

REPORT No. 70/11
PETITION 975-10
ADMISSIBILITY
ADÁN GUILLERMO LÓPEZ LONE ET AL.
HONDURAS
March 31, 2011

I. SUMMARY

1. On July 6, 2010, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition presented by the *Asociación de Jueces por la Democracia* (AJD) and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) alleging the responsibility of the State of Honduras (hereinafter “the State”, “Honduras” or “the Honduran State”) for the dismissal from office of judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, and magistrate Tirza del Carmen Flores Lanza (hereinafter “the alleged victims”) at the hands of the Supreme Court of Honduras, allegedly on arbitrary, illegal and political grounds.

2. The petitioners alleged that the State was responsible for the violation of the rights enshrined in Articles 8 (right to a fair trial), 13 (freedom of thought and expression), 15 (right of assembly), 16 (freedom of association) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in relation to the duty to respect and ensure the rights set forth at Article 1(1) and the duty to adopt legislative or other measures set forth at Article 2 thereof. As for the requirement of prior exhaustion of domestic remedies, the petitioners argue that it is applicable the exception set forth at Article 46.2(a) of the American Convention.

3. For its part, the State alleged that the petitioners had failed to comply with the requirement of prior exhaustion of domestic remedies. Moreover, the State alleges that the petition should be rejected on the grounds that it does not present facts that tend to establish violations of the rights enshrined in the American Convention.

4. After analyzing the positions of the parties and compliance with the requirements set out in Articles 46 and 47 of the American Convention, the Commission decides to declare the claim admissible for the purposes of examining the alleged violations of Articles 13, 15 and 16 in conjunction with Articles 1(1) and 2 thereof. The Commission decides to join the analysis of the requirement of exhaustion of domestic remedies to its considerations of the merits of the complaint regarding the possible violation of Articles 8 and 25. Additionally, through application of the principle of *iura novit curiae*, the Commission will analyze during the merits phase the possible violation of Article 5.1 of the Convention. The Commission decides to notify the parties of the report, to order its publication, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

5. On July 6, 2010, the IACHR registered the petition as number P-975-10. On August 20, 2010, the IACHR transmitted a copy of its pertinent parts to the State, giving it two months to submit information. On October 19, 2010, the State of Honduras submitted its observations to the Commission. The IACHR received observations from the petitioners on September 22, 2010 and January 20, 2011, which were duly passed on to the State. Also, the IACHR received observations from the State on March 11 and 22, 2011. The referred communications were duly passed on to the petitioners.

6. On March 25, 2011, during the 141^o Ordinary Period of Sessions of the IACHR, a public hearing took place where the parties presented their allegations respect the admissibility of the complaint.

III. POSITION OF THE PARTIES

A. The petitioners

7. The petitioners argue the international responsibility of the State for the allegedly arbitrary and illegal dismissal from office of judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, and of magistrate Tirza del Carmen Flores Lanza, all members of the *Asociación de Jueces por la Democracia* (AJD)¹, an organization that was allegedly subject to harassment and persecution at the hands of the Supreme Court of Justice (hereinafter “CSJ”), in particular, after the coup d’état of June 28, 2009. They note that during the political crisis of 2009, the AJD adopted a legal position that criticized the CSJ, a State organ that described the coup d’état as a process of “presidential succession” in accordance with the Constitution and the law². According to the petitioners, for the mentioned position of the AJD, the CSJ started a campaign to silence criticism and disagreement within the Judicial Branch, which included dismissals, transfers and other sanctions; in which context they present the facts of the instant petition.³ They further indicate that the alleged victims were dismissed from office for the following facts:

- **Judge Adán Guillermo López Lone:** The petitioners allege that on July 5, 2009, judge López Lone, member of the *Sala Primera del Tribunal de Sentencia de San Pedro Sula* (First Division of the Sentencing Tribunal of San Pedro Sula), participated in a pacific protest that denounced the breach of the constitutional order and called for the reestablishment of democratic institutions in Honduras. The petitioners note that judge López Lone participated in the demonstration as a citizen, without wearing any official emblems or political-party symbols. Furthermore, they indicate that judge López Lone did not identify himself as a public official and that the demonstration took place in a non-working day. The petitioners state that the demonstration was pacific and that violent acts only took place when military forces attacked a group of citizens. They further indicate that the attack caused a “huge human stampede.” As a result, the alleged victim suffered a fracture in his left leg and had surgery. They add that he was unable to work for more than 90 days.

- **Judge Luis Alonso Chévez de la Rocha:** On August 12, 2009, judge Chévez de la Rocha, from the *Juzgado Contra la Violencia Doméstica de San Pedro Sula* (Tribunal Against Domestic Violence of San Pedro Sula), was at the main entrance of the “City Mall” shopping center, when a demonstration in opposition to the coup d’état passed by. They indicate that, at that moment, security troops showed up and without warning attacked the demonstrators. They allege that when the judge observed that police forces were beating a group of elderly people, he identified himself as a public official. According to the petitioners, his declaration angered the police authorities so they arrested him. He was taken, with a group of people, to a police station. They indicate that his release took place during that night after a *habeas corpus* was filed before the *Corte de Apelaciones Seccional* (Sectional Court of Appeals).⁴

- **Judge Ramón Enrique Barrios Maldonado:** On August 19, 2009, judge Ramón Enrique Barrios Maldonado, member of the *Sala Primera del Tribunal de Sentencia de San Pedro Sula* (First Division of the Sentencing Tribunal of San Pedro Sula), acting in his condition of professor of Constitutional Law at *Universidad Nacional Autónoma de Honduras*, gave a conference on the

¹ The petitioners indicate that the AJD was established on August 12, 2006, in San Pedro Sula, by independent judges, with the aim to protect the fundamental rights of society, in general, and of judges, in particular, looking for effective and legitimate justice to strengthen the Rule of Law. They inform that judge López Lone serves as President, magistrate Flores Lanza acts as Secretary, and judges Chévez de la Rocha and Barrios Maldonado are associates since 2008 and 2006, respectively.

² They argue that the Supreme Court issued a press release inviting “all officials and employees of the Judicial Branch to participate in the *Demonstration for Peace in Honduras* on Tuesday, June 30, 2009,” during working hours.

³ They indicate that AJD legal opinion was made public through press releases, statements and other actions on behalf of the association and their members. They add that their actions were part of a general condemnation of the coup d’état, in line with the strong rejection of the international community that also condemned the breach of the constitutional order.

⁴ The petitioners allege that the *Corte de Apelaciones Seccional de San Pedro Sula* (Court of Sectional Appeals of San Pedro Sula) sent a photocopy of the file and the resolution that declared the arrest illegal to the *Fiscalía Especial de Derechos Humanos de San Pedro Sula* (Public Prosecutor’s Special Office for Human Rights). However, they indicate that, to date, they have not been informed of any police or Public Prosecutor’s Office inquiries about those facts.

circumstances surrounding the coup d'état. They indicate that in its edition of August 28, 2009, the journal *Tiempo* published a note about the conference with the title *No Fue Una Sucesión Constitucional* (It was not a Constitutional Succession) authored by judge Barrios Maldonado.

- **Magistrate Tirza del Carmen Flores Lanza:** On June 30, 2009, Tirza Flores, magistrate of the *Corte de Apelaciones de San Pedro Sula* (Court of Appeals of San Pedro Sula), acting in her condition of citizen, allegedly filed an *amparo* before the *Sala Constitucional* (Constitutional Chamber) of the CSJ seeking protection of President Manuel Zelaya Rosales, who has been “expelled from Honduran territory” in the context of the coup d'état. They indicate that the *amparo* was accumulated with other similar remedies filed by other judges, prosecutors and human rights defenders. They also allege that the admissibility resolution of the *amparo* did not indicate that the magistrate had committed any kind of irregularity. They further state that on October 16, 2009, the *Sala Constitucional* denied the magistrate her right to formalize the *amparo* as its filing was considered an act explicitly prohibited by the *Ley de Tribunales* (Law of Tribunals). They allege that decision constituted a discriminatory treatment and further indicated that it contravened the *Ley de Justicia Constitucional* (Constitutional Justice Law). They also state that on June 30, 2009, the magistrate filed a petition against high public officials –members of the Armed Forces and congressmen- which prepared and sanctioned the decree that removed José Manuel Zelaya Rosales as Constitutional President of the Republic of Honduras.

8. They allege that between August and September 2009, the *Inspectoría de Juzgados y Tribunales* (Inspectory of Tribunals) started an investigation against the alleged victims; that between October and November 2009, the *Dirección de Administración de Personal* (Office of Personnel Administration) notified them of the beginning of a disciplinary proceeding; and that between December 2009 and January 2010, the alleged victims appeared before the *Dirección de Administración de Personal* (Office of Personnel Administration) to testify and to present evidence, which was examined in April 2010. They indicate that on May 5, 2010, the Plenary of the CSJ delivered a ruling that ordered their dismissal. The decision was ratified on May 12, 2010. They also state that on May 21, 2010, the alleged victims brought a reconsideration remedy before the Plenary of the CSJ that was refused, and therefore the aforementioned sanction was ratified.⁵

9. Regarding the disciplinary proceeding, the petitioners indicate that the alleged victims did not participate in the phase of preliminary inquiry; that when the alleged victims were notified of the proceeding, they were not informed of the charges, nor they had access to the file or evidence brought; that they were not allowed to interrogate the witnesses during the preliminary inquiry; and that only on June 30, 2010, they got a copy of the minute of the CSJ session of May 5, 2010. They added that the *audiencias de descargos y evacuación de la prueba* (hearings) took place before an administrative official and that neither the results from those meetings nor the evaluation of the evidence have been made public.

10. The petitioners state that in accordance with the *Ley de Carrera Judicial* (Law of Judicial Career) and its Regulation, on June 30, 2010, the alleged victims appeared before the *Consejo de la Carrera Judicial* (Judicial Career Council) to file remedies against their dismissals, but to date, the recourses have not been determined on the merits. Moreover, the petitioners allege that only magistrate Flores Lanza and judge López Lone have been summoned for their hearings as it is mandated for this phase of the proceeding. They also indicate that the hearing for magistrate Flores Lanza was suspended; and that the call for the hearing of judge López Lone was cancelled.⁶ In respect to the other judges, the

⁵ The petitioners allege that according to the resolutions, the dismissals will take effect “once the substitute judge takes office.” They allege that in the case of magistrate Flores Lanza and judge López Lone substitute judges have been appointed so the dismissals were effective on July 1, 2010. In addition, on September 21, 2010, judge Luis Alonso Chévéz de la Rocha was informed of the appointment of his substitute, so his dismissal will be effective once the new judge takes oath before the *Corte de Apelaciones de San Pedro Sula* (Court of Appeals of San Pedro Sula).

⁶ The petitioners inform that during the hearing, the members of the *Consejo de la Carrera Judicial* (Judicial Career Council) were absent. They add that judge Guillermo López Lone requested this circumstance to be included in the minute. They also indicate that the legal advisor of the Council informed the alleged victim that the hearing will be annulled. Notwithstanding, the petitioners affirm there is no such resolution in the file.

petitioners allege that they have not been summoned for their mandatory hearings.⁷ They also point out that even though the remedies have not been finally examined, two of the four dismissals are effective as new substitute judges have been already appointed, and a third judge will take oath soon.

11. Notwithstanding the recourse lodged before the *Consejo de la Carrera Judicial* (Judicial Career Council), the petitioners argue that in the instant case it is applicable the exception set forth at Article 46.2(a) of the American Convention, as there were not due guarantees in the disciplinary proceeding against the alleged victims. They argue that the international community has already pointed out the lack of independence of the CSJ and its support for the *de facto* authorities; that the regulation of the disciplinary proceeding does not guarantee a fair trial and that the *Consejo de la Carrera Judicial* (Judicial Career Council) is a dependant body of the CSJ. They indicate that its members are appointed by the CSJ and that two of its members are magistrates of the CSJ. In sum, they allege that there is no independence ensuring the effectiveness of the recourse and the application of judicial guarantees.

12. In respect to the State allegation regarding the lack of presentation of the remedy of *amparo*, they indicate that, 1) No ordinary or extraordinary remedies may be filed against final rulings issued by the *Consejo de la Carrera Judicial* (Judicial Career Council)⁸; 2) The interested party must appeal the objected decision, which in the present case means lodging a remedy before the *Consejo de la Carrera Judicial* (Judicial Career Council). However, the decisions of the *Consejo de la Carrera Judicial* (Judicial Career Council) are not subject to appeal⁹; and 3) The remedy of *amparo* does not constitute an effective recourse since it would ultimately be heard by the Constitutional Chamber of the CSJ itself, the same organ that ordered the dismissal of the judges and the magistrate. Finally, they allege that there is no substitution proceeding if all members of the Chamber or the CSJ were recused.

13. In respect to the characterization of the alleged facts, the petitioners argue the violation of the rights enshrined in Articles 8, 13, 15, 16 and 25 of the American Convention in connection with Articles 1(1) and 2 thereof. They allege that the disciplinary proceeding lacks of adequate regulation that may ensure a fair trial and the right of defense of judicial officials, and that the alleged victims were not guaranteed with the principles of the natural judge, independence and impartiality. In respect to the right to freedom of expression, they allege that the dismissals did not pursue a legitimate aim necessary in a democratic society. In respect to the right of association, they explain that as the alleged victims lost their condition of judges, they could not participate as members of the AJD anymore, and therefore, they were impeded to fulfill the objectives of the organization. Finally, the petitioners allege that the imposed sanctions violate the right of reunion as the State punished the alleged participation of public officials in pacific demonstrations that rejected the coup d'état and that supported the return to the constitutional order. In the public hearing that took place during the 141th Ordinary Period of Sessions of the IACHR, the petitioners alleged that their dismissals had caused emotional and monetary consequences in the personal and family levels.

B. The State

14. The State alleges that the facts that motivated the dismissals of judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha, Ramón Enrique Barrios Maldonado and of magistrate Tirza del Carmen Flores Lanza, were not based on grounds of political persecution or harassment, as the

⁷ They add that two members of the *Consejo de la Carrera Judicial* (Judicial Career Council) and magistrates of the Supreme Court excused themselves from participating in the case, an issue that has not been resolved. They allege that the internal legislation does not consider a proceeding for the substitution of the magistrates, and therefore, they do not know how the Council will proceed with the aforementioned requests.

⁸ They quote Article 31 of the *Reglamento Interno del Consejo de la Carrera Judicial* (Internal Regulation of the Judicial Career Council).

⁹ Among others, they quote Article 46.3 of the *Ley sobre Justicia Constitucional* (Constitutional Justice Law), which establishes that an *amparo* is inadmissible when "the acts have been consented by the injured party. It will be understood that the acts have been consented by the injured party when a remedy is not lodged within the legal term, unless there is a proven case of impossibility to file said remedies."

State of Honduras, in general, and the CSJ, in particular, have only complied with the law¹⁰. The State argues that the conduct of the alleged victims was carried out in their condition of judges and not as citizens, all of which is explicitly prohibited by the law. Moreover, the State alleges that the petitioners avoid the legal analysis of what they called a “coup d’état”; as a result, the State rejects the fact account presented by the petitioners in that respect. The State expresses that there was a breach of the constitutional order, but that it was only caused by the unconstitutional conduct of then President Zelaya Rosales. Notwithstanding, the State points out that judges neither are nor can be political activists, members of political parties or participants in politics through other means, as their duty according to the Constitution is to administer justice with impartiality and independence.

15. In that context, it indicates that the *Dirección de Administración de Personal de la Carrera Judicial* (Direction of Administration of Personnel of the Judicial Career) started different inquiry and disciplinary proceedings for the actions of the alleged victims. The State further indicates that said actions were duly accredited and accepted by the alleged victims in their defense hearings.¹¹

16. The State affirms that the legal disciplinary framework for employees of the Judicial Branch is respectful of the standards of the rule of law, as the proceeding and the organs that participate have their origin in the Constitution and the law (*Ley de Organización y Atribuciones de los Tribunales*, *Ley de la Carrera Judicial*¹², *Reglamento de la Ley de la Carrera Judicial*, *Reglamento Interior de la CSJ*, *Reglamento Interno del Consejo de la Carrera Judicial* and *Código de Ética para Funcionarios y Empleados Judiciales*, among others). In particular, the State alleges that a fair trial does not ensure a positive solution for the claim of a plaintiff, but it should guarantee a due process. It also indicates that through the disciplinary proceeding –that is not concluded–, the alleged victims had the opportunity to exercise their defense presenting arguments and evidence in the aforementioned hearings; and that they had the opportunity to appeal before the *Consejo de la Carrera Judicial* (Judicial Career Council) the decision of dismissal. It informs that the alleged victims asked the *Consejo de la Carrera Judicial* (Judicial Career Council) to be reinstated in their positions or, otherwise, to declare the prescription of the action and the archive of the case.

17. The State also alleges that the petitioners have not exhausted all remedies available in the domestic jurisdiction before filing their claim with the IACHR. The State affirms that the petition was lodged on July 6, 2010. It also indicates that the *Dirección de Administración de Personal de la Carrera Judicial* (Direction of Administration of Personnel of the Judicial Career) issued its resolution of admissibility on August 31, 2010, but that the decision on the merits is pending.

18. The State alleges that the petitioners are simultaneously litigating in the domestic and international level, which violates the principles of *stoppe*, good faith and juridical certainty.

19. *Although* the State affirms that the final decisions of the CSJ are not subject to appeal as there is no higher tribunal at the domestic level, it points out that the alleged victims could have filed an *amparo* before the Constitutional Chamber of the CSJ to challenge the hypothetical violations in the disciplinary proceeding¹³. It argues that an *amparo* is the suitable and adequate remedy that provides victims the right to petition for the restitution in the “possession of the rights and guarantees set forth in

¹⁰ Regarding the allegations of the petitioners that the Supreme Court invited judicial staff to participate in a manifestation in favor of the coup d’état, the State indicated that the judicial employee that sent the invitation was submitted to an administrative investigation.

¹¹ They add that the Supreme Court of Justice elected for the 2009-2016 term, to date has issued 25 removal agreements against judges alleging breach and serious violation of their duties.

¹² The State indicates that in order to administrate the Judicial Career, the law creates three organs: 1) the *Consejo de la Carrera Judicial* (Judicial Career Council), 2) the *Dirección de Administración de Personal* (Direction of Administration of Personnel), and 3) the *Comisión de Selección de Personal* (Personnel Recruitment Commission). It adds that the *Consejo de la Carrera Judicial* (Judicial Career Council) is a dependant organ of the Supreme Court of Justice. The Council aids the Supreme Court of Justice with matters related to the administration of personnel and conflict resolution when the law and its regulation are applied.

¹³ The State alleges that it is possible to file an *amparo* against the resolutions of the *Consejo de la Carrera Judicial* (Judicial Career Council), despite the normative of Article 31 of the Internal Regulations of the Consejo de la Carrera Judicial, in consideration of Article 320 of the Constitution.

the Constitution, treaties, conventions and other international instruments.” It also adds that the legal framework contemplates the possibility to recuse judges.

20. In respect to the characterization of the alleged violations to the rights of the American Convention, the State refutes all statements presented by the petitioners regarding the lack of judicial guarantees and protection. It also states that the disciplinary proceeding offers the aforementioned public officials all guarantees for the respect of their rights. In addition, it indicates that this statement is contradictory with the allegation of the petitioners related to the lack of guarantees for their right of defense in the disciplinary proceeding against them. Additionally, the State indicates that all the petitioners were provided with copies of the files. In respect to the alleged lack of independence of the *Consejo de la Carrera Judicial* (Judicial Career Council), it argues that if that reasoning is followed, it could also be affirmed that the petitioners did not have independence in the exercise of their functions as all were appointed by the CSJ¹⁴.

21. In respect to the right to freedom of expression, the State alleges that this is not an absolute right and therefore it is possible to impose subsequent liability for its abuse to ensure respect for the rights of others, public order, or public health or morals. In respect to the right of reunion, the State alleges that the instant case is referred to the participation of members of the Judicial Branch in political demonstration that were incompatible with their duties as public officials. In respect to the right to freedom of association, the State indicates that the *Asociación de Jueces por la Democracia* (AJD) is a legal entity with full legal capacity. It also states that even the CSJ web site advertises this association and that the petitioners carried out their activities without interference of the State or its organs.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* of the Inter-American Commission

22. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition identifies, as its alleged victims, individuals with respect to whom the Honduran State had agreed to respect and ensure the rights enshrined in the American Convention and in other international instruments. The IACHR therefore has competence *ratione personae* to hear this petition.

23. The Commission has competence *ratione loci* to deal with the petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a State party thereto.

24. The IACHR has competence *ratione temporis*, in that the alleged facts took place when the obligation of respecting and ensuring the rights enshrined in the Convention was already in force for the State of Honduras, which ratified the American Convention on September 5, 1977. Finally, the Commission has competence *ratione materiae*, since the petition describes violations of human rights that are protected by the American Convention.

B. Other requirements of admissibility

1. Exhaustion of domestic remedies

25. Article 46.1(a) of the American Convention states that, for a complaint lodged with the Commission to be admissible under Article 44 of the American Convention, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized

¹⁴ The State also indicates that the impartiality of the administrative proceedings could be verified because four judges of the Supreme Court, members of the *Consejo de la Carrera Judicial* (Judicial Career Council), had decided to excuse themselves to analyze the case.

principles of international law.¹⁵ The prior exhaustion requirement applies when the national system does in fact offer available recourses that are adequate and effective for remedying the alleged violation. Thus, Article 46.2 stipulates that the requirement need not be observed if the domestic legislation does not afford due process of law for the protection of the right in question, if the alleged victim was denied access to the remedies offered by domestic law, or if there was an unwarranted delay in issuing judgment on those remedies.

26. In the case at hand, the parties disagree on whether this conventional requirement has been met. The State claims that the remedies offered by the domestic jurisdiction were not exhausted. It also indicates that the petitioners filed their claim with the IACHR before the remedy brought to the *Consejo de la Carrera Judicial* (Judicial Career Council) was decided, and that an *amparo* is the suitable and adequate remedy in the domestic jurisdiction for the protection of the rights allegedly violated. In turn, the petitioners claim that in the present case it is applicable Article 46.2(a) of the American Convention, which establishes an exception to the requirement of exhausting domestic remedies, that is, when national law does not provide due legal process for protecting the right in question.

27. In light of the above, the IACHR considers pertinent to analyze, in the instant case, whether the petitioners should exhaust the remedy with the *Consejo de la Carrera Judicial* (Judicial Career Council) before filing a petition with the Commission and whether they should have lodged an *amparo* remedy.

28. According to the information available, on June 30, 2010, the alleged victims filed an appeal before the *Consejo de la Carrera Judicial* (Judicial Career Council) to challenge their dismissals, as that body is competent to reinstate them in their positions,¹⁶ and to date, the appeal has not been determined on the merits. The Commission observes that the *Reglamento Interno del Consejo de la Carrera Judicial* (Internal Regulation of the Judicial Career Council) establishes specific terms with short extensions. In effect, the domestic norms establish that the Council will call for an audience so the plaintiff and the *Dirección de Administración de Personal* (Direction of Administration of Personnel) concur to present evidence, which should be examined within the next 15 days. Once the evidence is examined, the Council should issue its resolution within a 5-day term.¹⁷ In this sense, and considering that in the case of two judges, to date there has not been a call for an audience; that in the case of the magistrate Flores Lanza the call for the audience was cancelled; and that in the case of judge López Lone the audience itself was cancelled and there has not been further legal proceedings; the Commission considers that after more than a semester of being filed, the instant remedy does not present signs of effectiveness or prompt resolution with respect to the alleged victims.

29. In addition, the Commission observes the fact that the Council is a dependant body of the CSJ and that two of its five members are part of the CSJ -the organ that dismissed the alleged victims on May 5, 2010-, could influence the effectiveness of the remedy lodged¹⁸. It is also noted that in the dismissal agreements for the alleged victims it was indicated that the removal would take place in the

¹⁵ See: I/A Court H.R., *Chaparro-Álvarez and Lapo-Íñiguez v. Ecuador Case*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 16; I/A Court H. R., *Nogueira de Carvalho et al. v. Brazil Case*. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C No. 161, paragraph 50; I/A Court H.R., *Acevedo Jaramillo et al. v. Peru Case*. Judgment of February 7, 2006. Series C No 144, paragraphs 122 *et seq.*; *Ximenes Lopes v. Brazil Case*. Preliminary Objection. Judgment of November 30, 2005, Series C No. 139, paragraph 4; etc.

¹⁶ The pertinent part of Article 191 of the *Reglamento de la Ley de la Carrera Judicial* (Regulation of the Law of Judicial Career) establishes that: "The resolutions of the *Consejo de la Carrera Judicial* (Judicial Career Council) related to the complaints against dismissals may consist in the confirmation of the removal or the reinstatement of said employee or public official, either to the same position or another of the same level, with the right to receive all salaries accrued since the dismissal (...)."

¹⁷ Article 30 of the *Reglamento Interno del Consejo de la Carrera Judicial* (Internal Regulation of the Judicial Career Council).

¹⁸ The *Reglamento de la Ley de la Carrera Judicial* (Internal Regulation of the Judicial Career Council) establishes: "Article 22.- The *Consejo de la Carrera Judicial* (Judicial Career Council) is a dependant organ of the Supreme Court of Justice. Article 23.- (...) The Council has five (5) permanent members and three (3) substitutes. Permanent members are appointed by the Supreme Court of Justice, and nominated by its President, which presents a list of ten candidates. Two of the permanent members should be magistrates of the Supreme Court of Justice (...)."

date where a substitute judge or magistrate takes office¹⁹. According to the information presented, the removal of judge López Lone and magistrate Flores Lanza was effective on July 1, 2010, with the appointment of substitute judges²⁰. In other words, before the *Consejo de la Carrera Judicial* (Judicial Career Council) made a decision and before the dismissals were effective according to the internal norms.²¹

30. In respect to the alleged lack of presentation of an *amparo*, the Commission observes that according to Honduran law there is a double limitation for filing the aforementioned remedy. First, in order to declare an *amparo* admissible, it is required to exhaust all domestic remedies related to the reported situation, which in the instant case refers to the resolution of the remedy brought before the *Consejo de la Carrera Judicial* (Judicial Career Council), to date pending²². Second, if the Council had issued a decision, an *amparo* filing would have not been admissible according to Article 31 of the *Reglamento del Consejo de la Carrera Judicial* (Regulation of the Judicial Career Council), which establishes that “no remedies of any kind, either regular or special, shall be admissible against final decisions handed down by the Council.” Consequently, in both situations, the filing of a judicial remedy would have been hindered in term of Article 46 of the Convention.

31. Moreover, according to Article 31 thereof, it is not possible to request a judicial review of the disciplinary proceeding for Judicial Branch officials. In that way, not only an *amparo* cannot be filed but any other type of remedy.

32. Given the interplay between the effectiveness of the available remedies for the purposes of exhaustion of 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 these remedies must be taken up with the merits of the complaint. Accordingly, the Commission will join this aspect of the exhaustion of domestic remedies to the merits of the case.

2. Deadline for submitting the petition

33. According to Article 46(1)(b) of the Convention, for a petition to be admitted it must be submitted within six months of the date on which the petitioner was notified of the final decision in the domestic jurisdiction. Nonetheless, as provided in Article 32(2) of the IACHR's Rules of Procedure, in those cases in which the exceptions to prior exhaustion rule apply, the petition must be submitted within a time Commission considers reasonable. To this end, the Commission should consider the date of the alleged violation of rights and the circumstances of each case.

34. In the petition under study, the IACHR considers that the exception to the prior exhaustion requirement provided for at Article 46(2)(a) and (c) of the American Convention applies. Mindful of the date on which the dismissals of the alleged victims took place (resolution of the CSJ of May 5, 2010), and the date on which they filed remedies before the *Consejo de la Carrera Judicial* (June 30, 2010) –to date pending-, the IACHR concludes that the petition, submitted on July 6, 2010, was submitted in a reasonable time, and, therefore, it considers that the requirement established at Article 46(1)(b) of the Convention has been satisfied.

3. Duplication of international proceedings and *res judicata*

35. Nothing in the case file indicates that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as any other petition already

¹⁹ Supreme Court of Justice, Agreements No 346, 348, 371 and 372.

²⁰ The petitioners indicate that in September 2010, judge Chévez de la Rocha was informed of the appointment of a substitute for his position.

²¹ The pertinent part of Article 65 of the *Ley de Carrera Judicial* (Law of Judicial Career) states: “The dismissal is confirmed once all remedies filed by the interested party are exhausted and denied”.

²² Article 46 (inadmissibility of the remedy of *amparo*) of the *Ley sobre Justicia Constitucional* (Constitutional Justice Law).

examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1(c) and 47.d of the Convention have been met.

4. Characterization of the alleged facts

36. As the Commission has stated on other occasions, this stage in the proceedings is not for establishing whether or not a violation of the American Convention was committed. In ruling on admissibility, the IACHR must simply decide whether the claim describes incidents that could tend to establish a violation of the American Convention, as required by Article 47.b, and whether the petition is “manifestly groundless” or “obviously out of order,” as stipulated in Article 47.c. The level of conviction regarding those standards is different from that required in deciding on the merits of a complaint. At this juncture the IACHR must perform a *prima facie* evaluation, which in no way represents a preliminary judgment or untimely opinion on the merits. Its own Rules of Procedure sets out the distinction that exists between the evaluation performed in order for a petition to be ruled admissible and the one carried out to determine whether the State is or is not responsible, by establishing clearly separate phases for analyzing admissibility and analyzing the merits.

37. In the instant case, the petitioners claim that the alleged victims were dismissed from their positions arbitrarily and in the absence of a fair trial. According to the facts set out by the petitioners, the Commission finds that the petitioners have made allegations that are not “manifestly groundless” or “obviously out of order” and that, if proven, could tend to establish violations of Articles 13, 15 and 16 of the American Convention, respectively, in conjunction with Articles 1.1 and 2 thereof. Also, without prejudging the merits of the matter, the Commission finds that the petitioners’ petition contains factual allegations that, if proved, tend to establish violations of the rights guaranteed by Articles 8 and 25 of the Convention, in conjunction with the State’s obligations under Article 1(1) of the Convention. In the Commission’s view, this includes an issue as to whether the petitioners were afforded an effective possibility to request a revision of their dismissals under Article 8(2)(h) of the Convention. Additionally, through application of the principle of *iura novit curiae*, the Commission considers the characterization of a possible violation of Article 5 of the Convention.

38. Since the claim is not obviously groundless or out of order, the Commission believes the requirements contained in Articles 47.b and 47.c of the American Convention to have been met with respect to this aspect of the petition.

V. CONCLUSIONS

39. The Commission concludes that it is competent to hear the petitioners’ claims regarding the alleged violations of Articles 8, 13, 15, 16 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, and that those claims are admissible under the requirements established by Articles 46 and 47 of the American Convention.

40. Also, the IACHR decides to join the analysis of the requirement of prior exhaustion of internal remedies with the merits, regarding the possible violation of Articles 8 and 25. Additionally, through application of the principle of *iura novit curiae*, the Commission will analyze during the merits phase the possible violation of Article 5.1 of the Convention.

41. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To rule this claim admissible as regards Articles 8, 13, 15, 16 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the American Convention.

2. Also, the IACHR decides to join the analysis of the requirement of prior exhaustion of internal remedies with the merits, regarding the possible violation of Articles 8 and 25. Additionally, through application of the principle of *iura novit curiae*, the Commission will analyze during the merits phase the possible violation of Article 5.1 of the Convention.

3. To give notice of this decision to the Honduran State and to the petitioners.

4. To continue with its analysis of the merits of the complaint.

5. To publish this decision and to include it in the Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on March 31, 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, y María Silvia Guillén, Commissioners.