attributed to each of the presumed victims. Nevertheless, ultimately, it was found that they both committed the same offense because they gave as grounds for the sanctions imposed not only those articles of the Judicial Service Act and of its Regulations that specifically established the offending conducts, but also other provisions contained in a large variety of laws and regulations without making the corresponding factual and legal analysis in relation to the supposed violation. In this regard, it should be pointed out that, in this case, domestic law required that, in order to determine the applicable sanction, **"the severity of the offense, [and] the background to the case"** must be taken into account, **as well as "the nature of the offense, the functions performed by the offender, [and] his degree of participation in the offense"** (*supra* para. 74).

267. In the case of disciplinary sanctions imposed on judges, the requirement of including a statement of reasons is even greater than in other disciplinary proceedings, because the purpose of the disciplinary control is to assess the conduct, suitability, and performance of the judge as a public official and, consequently, the seriousness of the conduct and the proportionality of the sanction require analysis.<sup>438</sup> In the disciplinary sphere, it is essential to indicate the offense precisely and to develop arguments that allow it to be concluded that the offending conducts are sufficiently serious to justify removing the judge from his post.<sup>439</sup>

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<sup>437</sup> In this regard, the Court notes that the plenum of the Supreme Court of Justice decided the dismissal of the four presumed victims in this case in a session that commenced on May 5 and concluded on May 7, 2010. The record of that **session indicates that the plenum of the Court appointed a committee of three justices to "draw up the respective resolution, and then to issue the corresponding dismissal decision"** (*supra* paras. 94, 114, 131 and 144). However, the disciplinary files contain decisions dated May 5, 2010, signed by the President and the Secretary of the Supreme Court, in which, apparently following up on the orders of the plenum of the Court, they **set out "the corresponding grounds, which have been approved, adding the date that the plenum was held"** (*supra* paras. 94, 114, 131 and 144). The decisions of the Judicial Service Council indicate that the dismissals of the presumed victims were based on grounds outlined in the May 5 decisions that were attached and that are in the case file. The Court notes that it is unclear what the nature and purpose of these decisions of the President were within the disciplinary proceedings of the presumed victims, because they were not issued by the committee of three justices that had been appointed by the plenum of the Supreme Court, and there is no record that they were notified to the presumed victims. Therefore, this Court will not take into account the said decisions of the President of the Supreme Court of May 5, 2010, to explain the grounds for the sanctions imposed on the presumed victims by the Supreme Court. Furthermore, even though the presumed victims learned of their dismissal in advance through the press and even filed appeals for review in this regard, it was not until the notification of the dismissal decisions on June 4, 2010 (Tirza del Carmen Flores Lanza, *supra* para. 115 and Luis Alonso Chévez de la Rocha, *supra* para. 132) and on June 16 (Adán Guillermo López Lone, *supra* para. 95 and Ramón Barrios Maldonado, *supra* para. 145), that they were officially notified of the decisions of the Supreme Court in relation to their disciplinary proceedings. Therefore, these decisions constitute the documents in which the Supreme Court announced its decisions.

<sup>438</sup> *Cf. Case of Chocrón Chocrón v. Venezuela, supra*, para. 120. Similarly, this Court has ordered that a punishment should be applied that is proportionate to the nature and seriousness of the offense, taking into account any attenuating or aggravating circumstances that could be relevant to the case. *Cf. Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 133, para. 133, and *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 196.

<sup>439</sup> *Cf. Case of Chocrón Chocrón v. Venezuela, supra*, para. 120.

268. The Court emphasizes that the failure to provide a statement of reasons in the decisions of the Supreme Court had a direct effect on the absence of clarity as regards the legal grounds or the wrongful conducts based on which the presumed victims were dismissed. Each dismissal decision issued by the Supreme Court of Justice used between 35 and 65<sup>440</sup> legal provisions as grounds, including substantive and procedural norms, without differentiating one from the others; some of a constitutional, legal or regulatory nature or from codes of ethics (including a model code) and even **the [American] "Declaration of the Rights and Duties of Man."** In addition, in the two cases in which the dismissals were confirmed by the Judicial Service Council (Adán Guillermo López Lone and Tirza del Carmen Flores Lanza), this body added normative provisions to found its decisions, without excluding the considerations of the Supreme Court and without explaining the relationship of the new provisions or the previous ones to the acts with which each victim was charged (*supra* paras. 95 to 103 and 118 to 120).

269. Furthermore, the Court notes that the Judicial Service Act and its Regulations contained residual clauses, such as article 55 (and its equivalent, article 174 in the Regulations to the Act), based on which all the presumed victims were accused and subsequently sanctioned by the Supreme Court of Justice, under which:

In general, the following is considered misconduct by judicial officials and employees: failure to carry out the duties associated with the post; violation of the norms on incompatibilities for the exercise of their functions, or exercising their functions despite being aware of legal impediments prohibiting this.<sup>441</sup>

270. Nevertheless, as indicated by expert witness Ibáñez, **"it is impossible to codify all assumptions" in disciplinary matters, so that "ultimately,** there must always be a relatively open clause concerning professional duties.<sup>442</sup> However, in these assumptions and when open or indeterminate disciplinary offenses are used, it is fundamental to provide a statement of reasons when applying them, because it is incumbent on the disciplinary court to interpret these norms respecting the principle of legality and observing the greatest rigor when verifying the existence of punishable conduct. With regard to this case, the Court has noted that the dismissal decisions issued by the Supreme Court and the decisions of the Judicial Service Council lacked adequate reasoning, precisely because they did not explain adequately the relationship between the acts that constituted a punishable conduct or behavior and the norms that were presumably violated (*supra* paras. 264 to 267).

271. Faced with the multiplicity of norms cited by the domestic organs that intervened in the disciplinary proceedings of the presumed victims, this Court considers that it is not incumbent on it to choose those that are best suited to the conducts of the presumed victims in order to determine whether or not they meet the requirements of precision and clarity called for by the principle of legality for norms of a punitive nature. Therefore, it is not possible to make a detailed analysis of the requirement of the substantive legality of the norms supposedly violated, owing to the absence of a statement of reasons.

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<sup>440</sup> In particular, 57 regulatory provisions were cited in the case of Mr. López Lone, 59 in the case of Tirza del Carmen Flores Lanza, 65 in the case of Luis Alonso Chévez de la Rocha and 35 in the case of Ramón Enrique Barrios Maldonado (*supra* paras. 95, 115, 132 and 145).

<sup>441</sup> This norm was in Chapter XI corresponding to the disciplinary regime. *Cf.* Judicial Service Act, article 55 (evidence file, folio 4166) and Regulations governing the Judicial Service Act, article 174 (evidence file, folio 198). Also, in Chapter X of the Regulations governing the Judicial Service Act, article 160 corresponding to the incompatibilities, under which the presumed victims were sanctioned by the Supreme Court, established that: "[a]ny other prohibition that may be established by law to ensure effectiveness, impartiality and independence in the exercise of the functions, shall be observed with due rigor; without prejudice to offenders incurring responsibility." Regulations governing the Judicial Service Act (evidence file, folio 192).

<sup>442</sup> Expert opinion provided by Perfecto Andrés Ibáñez during the public hearing held in this case.

272. Despite this, the Court notes that the Supreme Court of Justice and the Judicial Service Council **resorted to disciplinary grounds that used vague concepts such as the "dignity of the administration of justice" or the "decorum of the office."** The Court notes that, even though it may be admitted that the precision required in matters of disciplinary sanctions is less than in criminal matters (*supra* para. 257), the use of open assumptions or vague concepts such as the "dignity of the administration of justice" or the "decorum of the office" **require** the establishment of objective criteria that guide the interpretation or content that should be given to such concepts in order to limit discretion in the application of sanctions. Such criteria can be established by law or by means of interpretation in light of case law that places these concepts within the context, purpose and objective of the norm, in order to avoid the arbitrary use of such assumptions, based on the personal and private opinions or prejudices of the judges when they are applied.

273. In this regard, the Court recalls that the purpose of disciplinary control is to assess the conduct, suitability and performance of the judge as a public official (*supra* para. 267). Thus, the disciplinary regulations for judges should be aimed at protecting the judicial function and, therefore, to assess the performance of the judge in the exercise of his or her functions. Accordingly, when applying open or indeterminate disciplinary norms that require considering concepts, such as the decorum and the dignity of the administration of justice, it is essential to take into account the effects that the conduct examined could have on the exercise of the judicial function, either positively by the establishment of normative criteria for its application or by means of an adequate interpretation and statement of reasons by the judges when applying them. To the contrary, the scope of these disciplinary measures would be subject to the private or moral beliefs of the judges.<sup>443</sup>

274. None of the preceding assumptions was verified in this case. The laws did not provide the bases or the objective criteria that would have allowed the scope of the disciplinary measures to be delimited, and the decisions of the judges did not establish the rules that would have restricted possible arbitrariness in their application.

275. The Court also recalls that the obligation to adopt domestic provisions established in Article 2 of the Convention obliges the States Parties to adopt the legislative or other measures as may be necessary to give effect to the rights and freedoms protected by the Convention (*supra* para. 213).

276. Based on the above, the Court concludes that the State violated Article 9 of the Convention, in relation to Articles 1(1) and 2 of the Convention to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, owing to the excessive discretion in the establishment of the sanction of dismissal (*supra* paras. 259 to 264), as well as the vagueness and breadth with which the disciplinary grounds were established and applied to the victims in this case (*supra* paras. 265 to 274).

#### **VII-4 RIGHT TO PERSONAL LIBERTY OF JUDGE CHÉVEZ DE LA ROCHA**

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<sup>443</sup> In this regard, expert witness Ibáñez indicated that "these types of formula, which are very open formulas, call for very rigorous case law. I consider that this should be of a hard and fast nature, in which case law is used and there is a basic agreement on these fundamental principles, [... so as] not [to resort] to the private morals of the person who at a certain moment exercises the discipline." Expert opinion provided by Perfecto Andrés Ibáñez during the public hearing held in this case.



277. Mr. Chévez de la Rocha was arrested based on his supposed participation in a public protest in San Pedro Sula. The representatives argued the violation of Article 7<sup>444</sup> of the American Convention, in relation to Article 1(1) of this instrument, owing to the failure to investigate his supposed arbitrary deprivation of liberty. In this chapter, the Court will set out the arguments of the representatives and of the Commission and will then examine the alleged violations of this article.

### **A. Arguments of the Commission and the parties**

278. The representatives asserted that, on August 12, 2009, Mr. Chévez was “**arbitrarily arrested**” and, even though Judge Chévez was able to obtain his own release, the Honduran State did not carry out an investigation into these events that would have identified and punished those responsible for having arbitrarily deprived him of his liberty. **They indicated that “the obligation to ensure rights [contemplated in Article 1(1) of the Convention] requires [...] the State to investigate the violations of this right and to punish those responsible,” and it has not done so to date.** In addition, they stressed that this event was not isolated, but occurred in the context of a climate of violence against defenders who denounced human rights violations.

279. The Commission considered that “given the circumstances of this case and considering that the application for *habeas corpus* had been admitted, [it did] not have sufficient evidence to rule on a violation of the obligation to ensure the right to personal liberty.”

280. The State did not refer to the alleged violation of Article 7, **although it did underscore that “it was proved that Luis Alonso Chévez of the Rocha had been released owing to a reasoned decision by order of the Executing Magistrate, Katy Antonia Sánchez, who told him that he was not detained and that there was no evidence against him.”**

### **B. Considerations of the Court**

281. The Court recalls that Article 7 of the American Convention contains two types of very different rules, one general and the other specific. The general rule can be found in the first paragraph: [e]very person has the right to personal liberty and security. While the specific rule is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)); to be informed of the reasons for the detention and the charges against him (Article 7(4)); to judicial control of the deprivation of liberty (Article 7(5)), and to contest the lawfulness of the detention (Article 7(6)).<sup>445</sup> Any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily results in the violation of its Article 7(1).<sup>446</sup>

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<sup>444</sup> Article 7 of the Convention establishes that: “1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. 4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him. 5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. 7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.”

<sup>445</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 51, and *Case of Wong Ho Wing v. Peru, supra*, para. 236.

<sup>446</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador, supra*, para. 54, and *Case of Wong Ho Wing v. Peru, supra*, para. 236.

282. In addition, the Court has established that the obligation to ensure rights, included in Article 1(1) of the Convention, entails the obligation of the States Parties to organize the government apparatus and, in general, all the structures by means of which public powers are exercised, so that they are able to ensure legally the free and full exercise of human rights. As part of this obligation, States are legally bound to prevent, within reason, human rights violations, and to investigate, genuinely and with the means at their disposal, any violations committed within their jurisdiction so as to identify those responsible in order to impose the pertinent sanctions and to ensure adequate redress to the victim.<sup>447</sup>

283. Nevertheless, the Court considers that, taking into account the duration of the detention and the effectiveness of the application for *habeas corpus* that was filed, it is unnecessary to rule on the alleged failure to investigate the detention of Mr. Chévez de la Rocha. Therefore, the Court concludes that it is not necessary to issue a ruling on the alleged violation of Article 7 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Luis Alonso Chévez of the Rocha.

#### **VII-5 OTHER ALLEGED VIOLATIONS**

284. The representatives argued that “the violation of the right to personal integrity, and also the right to honor and dignity [had been] proved owing to the disruption of the victims’ life project,” so that there had been an autonomous violation of these rights. In addition, they indicated that, in this case, in addition to the violations that had already been declared, the right to defend human rights had been violated, as an autonomous and independent right that, although it was not expressly recognized in the text of the Convention, was protected by Articles 13(1), 15, 16(1), 23(1)(a) and 25(1) of this instrument.

285. Based on the conclusions set out in the preceding chapters, the Court considers that it is not necessary to examine, autonomously and separately, the arguments of the representatives indicated *supra*. However, the arguments presented concerning the effects caused to the victims will be taken into account as pertinent when ordering the corresponding reparations.

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

286. Based on Article 63(1) of the American Convention,<sup>448</sup> the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate redress,<sup>449</sup> and that this provision reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility.<sup>450</sup>

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<sup>447</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of the Barrios Family v. Venezuela. Merits, reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 47.

<sup>448</sup> 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.”

<sup>449</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Omar Humberto Maldonado Vargas et al. vs. Chile, supra*, para. 149.

<sup>450</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 25, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 149.

287. The reparation of the harm caused by the violation of an international obligation requires, whenever this is possible, full restitution (*restitutio in integrum*), which consists in re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the rights that have been infringed, and to redress the consequences of the resulting harm.<sup>451</sup> Consequently, the Court has considered it necessary to award different measures of reparation in order to repair the harm fully; thus, in addition to pecuniary compensation, measures of restitution and satisfaction and guarantees of non-repetition are particularly relevant in view of the harm caused.<sup>452</sup>

288. The Court has established that reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and also the measures requested to redress the respective damage. The Court must observe this concurrence in order to rule appropriately and in accordance with the law.<sup>453</sup>

289. Based on the violations declared in the preceding chapters, the Court will proceed to examine the claims presented by the Commission and the representatives, as well as the arguments of the State, in light of the criteria established in its case law as regards the nature and scope of the obligation to make reparation,<sup>454</sup> in order to establish measures to redress the harm caused to the victims.

### **A. Injured party**

290. The Court reiterates that, pursuant to Article 63(1) of the Convention, the injured party is considered those who have been declared victims of the violation of any right recognized therein.<sup>455</sup> Therefore, the Court consider that Tirza del Carmen Flores Lanza, Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado **are the "injured party" and**, in their capacity as victims of the violations declared in Chapters VII-1, VII-2 and VII-3, they will be the beneficiaries of the following reparations ordered by the Court.

### **B. General arguments of the State**

291. The State did not present specific arguments about all the measures of reparation requested by the Commission and the representatives. **In general, it argued that "trying to assert that [the events constitute] a wrongful act that can be attributed to the State [...] is manipulating the vision and analysis that has been made of the events in which the petitioners were involved, acting irresponsibly, violating the restrictions that, in the exercise of their functions, are established by the pertinent law and regulations."** Therefore, it argued that "in view of the offenses committed by the petitioners and the incompatibility of these offenses with domestic law, no reparation is in order."

### **C. Measures of integral reparation: restitution, satisfaction and guarantees of non-repetition**

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<sup>451</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, para. 26, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 150.

<sup>452</sup> Cf. *Case of Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 150.

<sup>453</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 149.

<sup>454</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 151.

<sup>455</sup> Cf. *Case of the La Rochela Massacre v. Colombia, supra*, para. 233, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 153.

### **C.1) Restitution**

292. The Commission asked the Court to order the State to: “[r]einstate the victims in the Judiciary, in a post similar to the one they held, with the same remuneration and social benefits and a rank equivalent to one they would have had today had they not been dismissed, for the time that **remained of their term of office.**” **If, for good reason, their reinstatement was not possible, the Commission asked that the State pay compensation.** According to the Commission, the **reinstatement in their posts was “essential as a message to the community of judges that, even in the context of the breakdown of the institutional framework, it is necessary to continue defending democracy and the strict application of the law.**

293. The representatives asserted that the dismissal of the victims was the result of proceedings **that harmed their fundamental rights and freedoms, so that “the appropriate and essential measure to redress the violations of their basic rights is reinstatement in their posts.”** They also **underscored that the dismissals had a profound effect on the victims, “because their personal and professional aspirations revolved around the exercise of their judicial mandate.”** They asked that reinstatement **include the right of the victims to enjoy “the remuneration that would have corresponded to them on the day they receive this, as well as all the corresponding social benefits and rank, respecting their geographical location and judicial specialization, as well as the indefinite nature of their appointment.”** Additionally, they asked that the State be ordered to calculate the years the victims had been out of office as if these had been years worked, so that their rights to retirement and to a **pension would not be impaired. Furthermore, they argued that “the reasons [for not reinstating the victims] that violated human rights, as in the case of Judge Chévez, could not be deemed objective.”** They also considered that the Supreme Court of Justice had broad authority to create posts and chambers to place the victims.

294. Furthermore, in their final written arguments, the representatives referred to the dismissal of Judge Barrios Maldonado, **and indicated that “insofar as the Court [...] finds that the use of ethical codes as disciplinary instruments violates the principle of legality, and that their use subsists at the present time, pursuant to the *iura novit curia* principle, the Court would be authorized also to order the reinstatement”** of Judge Barrios Maldonado.

295. The State emphasized that Ramón Enrique Barrios Maldonado remained in office, while Luis Alonso Chévez de la Rocha had been paid the social benefits to which he was entitled. Regarding Adán Guillermo López Lone and Tirza del Carmen Flores Lanza, the State indicated that it was **inadmissible to award them the measures of reparation requested, “because their actions were evidently politicized, and they committed offenses that are clearly established in the laws and regulations”** of Honduras.

296. The Court notes that, in their affidavits, the victims indicated that reinstatement in their posts was essential in order to obtain adequate redress. Thus, Mr. Chévez de la Rocha **indicated that “the foremost right that [he was] claiming is to be reinstated in [his] post in the same court and [...] in the same city, with the same rights as the other judges.”** Meanwhile, Ms. Flores Lanza stated that **financial compensation instead of reinstatement “would not signify true reparation.”** In addition, Mr. López Lone considered **that “reinstatement [...] is a primordial act [because] it would represent full implementation of the justice [they had] sought.”** Furthermore, the psychologist, María Sol Yáñez, recommended that the victims be reinstated in the Judiciary, with no negative consequences on the part of the institution and their colleagues, in the same place, and under the same conditions, and that measures be taken to avoid the victims being harassed or stigmatized.

297. The Court determined that the dismissal of Judges Luis Chévez de la Rocha and Adán Guillermo López Lone and Justice Tirza del Carmen Flores Lanza was the result of disciplinary

proceedings and decisions that violated their political rights, freedom of expression and the right of assembly, respectively, as well as judicial guarantees and the right to tenure (*supra* paras. 178 to 183 and 240). The Court bears in mind that the guarantee of tenure of judges shall operate so as to allow the reinstatement to the status of judge or justice to whoever has been arbitrarily deprived of it.<sup>456</sup> Moreover, in previous cases, the Court has pointed out that, following arbitrary dismissal, immediate reinstatement constitutes the least harmful measure to meet both the objectives of the judicial restructuring and also the guarantee of tenure inherent in judicial independence, and **indicated that** “[t]his is so because, to the contrary, States could remove judges and therefore intervene in the Judiciary without any great cost or control.”<sup>457</sup> In addition, “this could generate fear in the other judges, who observe that their colleagues are dismissed and then not reinstated, even when the dismissal has been arbitrary. This fear could also affect judicial independence, because it would encourage judges to follow instructions or to abstain from contesting both the nominating and the sanctioning entity.”<sup>458</sup>

298. Consequently, the Court finds that the State must reinstate Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Chévez de la Rocha in posts similar to those they held at the time of the facts, with the same remuneration and social benefits and a similar rank to the one they would have had at the present time if they had been reinstated promptly. The State must implement this measure within one year of notification of this judgment. When reinstating the victims, the State must assume **the amounts corresponding to the victims’ contributions to social benefits** during the time they were excluded from the Judiciary.

299. However, if for reasons beyond the control of the victims, the State justifies the impossibility of reinstating Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Chévez de la Rocha in the Judiciary, the State shall instead pay them compensation, which the Court establishes, in fairness, as US\$150,000.00 (one hundred and fifty thousand United States dollars) or the equivalent in local currency each, within six months, or when the one-year period granted in the preceding paragraph for their reinstatement expires.

300. Regarding the request to reinstate Mr. Barrios Maldonado, the Court notes that he was never removed from his post as a result of the disciplinary proceedings that are the purpose of this case (*supra* para. 147). Consequently, the Court does not find it in order to require his reinstatement.

## **C.2) Satisfaction: publication and dissemination of the judgment**

301. The representatives asked the Court to order the State to publish, within six months, at least **“the sections on the context and proven facts, as well as the operative paragraphs of the judgment in the official gazette and in at least two national newspapers.”** They also requested that publication be made on the websites of the Supreme Court of Justice, the Ministry of Foreign Affairs, and the Public Prosecution Service, and be maintained on these sites until the judgment was complied with fully.

302. The State did not present any specific observation in this regard.

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<sup>456</sup> Likewise, in the case of *Apitz v. Venezuela*, the Court established that “taking into consideration that the guarantee of permanence and stability 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 deems that as a reparation measure the State must reinstate the victims, if they so desire, 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, supra*, para. 246. See also, *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador, supra*, para. 258.

<sup>457</sup> *Case of Reverón Trujillo v. Venezuela, supra*, para. 81, and *Case of Chocrón Chocrón v. Venezuela, supra*, para. 152.

<sup>458</sup> *Case of Reverón Trujillo v. Venezuela, supra*, para. 81, and *Case of Chocrón Chocrón v. Venezuela, supra*, para. 152.

303. The Court establishes, as it has in other cases,<sup>459</sup> that the State must publish, within six months of notification of this judgment: (a) the official summary of the judgment prepared by the Court, once, in the official gazette; (b) the official summary of the judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) the judgment in its entirety, available for one year on an official website.

### **C.3) Other measures requested**

304. The Commission also asked the Court to require the State to “[m]ake the necessary amendments to the law to ensure that disciplinary proceedings against judges are conducted by competent authorities with sufficient guarantees of independence and impartiality; [and to] “ensure that the grounds for disciplinary action against judges and the applicable sanctions are compatible with the principle of legality.”

305. Meanwhile, the representatives asked the Court to order the State to: (i) “file the corresponding criminal, civil or administrative charges against those responsible for the facts on which this case is based”; (ii) **organize a public act to acknowledge international responsibility and make a public apology**; (iii) implement a permanent training program for recently appointed agents of justice to provide basic information on judicial independence, and respect for the free and full exercise of their rights and obligations **as judicial officials**, and (iv) **that the Court “reiterate to the State its obligation implement a public policy (for the protection of human rights defenders] and require that this policy include sufficient guarantees to protect the exercise of the human right to defend human rights.”**

306. They also asked the Court to order the State to take the necessary measures to guarantee a disciplinary regime for judges that met the pertinent international standards. They indicated that, under the current regime, the provisions on the prohibitions and incompatibilities relating to judicial posts and the disciplinary regime **“are insufficiently clear and specific, [because] the substantive content of the articles in force is almost the same as the articles that were annulled.”** In addition, they indicated that the actual law merely refers to three general situations that can result in the suspension of judicial employees and officials, as well as some general prohibitions for judges and justices. They also indicated that the section corresponding to the disciplinary responsibility of officials and judges merely refers to the appeal for reconsideration that may be filed against the decision issued in the disciplinary proceeding, while the substantiation of the proceeding, the violations and the corresponding sanctions **are “delegated to the regulations governing the Law on the Council of the Judiciary and the Judicial Service to be drawn up and approved by that body, which has not happened to date.”** In addition, the representatives argued that some norms still subsist that were not expressly annulled; namely, those established in the Law on the Organization and Faculties of the Courts and the Code of Ethics for Judicial Officials and Employees.

307. Regarding this measure, the Court notes that, in Honduras, the disciplinary regime applied to the presumed victims has been amended. It recalls, however, that it is not incumbent on the Court to review, in the abstract, norms that were not applied or that did not have any impact on the violations declared in a specific case.<sup>460</sup> In the instant case, the new disciplinary regime was not applied to the victims, and there is no evidence that its possible applicable could have a direct

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<sup>459</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 162.

<sup>460</sup> Cf. *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 50, and *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2015. Series C No. 287, para. 64.

relationship to the facts of this case.<sup>461</sup> Therefore, and bearing in mind that the measures requested entail the analysis of legal norms and alleged legal advances that did not constitute the regime in force when the disciplinary proceedings against the victims in this case were held, the Court considers that it is not appropriate to make a ruling on these requests when establishing reparations in this case.<sup>462</sup> Nevertheless, the Court recalls that when a State is party to an international treaty such as the American Convention, all its organs, including its judges, are subject to that treaty, and this obliges them to ensure that the effects of the provisions of the Convention are not lessened by the application of norms contrary to its object and purpose. Judges and bodies involved in the administration of justice at all levels, are bound to exercise *ex officio* a “control of conventionality” between domestic law and the American Convention, evidently within the framework of their respective jurisdictions and the corresponding procedural regulations. In this task, the judges and bodies involved in the administration of justice must take into account not only the treaty, but also the interpretation of this that has been made by the Inter-American Court, ultimate interpreter of the American Convention.<sup>463</sup> Therefore, when applying the new disciplinary regime, the domestic authorities are obliged to take into account the interpretations of the American Convention made by the Inter-American Court in this and other cases, including those relating to the importance that disciplinary proceedings and the applicable norms are clearly and legally established, to the judicial guarantees that must be ensured in this type of proceedings, to the right to tenure, as well as to the respect for political rights, freedom of expression and the right of assembly of judges. The Court will not examine compliance with this obligation when monitoring compliance with this judgment.

308. Regarding the other measures 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 find it necessary to order such additional measures.

#### **D. Compensation**

309. The Commission asked the Court to order reparation for the violations declared in the Merits Report, “including both pecuniary and non-pecuniary damages.”

##### **D.1) Pecuniary damage**

310. The representatives argued that “[f]rom the start of the disciplinary proceedings, the [presumed] victims [...] have taken steps to obtain justice and to try and reverse the decisions that have violated their rights.” They indicated that “numerous actions have been taken [...] in their search for justice,” and this had entailed many hours of work. In particular, they asserted that, on May 17, 2010, Judges Chévez de la Rocha and López Lone, together with several members of the Association of Judges for Democracy, began a 15-day hunger strike to demand justice. This protest “entailed a series of expenses, including transport, telephone calls, stationary, rental of tents, and the medical care that the two [presumed] victims received.” According to the representatives, some of the expenses were assumed directly by the presumed victims. They also indicated that Mr. Chévez de la Rocha had to assume additional expenses for the treatment of his son, owing to the impossibility of using the private medical insurance offered by the Judiciary. Lastly, they argued that, owing to the passage of time, they do not have vouchers for the said expenses and, therefore,

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<sup>461</sup> To the contrary, see, *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 310. Also, *cf. Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*, *supra*, para. 64.

<sup>462</sup> Similarly, *Case of Mohamed v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 23, 2012. Series C No. 255, para. 162.

<sup>463</sup> *Cf. Case of Almonacid Arellano et al. v. Chile*, *supra*, para. 124, and *Case of Expelled Dominicans and Haitians v. Dominican Republic*, *supra*, para. 311.

asked the Court to determine, in fairness, the amount corresponding to consequential damage for each of the presumed victims.

311. Regarding loss of earnings, the representatives calculated the salaries that the victims failed to receive based on the salary of each of them at the time of the dismissal, and added two additional salaries a year representing the thirteenth month and social benefits. They also included one extra salary, **"because the officials and employees of the Judiciary enjoy one month of paid vacations after each year of service."**<sup>464</sup> The representatives made this calculation in their pleadings and motions brief **based on rough estimates, because they "had been denied" access to the certifications of the victims' salaries at the time of their dismissals. These amounts were adjusted by the representatives after the State had presented the calculations of the salaries that the victims would have received between 2010 and 2014, in response to a request for helpful evidence by the President of the Court, in his order of December 10, 2014**<sup>465</sup> (*supra* paras. 9 and 38).

312. On this basis, the representatives asked that the State pay the following for loss of earnings: to Luis Alfonso Chévez de la Rocha the sum of US\$59,678.44;<sup>466</sup> to Tirza del Carmen Flores Lanza the sum of US\$238,035.81, and to Adán Guillermo López Lone the sum of US\$179,435.00. Nevertheless, they asked that the Court order the payment of back pay up until the date on which **the presumed victims were reinstated in their posts. In addition, they asked that the employer's contributions to social security "be paid with retroactive effect, so that [the presumed victims] do not lose the years of contributions towards their retirement pension."**

313. Regarding the estimates presented by the representatives, the State indicated **that it "trusted that the preliminary objection would be declared admissible and that the Court would order that the case be closed." It also indicated that** Mr. Chévez de la Rocha had been "paid his employment entitlements in keeping with the provisions of the Judicial Service Act, and he had accepted them to **his entire satisfaction."**

314. In its case law, the Court has developed the concept of pecuniary damage and the situations in which it must be compensated. The Court has established that pecuniary damage covers "the loss of, or detriment to, the earnings of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case."<sup>467</sup>

315. In the instant case, the Court notes that Mr. Chévez de la Rocha, Mr. López Lone and Ms. Flores Lanza suffered financial harm owing to their dismissal.

316. In particular, regarding the situation of the López Flores family, Ms. Flores Lanza indicated that, when both she and her husband were left without work and with scant possibilities of finding **other employment because they had been labelled "as persons who had been rejected and reprimanded," they had** to reduce their family budget significantly, and their oldest son had to pay

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<sup>464</sup> In the case of Luis Chévez, the calculation was made taking into account that his effective dismissal was September 23, 2010. However, the payment corresponding to the employment entitlements that the Judicial Service Council agreed to pay him for the salaries that he failed to receive and for **social benefits "up until the date of the decision confirming his dismissal; in other words, up until August 24, 2011," "was deducted" from the final sum. In the cases of Tirza Flores Lanza and Adán Guillermo López Lone, "the calculation was made on the basis of the fact that they were dismissed on July 1, 2010. At that date, they had been paid the [salary for social compensation] for that year, as well as the first part of their paid vacations], but not the thirteenth month."**

<sup>465</sup> *Cf.* Order of the President of the Court of December 10, 2014.

<sup>466</sup> The representatives calculated that the total amount for loss of earning corresponding to Luis Alonso Chévez de la Rocha was US\$83,679.45; however, they deducted US\$24,001.00 from this for the payments received for advance notice and compensation (merits file, folio 675).

<sup>467</sup> *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 174.



the most urgent expenses, such as the mortgage on the house and some services. According to Mr. López Lone, they have subsisted, "since [...] 2010, working as technical advisers to the Association of Judges for Democracy," **but owing to the dismissals, they had to change the plans they had for their children to "study in certain universities."** Also, their daughter Carmen Haydée testified that her parents had the added burden of "responsibilities related to their professional work, their work in the AJD, and **the actions [...] relating to the disciplinary proceedings,"** and that "the family's life project was brought to a halt." Their son José Ernesto indicated that the dismissal "had financial implications, [because] the family's two sources of financial income were cut off at one and the same time." Lastly, their oldest son, Daniel Antonio, indicated that, owing to the dismissals, they had to cut back on any expense that was not exclusively necessary and, for seven months, he had to assume the expense of the mortgage on the house and payment of utilities.

317. Mr. Chévez de la Rocha stated that "in view of the delicate financial situation in which [he] was placed by the dismissal, because [he] had not even completed payments on the house [he] lived in with [his] family, and with two children of four and six years of age at the time, [he] decided to take the money [corresponding to the employment benefits] as payment in advance for the harm caused; [and] merely considered the amount obtained as an advance for the difficult financial situation to which [he] was relegated." He indicated that the dismissal "had an extremely negative impact on [his] life and on that of [his] family; [they] lost the right to life insurance and, in particular, to the medical insurance that was paid for by the Judiciary, and which [his] children used regularly because they were both born with allergies." He also stated that his wife, who had "a reproductive health problem, had to delay her visits to the gynecologist, owing to the high financial cost involved." Also, before the dismissal, he had considered paying off the house and then selling it to buy another one in "a less conflictive part of the city," but could not do this and now the value of the house had declined because it was located in a dangerous area. Mr. Chévez de la Rocha was without work for four months following his dismissal until he began to work as coordinator of a project for the defense and protection of human rights in the *Equipo de Reflexión, Investigación y Comunicación* (ERIC) founded by the Jesuits in Honduras. Meanwhile, his wife underlined that they had endured many financial difficulties and even had to take out a three-year loan to pay for their children's schooling.<sup>468</sup>

318. The Court notes that the representatives had asked it to determine, in fairness, the amount for consequential damage suffered by the victims in this case, while they had indicated the specific amounts that would correspond to the victims for loss of earnings, by calculating the amounts they failed to receive for salary and other employment benefits, based on the information submitted by the State. The State did not present any specific comments on the amounts indicated by the representatives. The Court also observes that, at the domestic level, Mr. Chévez de la Rocha had received a sum corresponding to the payment of employment benefits, which had been deducted from the representatives' claim. In this regard, the Court recalls that pecuniary damage should cover the salaries and employment benefits that the victims failed to receive from the time of their arbitrary removal and up until the date of the delivery of this judgment, including the corresponding interest and other related concepts.<sup>469</sup> Consequently, and based on the calculations presented by the representatives in the context of salaries that were not received, the Court decides to establish the sums of US\$162,000.00 (one hundred and sixty-two thousand United States dollars) for Adán Guillermo López Lone; US\$214,000.00 (two hundred and fourteen thousand United States dollars) for Tirza del Carmen Flores Lanza, and US\$49,000.00 (forty-nine thousand United States dollars) for Luis Alonso Chévez de la Rocha for loss of earnings. In addition, the Court decides to establish,

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<sup>468</sup> The Court notes that the representatives presented a certification of a three-year personal loan in the name of Mr. Chévez de la Rocha, for 156,800.00 lempiras. At June 30, 2014, the balance was 88,790.76 lempiras, and he has a mortgage for 202,800.00 lempiras for a term of 228 months, with a balance at June 30, 2014, of 68,292.44 lempiras (evidence file, folio 5786).

<sup>469</sup> Cf. *Case of Chocrón Chocrón v. Venezuela*, *supra*, para. 184.

in fairness, the sum of US\$5,000.00 (five thousand United States dollars) for each of the victims, Adán Guillermo López Lone, Luis Chévez de la Rocha, Ramón Barrios Maldonado and Tirza del Carmen Flores Lanza, for consequential damage.

## **D.2) Non-pecuniary damage**

319. The representatives indicated that “there had been an autonomous effect on the mental integrity and private life of Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Ramón Enrique Barrios and Tirza del Carmen Flores Lanza, because they were subject to stigmatization and discrimination by public officials, and also due to the stress, suffering, frustration and uncertainty **caused by the dismissals.**” Accordingly, they asked that, based on the circumstances of the case and the harm suffered by the victims, the Court determine, in fairness, compensation for non-pecuniary damage for each of them.

320. International case law has established that the judgment constitutes *per se* a form of reparation.<sup>470</sup> However, this Court has developed the concept of non-pecuniary damage and has established that this “may include the suffering and affliction caused to the direct victim and his family, the impairment of values that are very significant for the individual, and also the changes of a non-pecuniary nature in the living conditions of the victim or his family.”<sup>471</sup>

321. The Court notes that, in the statements made by the victims, they referred to their suffering and affliction owing to the violations declared in this case. Thus, Mr. Chévez de la Rocha stated that “the fact that a disciplinary case was brought against [him had] a strong impact, especially when the dismissal became final.” Losing his tenure as a judge “upset [him] and, at the beginning, his family seemed not to understand it”; he felt guilty, he was criticized, he was worried about the debts he had contracted and his children’s studies. He also stated that he had accumulated a “high level of stress [...] over these four years and this has affected [his] health.” He indicated that he had been diagnosed with generalized arthritis and the situation had even led to conflictive relationships within his household, “circumstances that [they] had responded to by paying for psychosocial assistance for [his] wife, [his] children and [him]self.” He stated that the dismissal had affected him psychologically; he “feels that this situation has deprived [his] family of a better quality of life and [... he] constantly feels guilty and even though [he] is able to overcome this – because [he] is convinced that [his] stance was correct – it still annoys” him. In addition, his wife testified that the disciplinary proceeding and her husband’s dismissal “was really traumatic; he became more anxious, irritable.” She indicated that her husband became depressed because he had not been reinstated and the stress had affected his health.

322. Tirza Flores Lanza testified that “the disciplinary proceeding [...] was a time of much uncertainty and affected [her] dignity. Following the dismissal [her] life changed completely; [she] felt totally disoriented and extremely worried about the maintenance of [her] family”; she felt “great fear [and] frustration.” She stated that “over the [...] years since [she] was dismissed from the Judiciary, [she had] felt very sad and depressed on many occasion owing to the frustration caused by the fact that, because [she] did the right thing, [... she had been] expelled from [her] place of work as a result of accusations that have damaged [her] honor.” She stressed that she had “been subjected to many offensive and denigrating insults [...] which have affected [them] greatly.” In addition, she stated that her husband, Adán Guillermo López Lone, had undergone episodes of depression and anxiety as a result of his dismissal. Meanwhile, Adán Guillermo López Lone indicated that “the dismissal [...] was a very difficult situation, almost devastating; [they] suffered a great

<sup>470</sup> Cf. *Case of El Amparo v. Venezuela. Reparations and costs*. Judgment of September 14, 1996. Series C No. 28, para. 35, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 157.

<sup>471</sup> *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 of Omar Humberto Maldonado Vargas et al. v. Chile, supra*, para. 174.

deal of anguish, anxiety, depression; [he] had to seek medical help in order to overcome the **situation.**" His children indicated that their parents suffered "significant stigmatization"; the media coverage caused them great frustration and they were "moody." They also indicated that their parents suffered "a great deal of emotional insecurity owing to their stigmatization, and even owing to the risk to their physical integrity that they felt on more than one occasion, and of the uncertainty owing to the arbitrary decisions of the authorities. Permanent helplessness was one of the strongest feelings they experienced."

323. Ramón Barrios Maldonado stated that, the fact that he had been dismissed and, at the same time, remained in his post awaiting his substitute, "affected [him] morally, and diminished [his] professional capability to execute [his] work as a judge." He also indicated that the proceeding affected both him and his family emotionally owing to the uncertainty of not knowing his fate. As a result of the proceeding, he "was stigmatized before society as a rebel judge, a communist and a Zelayist." Throughout the proceedings he was also "emotionally destroyed and professionally diminished." Moreover, Luis Alonso Chévez de la Rocha stated that he "could see the frustration [of Ramón Barrios,] but what he saw most was the emotional confusion caused by having been dismissed and having to wait a long time for his substitute to arrive, which, according to him, [...] kept him in uncertainty, and [in a state of] emotional frustration."

324. In addition, expert witness María Sol Yáñez determined that the four victims "have been deeply hurt, because the dismissal that was perceived as unjust has affected something as vital as their identity." The expert witness indicated that they experienced great mental suffering, and constraints to being able to carry on with their life project. She concluded that various factors have contributed to the continuation of the pain and the prolonged emotional impact on the victims, namely: the impact of the traumatic loss of their jobs; the climate of fear and vulnerability created by the polarization; the lack of social validation of their pain; the absence of institutional and social support; the stigmatization and the moral harm; the lack of resources for their living expenses owing to their dismissal; the contempt for their dignity and the questioning of their search for justice, and their concerns with regard to the life projects of their children.

325. Taking into account the statements described above, the Court finds that the disciplinary proceedings and the termination of their functions caused moral harm to the victims in this case. Consequently, and based on the circumstances of the case and the violations declared, the Court finds it pertinent to establish, in fairness, the sum of US\$10,000.00 (ten thousand United States dollars) each for non-pecuniary damage for Adán Guillermo López Lone, Luis Chévez de la Rocha, Ramón Barrios Maldonado and Tirza del Carmen Flores Lanza.

### ***E. Costs and expenses***

326. The representatives alleged that the victims incurred diverse expenses throughout the disciplinary proceedings,<sup>472</sup> which were estimated at US\$2,109.36. However, they indicated that the victims had not kept the receipts for the expenses incurred, and therefore requested that the Court establish an amount based on fairness.

327. Regarding the costs and expenses incurred by the AJD, they alleged that the latter had various expenses as a result of the 2010 hunger strike in which Judges López Lone and Chévez de la Rocha took part. They also indicated that they had to cover the cost of the travel expenses of Ms. Flores Lanza in a trip to Spain "to make visits and have meetings with authorities and organizations relating to the dismissal of the victims."<sup>473</sup> In addition, they indicated that, during the litigation

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<sup>472</sup> They indicated that they had to travel from San Pedro Sula to Tegucigalpa several times to take part in the disciplinary proceedings.

<sup>473</sup> Cf. Receipt for travel expenses dated May 10, 2010 (evidence file, folio 5898).

before the Commission, the Association paid all the expenses of the trips to Washington D.C., United States of America, to take part in the hearing of this case. Consequently, they requested payment of costs and expenses prior to the presentation of the pleadings and motions brief for the sum of US\$9,922.86.<sup>474</sup> Following the presentation of the pleadings and motions brief, the AJD alleged that it had incurred expenses for the certification and forwarding of the affidavits.<sup>475</sup> Additionally, it had covered the travel and accommodation expenses of its representative and of the victims to the hearing of this case before the Court.<sup>476</sup> These expenses were calculated at US\$6,773.80. Therefore, they requested payment of a total of US\$16,696.66<sup>477</sup> for costs and expenses covered by the AJD.

328. Regarding the costs and expenses incurred by CEJIL, the representatives indicated that CEJIL **had had "expenses that included trips, accommodation, communications, photocopies, stationary and mailings,"** and also legal work, research, compilation and presentation of evidence, interviews, and preparation of briefs.<sup>478</sup> Thus, CEJIL had incurred expenses of US\$25,281.86 before the presentation of the pleadings and motions brief. Following the presentation of this brief, it presented vouchers for expenses arising from psychosocial support for the victims; producing expert evidence for the public hearing; sending the original expert opinions, and the salaries of three representatives of CEJIL. These expenses were calculated at US\$24,094.47. Therefore, they requested a total payment of US\$49,376.33 for costs and expenses incurred throughout the proceedings before the Court, and that the State reimburse this amount directly to CEJIL.

329. The State indicated that it **"trusts that, once the dispute has been decided, the party who prevails will be awarded the right to reimbursement of the expenses that it may have incurred as a result of the proceedings and that, should the Court [...] find that the parties had reasonable grounds for litigating, they are exempted from the payment of such expenses."**

330. The Court reiterates that, according to its case law,<sup>479</sup> costs and expenses form part of the concept of reparation, because the actions taken by the victims in order to obtain justice, at both the domestic and the international level, entail disbursements that must be compensated when the international responsibility of the State is declared in a judgment against it. It also recalls that the eventual reimbursement of costs and expenses is made on the basis of the disbursements that have been duly authenticated before the Court.

331. With regard to the expenses alleged by the victims in relation to the administrative proceedings, considering the absence of specific probative elements on this item, as well as the

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<sup>474</sup> The representatives alleged that the costs of the hunger strike amounted to US\$2,149.35; the travel expenses of Ms. Flores Lanza to US\$500.00; the participation of the victims in the hearing on admissibility to US\$3,413.15, and the participation in the hearing on the merits to US\$3,860.36.

<sup>475</sup> The representatives forwarded the vouchers for costs and expenses incurred following the presentation of the pleadings and motions brief together with their final written arguments (*supra* para. 38).

<sup>476</sup> In this regard, they alleged that, even though the Court had decided not to summon the four victims to testify at the hearing, the victims **"felt it was very important to be present."** Regarding the wife of Mr. Chévez, they indicated that her presence was **"very important"** for her husband, because **"the consequences [...] of the actions that he took [...] entailed some difficulties in their relationship; thus, sharing the experience with her helped repair the situation."**

<sup>477</sup> The representatives indicated that the cost of certifying and forwarding the affidavits of the victims and their family members, and the expert opinions was US\$533.48. Regarding the expenses for participating in the public hearing, they indicated that these amounted to US\$6,240.32.

<sup>478</sup> CEJIL indicated, with regard to the expenses for travel between San José and San Pedro Sula, that **"some of these [...] were] not used entirely for work relating to this case, [so that] the amounts were established on the basis of a proportionate amount of the expenses incurred for the trip, based on the time dedicated specifically to work on this case."**

<sup>479</sup> *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, supra*, para. 376.

amount granted for consequential damage, the Court does not find it in order to award an additional amount to the victims under this heading.

332. Regarding the expenses incurred by the AJD, the Court notes that the Association presented various probative elements to support the expenses associated with the hunger strike of May 2010. However, the Court finds that these expenses were not directly related to the processing of the litigation of this case at the domestic and the international levels. **Regarding Ms. Flores Lanza's** travel expenses for the trip she made to Spain, the representatives did not explain clearly how that trip had been useful for the processing of this case. Furthermore, it notes that the representatives provided receipts for per diems given to the four victims in this case, as well as for accommodation and plane tickets to attend the hearings held by the Commission in March 2011 and March 2012.<sup>480</sup> In this regard, they indicated that the victims had taken part in other meetings and activities in the context of that trip and had therefore asked that the Court consider only 50% of the expenses covered by the said vouchers. The Court observes that on the invoice corresponding to the purchase of plane tickets,<sup>481</sup> of the four tickets that this covers, only one corresponds to tickets in the name of a victim in this case, and the representatives did not clarify whether the other three tickets bore any relationship to this litigation. Consequently, the Court will take into account only **the cost of Mr. López Lone's ticket. Regarding the expenses of the participation of Messrs. Chévez and Barrios, the representatives indicated that they "do not have the corresponding vouchers; nevertheless, [... they] asked that the Court consider that these were similar to the amount assigned to Mr. López Lone] as they covered the same items."** Following the presentation of the pleadings and motions brief, the representatives submitted invoices corresponding to the expenses for seven affidavits,<sup>482</sup> and the forwarding of documents, as well as for the payment for the authentication of signatures and the forwarding of expert reports.<sup>483</sup> They also presented vouchers for travel expenses, per diems, and accommodation related to participation in the public hearing held in this case.<sup>484</sup> Based on the foregoing, the Court notes that the AJD presented vouchers for costs and expenses amounting to US\$12,057.06.

333. Regarding the expenses incurred by CEJIL, the Court determines that it has provided evidence corresponding to the expenses to attend the hearing on admissibility before the Inter-American

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<sup>480</sup> **Cf.** Receipts for travel expenses dated March 16, 2011, for each victim to attend the hearing held at the Inter-American Commission in March 2011 (evidence file, folios 5900 to 5903); invoices for accommodation at The Embassy Inn from March 21 to 27, 2011 (evidence file, folios 5904 and 5905); receipt from American Airlines dated March 8, 2011 (evidence file, folio 5906); invoice for accommodation at Carlyle Suites, Washington D.C. from March 21 to 27, 2012 (evidence file, folio 5909), and receipts for travel expenses of Adán Guillermo López Lone and Tirza del Carmen Flores Lanza dated March 20, 2012 (evidence file, folio 5911).

<sup>481</sup> **Cf.** Invoice for the purchase of plane tickets in the name of Rubenia Galeano, Paula Velasquez, Adriana Orocu and Guillermo López Lone of March 3, 2012 (evidence file, folio 5908).

<sup>482</sup> **Cf.** Invoice from *Asesoría Legal Integrada* dated January 8, 2015, for four affidavits and payment for forwarding them on the same date (merits file, folios 1688 and 1689); receipt for payment of three notarized statements dated January 7, 2014 (merits file, folio 1692). When calculating the dollar value of the amounts presented in lempiras, the Court used the exchange rate in force at the date of the invoice according to the table on the average cost of the dollar prepared by the Banco Central of Honduras.

<sup>483</sup> **Cf.** Invoice for sending documents by Fedex dated January 9, 2015 (merits file, folio 1693); receipt for payment of **authentication of Julio Escoto's signature (merits file, folio 1695), and UPS payment of January 9 and 10, 2015 (merits file, folios 1696 to 1698).**

<sup>484</sup> The representatives presented the invoice corresponding to the plane tickets for Luis Chévez and Lidia Galindo, Oduemi Arias, Tirza Flores, Adán López and Ramón Barrios (merits file, folios 1701 and 1702). They also presented the vouchers for payment of the airport and exit taxes (merits file, folios 1703 to 1711); invoice for accommodation at the Hotel Casa Cambranes (merits file, folio 1712), vouchers for payment of per diems to Oduemi Arias for six days to attend the public hearing; to Guillermo López Lone for nine days; to Tirza Flores Lanza for nine days; to Ramón Barrios for five days; to Luis Alonso Chévez for five days, and to Lidia Galindo for five days (merits file, folios 1713 to 1718).

Commission and the hearing on the merits.<sup>485</sup> However, it notes that CEJIL asked that the Court pay only 50% of the expenses incurred since it had taken part in other hearings that were unrelated to this case during those trips. CEJIL also provided evidence relating to two trips to Honduras, one in May 2011, for which it requested payment of 5% of the total trip expenses,<sup>486</sup> and another in May 2014,<sup>487</sup> for which it requested payment of US\$405.28. In addition, it presented vouchers for the payment of photocopies,<sup>488</sup> the expenses of producing expert evidence,<sup>489</sup> and also salary vouchers for the lawyers who worked on this case.<sup>490</sup> As regards the expenses related to the travel and support provided to the victims by expert witness María Sol Yáñez, the Court notes that CEJIL presented vouchers for US\$9,206.98.<sup>491</sup> However, the case file does not show that all these expenses were necessary in the context of this case. Therefore, those expenses that are unreasonably high will be deducted from the assessment made by the Court.<sup>492</sup> Accordingly, the Court will only take into consideration the amount of the contract for professional services. Thus, the Court determines that CEJIL presented vouchers for expenses incurred in the context of this case for sum of US\$41,423.75.

334. Consequently, the Court orders the State to reimburse, under the heading of costs and expenses, US\$12,057.06 (twelve thousand and fifty-seven United States dollars and six cents) to the Association of Judges for Democracy and US\$41,423.75 (forty-one thousand four hundred and twenty-three United States dollars and seventy-five cents) to CEJIL. At the stage of monitoring compliance with this judgment, the Court may order the reimbursement by the State to the victims or to their representatives of subsequent expenses that are reasonable and duly authenticated.<sup>493</sup>

#### ***F. Method of complying with the payments ordered***

335. The State shall make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons

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<sup>485</sup> Cf. CEJIL, payment of travel expenses, March 31, 2011 (evidence file, folio 5913); purchase of plane tickets San José – Washington, D.C. (evidence file, folio 5914); invoice for accommodation at Carlyle Suites, Washington, D.C. from March 21 to 29, 2011 (evidence file, folio 5915); payment of travel expenses dated March 29, 2012 (evidence file, folio 5926); purchase of plane tickets San José – Washington, D.C. (evidence file, folio 5929), and invoice for accommodation at Carlyle Suites, Washington, D.C. from March 21 to 29, 2012 (evidence file, folio 5930).

<sup>486</sup> Cf. CEJIL, payment of travel expenses, accommodation, plane tickets, airport and exit taxes to Marcia Aguiluz for working trip to Honduras (evidence file, folios 5918 to 5921).

<sup>487</sup> Cf. CEJIL, payment of travel expenses and accommodation to Marcia Aguiluz and payment of travel expenses, accommodation, plane tickets and exit taxes to Alfredo Ortega for trip to Honduras (evidence file, folios 5932 to 5936).

<sup>488</sup> Cf. Vouchers for photocopies from Centro de Fotocopiado Policromia S.A (evidence file, folio 5939 to 5941).

<sup>489</sup> Cf. UPS invoices for forwarding the opinions of four expert witnesses (merits file, folios 1760 to 1768); receipt for official translation of one expert opinion (merits file, folio 1770); receipt for travel expenses for Antonio Maldonado dated January 30, 2015: plane tickets Panama – San José and accommodation (merits file, folios 1746 to 1749); receipt for travel expenses for Perfecto Andrés Ibáñez dated January 30, 2015: plane tickets Madrid – San José and accommodation (merits file, folios 1750 to 1753); receipt for travel expenses for Leandro Despouy dated February 1, 2015: plane tickets Buenos Aires – San José and accommodation (merits file, folios 1754 to 1758).

<sup>490</sup> Cf. CEJIL payroll (evidence file, folios 5943 to 5956 and merits file, folios 1772 and 1773).

<sup>491</sup> Cf. Receipts for CEJIL payments dated June 30, September 24, and November 22, 2014 (merits file, folios 1720, 1725 and 1730); plane tickets San Salvador – San Pedro Sula from September 24 to 28 and from November 22 to 27, 2014 (merits file, folios 1726, 1727, 1731 and 1732); receipt for payment from CEJIL for trip accompanying the victims to the public hearing before the Court from January 28 to February 5, 2015 (merits file, folio 1736); plane tickets San Salvador – San José and receipt for accommodation (merits file, folios 1737 to 1739); contract for professional services (merits file, folios 1741 and 1742), and payments for professional services (merits file, folios 1743 and 1744).

<sup>492</sup> Cf. *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 422.

<sup>493</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 291, and *Case of Gonzales Lluay et al. v. Ecuador, supra*, para. 421.

indicated herein, within one year of notification of this judgment, without prejudice to making the complete payment at an earlier date.

336. If the beneficiaries have died or die before they receive the corresponding amount, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

337. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in local currency, using the exchange rate in force on the New York Stock Exchange (United States), the day before payment.

338. If, for reasons that can be attributed to a beneficiary of the compensation or his or her heirs, it is not possible to pay the amounts established within the term indicated, the State shall deposit such amounts in his or her favor in an account or certificate of deposit in a solvent Honduran financial institution, in United States dollars, and in the most favorable financial conditions allowed **by the State's banking law and practice. If, after ten years, the compensation has not been claimed,** the amounts shall be returned to the State with the interest accrued.

339. The amounts assigned in this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses shall be delivered to the persons indicated integrally, as established in this judgment, without any deductions resulting from possible taxes or charges.

340. If the State should incur delay, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Honduras.

## **IX OPERATIVE PARAGRAPHS**

341. Therefore,

### **THE COURT**

#### **DECIDES,**

unanimously,

1. To reject the preliminary objection filed by the State with regard to the exhaustion of domestic remedies, in the terms of paragraphs 19 to 29 of this judgment.

#### **DECLARES,**

unanimously, that:

2. The State is responsible for the violation of Articles 13(1), 15 and 23 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Adán Guillermo López Lone, because the disciplinary proceeding instituted against him and his subsequent dismissal constituted an undue restriction of his freedom of expression, right of assembly and political rights, pursuant to paragraphs 160 to 178.

3. The State is responsible for the violation of Articles 13(1), 15 and 23 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Luis Alonso Chévez de la Rocha, because the disciplinary proceeding instituted against him and the refusal to reinstate him

in his post of judge constituted an undue restriction of his freedom of expression, right of assembly and political rights, pursuant to paragraphs 160 to 177, 179 and 180.

4. The State is responsible for the violation of Articles 13(1) and 23 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Tirza del Carmen Flores Lanza, because the disciplinary proceeding instituted against her and her subsequent dismissal constituted an undue restriction of her freedom of expression and political rights, pursuant to paragraphs 160 to 177, 181 and 182.

5. The State is responsible for the violation of Articles 13(1) and 23 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Ramón Enrique Barrios Maldonado, because the disciplinary proceeding instituted against him constituted an undue restriction of his freedom of expression and political rights, pursuant to paragraphs 160 to 177 and 183.

6. The State is responsible for the violation of Article 16 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Alonso Chévez de la Rocha, owing to the undue violation of their freedom of association, pursuant to paragraph 186.

7. The State is responsible for the violation of Article 8(1) of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, owing to the violation of the guarantees of competence, independence and impartiality in the disciplinary proceedings to which they were subjected, as well as in relation to Article 23(1)(c) of the Convention owing to the arbitrary infringement of tenure in the exercise of judicial functions and the consequent violation of judicial independence, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Alonso Chévez de la Rocha, pursuant to paragraphs 207 to 240.

8. The State is responsible for the violation of Article 25(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, owing to the ineffectiveness of the application for *amparo* to contest the decisions in the disciplinary proceedings to which the victims were subjected, pursuant to paragraphs 245 to 250.

9. The State is responsible for the violation of Article 9 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, owing to the excessive discretion in the establishment of the sanction of dismissal, as well as to the imprecision and breadth with which the disciplinary grounds were defined and applied to the victims in this case, pursuant to paragraphs 257 to 276.

10. The State is not responsible for the violation of Articles 16 and 23(1)(c) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Ramón Enrique Barrios Maldonado, pursuant to paragraphs 186 and 238.

11. It is not necessary to rule on the alleged violation of the obligation to state the reasoning for a decision, the right of defense, the presumption of innocence, and the effectiveness of the remedy before the Judicial Service Council, pursuant to paragraph 241.



12. It is not necessary to rule on the alleged violation of Article 13(3) of the American Convention, pursuant to paragraph 184.

13. It is not necessary to rule on the alleged violation of Article 7 of the American Convention, to the detriment of Luis Alonso Chévez de la Rocha, pursuant to paragraphs 281 to 283.

14. It is not necessary to rule on the alleged violation of Articles 5 and 11 of the American Convention, or on the right to defend human rights, pursuant to paragraph 285.

**AND ESTABLISHES,**

unanimously, that:

15. This judgment constitutes *per se* a form of reparation.

16. The State must reinstate Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Chévez de la Rocha in functions similar to those they performed at the time of the facts, with the same remuneration, social benefits and rank as those that would have corresponded to them at that date if they had been reinstated promptly, pursuant to paragraphs 297 and 298. If their reinstatement is not possible, it shall pay them the amount established in paragraph 299 of this judgment.

17. The State must make the publications indicated in paragraph 303 of this judgment, within six months of notification hereof.

18. The State must pay the amounts established in paragraphs 318, 325 and 334 of this judgment as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, in the terms of the said paragraphs and of paragraphs 335 to 340.

19. The State must, within one year of the notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

20. The Court will monitor complete compliance with this judgment, in exercise of its authority and in execution of its obligations under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

Done, at San José, Costa Rica, on October 5, 2015, in the Spanish language.

Humberto Antonio Sierra Porto  
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García-Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered

Humberto Antonio Sierra Porto  
President

Pablo Saavedra Alessandri  
Secretary