

**REPORT No. 23/17**  
CASE 12.311  
MERITS  
EDUARDO BENJAMIN COLINDRES  
EL SALVADOR  
MARCH 18, 2017

**I. SUMMARY**

1. On May 4, 2000, the Inter-American Commission on Human Rights (hereinafter the "Commission," "Inter-American Commission," or "IACHR") received a petition lodged by the Human Rights Institute of José Simeón Cañas Central American University (hereinafter "the petitioners"), which alleged that the Republic of El Salvador (hereinafter "the Salvadoran State," "El Salvador," or "the State") bore international responsibility by reason of the disciplinary proceedings that culminated in the separation from office of Judge Eduardo Benjamin Colindres as well as for the lack of judicial protection in connection with the alleged facts.

2. The State of El Salvador held that the decision dismissing Judge Colindres from his position did not violate any of the provisions contained in the American Convention, since the proceedings were verified by a competent authority as being in accordance with the Constitution and his right to a hearing was ensured. The State also maintained that the alleged victim had access to adequate and effective domestic remedies.

3. Having examined the positions of the parties, the Commission has concluded that the Salvadoran State is responsible for violation of the right to a fair trial, the principle of legality, the right to participate in government, and the right to judicial protection recognized in Articles 8(1), 8(2)(b), 8(2)(c), 8(2)(h), 9, 23(1)(c), 25(1) and 25(2)(c) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") taken in conjunction with Articles 1 and 2 of that treaty. Based on the foregoing, the Commission formulated appropriate recommendations.

**II. PROCESSING BY THE COMMISSION SUBSEQUENT TO APPROVAL OF ADMISSIBILITY REPORT No. 25/06**

4. The processing of the petition, from the time it was lodged to the decision on admissibility, is described in detail in Report on Admissibility 25/06.<sup>1</sup> On March 22, 2006, the Commission notified the parties of the aforementioned report and, pursuant to Article 38 (2) of its Rules of Procedure then in force, gave the petitioners two months in which to submit additional observations on merits. The IACHR also placed itself at the disposal of the parties with a view to reaching a friendly settlement.

5. On May 23, 2006, the petitioners expressed their willingness to reach a friendly settlement of the case, and on August 21, 2006, submitted a draft agreement. On May 23, 2006, the State presented its observations on merits, and on November 2, 2007, expressed its intention to proceed with the friendly settlement process. After a series of working meetings, the petitioners wrote to the Commission on March 22, 2010, requesting that it consider the friendly settlement stage concluded and that it resume its processing of case. The IACHR received further communications from the petitioners on July 14, August 26, and October 24, 2008; February 26, 2009; March 22, 2010; March 14 and May 22, 2012; and November 6, 2013. The IACHR received additional communications from the State on August 28, 2008, and on February 14 and July 19, 2012. Those communications were duly forwarded between the parties.

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<sup>1</sup>IACHR, Report No. 25/06 (Admissibility), Petition 12.311, Eduardo Benjamín Colindres, El Salvador, March 14, 2006.

### **III. POSITIONS OF THE PARTIES**

#### **A. The petitioners**

6. The petitioners said that on August 11, 1994, the Legislative Assembly officially appointed Eduardo Benjamín Colindres to the position of regular judge (*magistrado propietario*) of the Supreme Electoral Tribunal (TSE). They said that in the wake of infighting in the Christian Democrat Party (PDC)—with which the alleged victim was connected, the Legislative Assembly, at the request of said party, removed Mr. Colindres from office on November 22, 1996. They said that Mr. Colindres' dismissal was motivated by his actions on the TSE. They said that the Constitutional Division of the Supreme Court (hereinafter "the Constitutional Division" or "the Division"), upon examining an application for constitutional relief (*recurso de amparo*) lodged with it, ruled that the Constitution contained no express procedure for the removal of a TSE judge; however, it held that it should be understood that since the Legislative Assembly was the body that evaluated the requirements for their appointment, then it was also empowered to remove them from office when they no longer met such requirements. The petitioners stated that said decision also specified, however, that such a procedure should respect the right to a hearing guaranteed in the Constitution. They said that the Constitutional Division ruled in favor of the application, finding that the alleged victim's guarantee of a hearing and right to tenure had been infringed, and ordered that he be reinstated with back pay.

7. The petitioners said that shortly after Mr. Colindres' reinstatement, PDC deputies requested the Plenary of the Legislature to set up a special committee to ensure the judge's guarantee of a hearing. They said that the petitions filed by Judge Colindres against the creation of the special committee were denied by the Constitutional Division. They said that although, at first, the Constitutional Division ordered the suspension of the decision creating the aforesaid committee, that suspension led the Legislative Assembly to put pressure on the Supreme Court, which resulted in the ensuing unfavorable decisions.

8. They also said that, apart from having no basis in law to perform those functions, the special committee, by issuing a report from which it omitted information in its possession, failed to ensure Mr. Colindres' right of defense. They said that on July 2, 1998, the Legislative Assembly adopted Decree 348 by which it removed Judge Colindres from office.

9. They said that Mr. Colindres filed two *amparo* applications against the decision to remove him, in which, *inter alia*, he questioned the authority of the Legislative Assembly to dismiss TSE judges and alleged violations of due process and of the principle of legality and that he had been tried twice on the same charges. However, those applications were declared inadmissible, and the actions of the Legislative Assembly and special committee were legitimized.

10. They said that in the suit for damages filed by Mr. Colindres as a result of his first dismissal, on December 23, 1999, the Supreme Court ruled against the State, and that the Civil Division upheld that decision on June 13, 2001. They said that the public prosecutor's office filed a cassation appeal, a decision on which was pending from August 2001 until December 2009, when the verdict went in favor of Mr. Colindres. The petitioners said that despite the existence of a final judgment, the State has refused to comply with it.

11. They said that the State is responsible for violation of the rights to a fair trial and judicial protection recognized at Articles 8, 9, and 25 of the Convention, taken in conjunction with Articles 1(1) and 2 thereof, on account of acts that resulted in infringements of his due process guarantees, job tenure, the principle of a competent judge previously established by law, and the principle of legal certainty, given that, according to the petitioners, the judge was sentenced twice on the same charges. In particular, with respect to the principle of legality, they said that the Legislative Assembly did not have the authority to dismiss TSE judges and, therefore, Mr. Colindres' dismissal was illegal and arbitrary. Finally, they argued that as a result of the arbitrary nature of the proceeding the State violated the right of access to public service enshrined in Article 23 of the Convention.

#### **B. The State**

12. The State said that the dismissal of Judge Colindres was due to his official misconduct. It said that for that reason, the PDC political party presented a petition to the Legislative Assembly that resulted in Mr. Colindres' removal from the post to which he had been appointed.

13. In relation to the first removal from office, the State said that the *amparo* application filed was an effective remedy as Judge Colindres was reinstated, in addition to which he was awarded compensatory damages. However, it added, due to the fact that the causes on which the petition for dismissal was based persisted, the Legislative Assembly, in exercise of its authority recognized by the Constitutional Division, instituted new proceedings in which the guarantees of due process were observed throughout without external pressures of any kind.

14. With respect to the proceeding for damages, the State said that the civil cassation appeal was decided on December 22, 2009, which decision became final on February 23, 2010. According to the State, that decision upheld the judgment on the first *amparo* application returned by the First Section of the Center, which found against the State for having dismissed Judge Colindres. The State said that steps were already being taken to enable the payment in the next fiscal year of the compensatory damages awarded to Mr. Colindres. It said that the institutional budget projections concluded with their presentation to the legislative branch for consideration and approval, which, it said, occurred in late September 2012. Subsequently, the State said that the 2013 budget policy was approved in April 2012. In that context, it informed the IACHR that the Ministry of Foreign Affairs requested verifications and that arrangements be made to include sufficient funds in the budget of the TSE or of the Legislative Assembly, so that the compensation awarded to Mr. Colindres could be paid.

15. The State said that it did not violate the right to a fair trial or the principle of legality, since the Legislative Assembly had the authority to dismiss the judge, given that, even though the domestic system of laws contains no provisions expressly governing that process, in view of the fact that the Legislative Assembly was responsible for the appointment, it should also be in charge of any petitions for dismissal when judges cease to meet such requirements. In that sense, it said that nor had it committed any violation of Mr. Colindres' right to participate in government.

16. As for the right to judicial protection, the State said that the remedies sought by Mr. Colindres during the disciplinary process and afterwards were decided by the Constitutional Division in accordance with the Constitution and the law, and were ruled inadmissible, either for improper filing, or for having no constitutional basis, or because Mr. Colindres allegations concerned mere legal technicalities.

#### **IV. ANALYSIS OF MERITS**

##### **A. Proven Facts**

17. At the time of the facts alleged in the petition, Mr. Eduardo Benjamín Colindres was a lawyer with a bachelor's degree in sociology and a doctorate in history.<sup>2</sup> He was appointed regular judge of the Supreme Electoral Tribunal by Legislative Assembly Decree 102 of August 11, 1994, for a term of five years,<sup>3</sup> in accordance with the procedure established in Article 208 Constitution.<sup>4</sup> Mr. Colindres was one of three

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<sup>2</sup> Brief from Mr. Eduardo Benjamín Colindres to the Political Committee dated March 24, 1998, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>3</sup> Official Gazette of the Republic of El Salvador, Legislative Decree 102 of August 29, 1994, Vol. 324, No. 158, p. 22. Annex 1 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>4</sup> The relevant portion of this constitutional provision reads as follows: "Article 208. There shall be a Supreme Electoral Tribunal which shall consist of five judges, who shall serve for five years and be elected by the Legislative Assembly. Three of them from each of the shortlists of three candidates (*ternas*) proposed by the three political parties or legal coalitions that obtained the greatest number of votes in the last presidential election. The two remaining judges shall be elected with the favorable vote of at least two thirds of the elected Deputies, from two shortlists of three candidates proposed by the Supreme Court of Justice, who must meet the requirements to be judges of the divisions at second instance and have no party affiliation." Constitution of El Salvador of 1983. Annex 2 to the petitioner's initial petition of May 4, 2000 (received on that same date).

judges who, under the procedure set forth in the Constitution, had to be elected from shortlists put forward by the political parties or lawful coalitions that garnered the most votes in the last presidential election. Mr. Colindres was elected from a shortlist submitted by the Christian Democrat Party.

18. What follows is an account of the impeachment proceedings conducted by the Legislative Assembly against Judge Colindres, which culminated in his removal from office, in addition to the remedies brought against those decisions.

### **1. The Dismissal of Mr. Colindres as a Judge of the Supreme Electoral Tribunal on November 22, 1996**

19. In 1996, there were various disputes in the Christian Democrat Party (PDC) over the party's leadership selection process that were brought to the attention of the TSE.<sup>5</sup> Various records dating from 1996 show that Mr. Colindres recused himself from certain decisions that concerned the PDC.<sup>6</sup> The record also shows that he participated in decisions relating to that party.<sup>7</sup> According to press reports, the leader of the party reputedly said that there was insufficient communication between the leadership and the judge and, therefore, "we are not excellently represented."<sup>8</sup>

20. In response to a petition for dismissal<sup>9</sup> from members of the PDC, on November 22, 1996, the Legislative Assembly decided by Legislative Decree 899 to remove Mr. Colindres from his position as a judge of the TSE with the argument that:

(...) The conduct of Dr. Eduardo Benjamín Colindres as a TSE judge has caused widespread malaise in the entities of the public administration, preventing the TSE from operating as it should and from meeting the administration's needs and requirements, a fact exacerbated by his clear lack of training and probity in the performance of his duties by acting with bias in

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<sup>5</sup> The existence of problems within the PDC and the Supreme Electoral Tribunal's examination thereof was mentioned by various press media. See Synoptical Table of Newspaper Articles, Headline "*Magistrado se abstendrá de conocer conflicto en PDC*," (Judge to recuse himself from PDC dispute) in LPG newspaper, November 2, 1996, p. 18, and headline "*Riña en Convención. Ni Claramount ni Umaña logran dos tercios de los votos. No hubo ganador en convención del PDC. Breves de la convención del PDC*" (Row at Convention. Neither Claramount nor Umaña Get Two Thirds of Vote. No Winner at PDC Convention. Bulletins from PDC Convention), LPG newspaper, November 25, 1996, pp. 1-6.

<sup>6</sup> See Supreme Electoral Tribunal Record 214 of November 1, 1996, item 4.III, p. 22, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date); Summary of the contents of the certifications of items in TSE records regarding the PDC, p. 4; and Supreme Electoral Tribunal Records 215 and 217 of November 5, 1996, item 4.II and 4.V. pp. 21 and 22, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date); certifications of documents forwarded by the TSE to the Special Committee and the Political Committee on April 24, 1998, p. 152, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, annex to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>7</sup> Thus, for example, in a matter concerning the PDC, specifically the certification of the roll of officers of the National Political Committee, Record 383 of March 18, 1998 shows that Mr. Colindres signed the decision approving that roll. In relation to that matter, Mr. Colindres said that he "neither objected nor obstructed. Summary of the contents of the certifications of items in TSE records regarding the PDC, p. 4, and Supreme Electoral Tribunal Records 383 of March 18, 1998, item 4.III, p. 17, both enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, annex to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>8</sup> Synoptical Table of Newspaper Articles. Headline "*Dirigentes viejos marginados del PDC*" (Old PDC Leaders Sidelined), LPG newspaper, November 6, 1996, p. 7-A.

<sup>9</sup> According to press reports, at a PDC convention, Deputy Villatoro had urged his removal, insisting that "Mr. Colindres was an immoral person." According to the petitioners, in a press report the deputy "explained that Colindres' dismissal was necessary because he had engaged in erratic conduct in the performance of his functions since he had used TSE employees for other purposes and exercised his functions in a biased way, to the detriment of the internal affairs of the PDC Synoptical Table of Newspaper Articles. Headline "*Se unen en la votación ARENA y PDC. Movida Política, Colindres destituido del TSE*" (ARENA and PDC Unite on Vote. Political Maneuver: Colindres Ousted from TSE), in LPG newspaper, November 23, 1996, p. 6, and headline "*Riña en Convención. Ni Claramount ni Umaña logran dos tercios de los votos. No hubo ganador en convención del PDC*" (Row at Convention. Neither Claramount nor Umaña Get Two Thirds of Vote. No Winner at PDC Convention. Bulletins from PDC Convention), LPG newspaper, November 24, 1996, p. 4.

his capacity as a judge in relation to the internal problems affecting the Christian Democrat Party and not recusing himself in relation to said crisis, as well relinquishing the objectiveness and impartiality that his office demanded.<sup>10</sup>

21. The above decree was adopted at a session of the Legislative Assembly presided over by the vice speaker, a deputy who was reportedly a member of the PDC.<sup>11</sup>

## **2. The Reinstatement of Mr. Colindres as a Judge of the Supreme Electoral Tribunal**

22. On December 2, 1996, Mr. Colindres filed an application for constitutional relief (*amparo*) (No. 44-C-96) from Decree 899 with the Constitutional Division of the Supreme Court.<sup>12</sup> On November 4, 1997, the Division reinstated Mr. Colindres as a judge of the TSE. The Division acknowledged "the constitutional and infraconstitutional rules do not envisage an express procedure for the removal of judges" from the TSE.<sup>13</sup> However, it said that if the Legislative Assembly was the competent body to appoint TSE judges "it would be perfectly reasonable to interpret, bearing in mind the political origin of the appointment" that it was also competent to decide their removal from office. However, for that purpose, the "right to a hearing" had to be ensured.<sup>14</sup> The Division ordered Judge Colindres to be reinstated in view of the fact that he was afforded no such guarantee in the process.<sup>15</sup>

## **3. Mr. Colindres Second Dismissal on July 2, 1998**

23. On March 17, 1998, PDC deputies presented an "application for a motion" to remove Judge Colindres from office,<sup>16/17</sup> taking into account the reasons established in Decree 899 and reiterating that he had acted with bias in his adjudicatory capacity in relation to the internal problems of the Christian Democrat Party.<sup>18</sup> On March 24, 1998, Legislative Decision 281 created a special committee to guarantee the right of judge Colindres to a hearing.<sup>19</sup>

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<sup>10</sup> Legislative Decree 899 of November 22, 1996, item V, Annex 3 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>11</sup> In that connection, Deputy Aristides Alvarenga, who signed Decree 899, identifies himself as a member of the PDC in the record of the plenary session of April 30, 1998, in relation to the discussion of item No. 4-A, pp. 78 and 85. Annex to the petitioners' brief received on February 22, 2002.

<sup>12</sup> Brief from Mr. Eduardo Benjamín Colindres to the Political Committee dated May 26, 1998, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 2v. Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date). Amparo Application No. 44-C-96 of December 2, 1996. Annex 4 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>13</sup> Ruling accepting Amparo Application No. 44-C-96, p. 27. Annex 5 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>14</sup> Ruling accepting Amparo Application No. 44-C-96, p. 26. Annex 5 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>15</sup> Ruling accepting Amparo Application No. 44-C-96, p. 33. Annex 5 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>16</sup> The petition for dismissal was presented by the following deputies: Ronal Umaña, Alfonso Aristides Alvarenga, José Ricardo Vega, René Napoleón Aguiluz, Ernesto Santiago Varela, and Rubén Armando Darío Escalante. Legislative Decree No. 348 of July 2, 1998, p. 163, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>17</sup> Motion to dismiss Mr. Colindres, p. 119, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>18</sup> They said that Judge Colindres "has caused widespread malaise in the entities of the public administration, preventing the TSE from operating as it should and from meeting the administration's needs and requirements, a fact exacerbated by his clear lack of training and probity in the performance of his duties by acting with bias in his capacity as a judge in relation to the internal problems affecting the Christian Democrat Party and not recusing himself in relation to said crisis." Legislative Decree 899 of November 22, 1996. Annex 3 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>19</sup> Legislative Decision No. 281, p. 122, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

24. On April 15, 1998, the PDC deputies presented and expanded motion to the Special Committee.<sup>20</sup> They said that bearing in mind that it had been the PDC that nominated him as a TSE judge, the "conduct displayed by Mr. Colindres violates the constitutional principle according to which the three political parties or legal coalitions that obtained the greatest number of votes in the presidential election."<sup>21</sup> [Tr: *sic*; the original Spanish is an incomplete sentence] The deputies referred to a series of situations in which Mr. Colindres purportedly intervened in PDC affairs.<sup>22</sup>

25. On April 15, 1998, the Special Committee decided to "grant a hearing in three days" to Judge Colindres.<sup>23</sup> On April 20, 1998, Mr. Colindres presented a brief to the Special Committee, questioning its powers in said proceeding and saying that the charges brought against him would have to be proved and that he should have the real possibility of defending himself.<sup>24</sup> On April 21, 1998, the Special Committee took the hearing as concluded and requested a variety of information from the TSE.<sup>25</sup> The TSE sent that information on April 28, 1998.<sup>26</sup>

26. On May 21, 1998, the Committee Special submitted its report to the Political Committee<sup>27</sup> for consideration and said that it had not received the documentation requested from the TSE.<sup>28</sup> In response to a request from Judge Colindres, on May 25, 1998, the TSE sent the Political Committee the information that it

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<sup>20</sup> Brief of the deputies petitioning dismissal to the committee set up, April 15, 1998, p. 125, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>21</sup> Brief of the deputies petitioning dismissal to the committee set up, April 15, 1998, p. 125, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>22</sup> Among other arguments, the deputies said that Judge Colindres had favored one of the groups in the PDC in which his wife and he had interests. The deputies said that Judge Colindres had breached the eligibility requirements for holding the position of judge, since he had allegedly failed to act in a manner becoming of a judge, given that in his supposed intervention in the problems of the PDC he had sought "clearly and brazenly to favor his wife," who, according to those deputies, belonged to a group that aimed to supplant the legally constituted officers of the political institution, when the appropriate behavior for any judge would have been to recuse themselves so as not to undermine the impartiality and fairness that should characterize the office of a judge." They said that another aspect that further underscored the "proven immorality of Mr. Colindres" was the fact that "he has used TSE personnel (such as Carlos Ernesto Claramount who served as an electoral registrar) and currently Mr. Jaime Magaña Figueroa, who holds the position of advisor to the judge on the technical committee of the TSE)." [Tr: *sic*; no opening parenthesis in the Spanish] According to the deputies, those individuals were part of the group that "sought criminally to supplant the party's legally recognized officers." Brief of the deputies petitioning dismissal to the committee set up, April 15, 1998, pp. 125 and 126, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>23</sup> Pronouncement of the Special Committee, p. 127, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>24</sup> Brief of Mr. Eduardo Benjamín Colindres addressed to the Special Committee on April 20, 1998, p. 129v, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>67</sup> Brief of the Special Committee dated April 21, 1998, pp. 130-131, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>26</sup> Brief of the TSE to the members of the Political Committee, dated May 25, 1998, p. 143, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>27</sup> Brief from Mr. Eduardo Benjamín Colindres to the Political Committee dated May 26, 1998, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 143, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>28</sup> Report of the Special Committee of May 21, 1998, in relation to file 1058-3-98, p. 142, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

had previously sent to the Special Committee.<sup>29</sup> There is nothing in the record to suggest that Mr. Colindres had a formal opportunity to present his comments in relation to said documentation.

27. In a brief dated May 26, 1998, Judge Colindres informed the Political Committee that he had learned from media reports that the Special Committee had presented a report to the plenary of the legislature. In his brief, he questioned the proceeding and said that his right to a hearing had not been ensured.<sup>30</sup> On June 24, 1998, the Political Committee said that "only the plenary of the legislature can adopt a decision on or accept the above report, and therefore it is returning it for its consideration."<sup>31</sup> There is nothing in the record to suggest that the Political Committee forwarded the brief that Mr. Colindres presented to the Legislative Assembly.

28. On June 29, 1998, the deputies who were seeking dismissal submitted a brief to the Officers of the Legislative Assembly.<sup>32</sup> Among other things,<sup>33</sup> they said that "the judge can no longer be relied upon for the future of democracy" because "he has developed an insidious tendency to rule against the Christian Democrat Party, which nominated him for the office he currently holds."<sup>34</sup> There is nothing in the record to suggest that Mr. Colindres had the opportunity to contest the contents of that brief.

29. On July 2, 1998, the Legislative Assembly adopted Decree 348 by which it removed Judge Colindres from office, saying that "the causes that prompted Decree 899 to be issued persisted."<sup>35</sup> The opinions of a number of deputies who disputed the authority of the Assembly to remove the judge were set down in the record of the plenary session at which the decision to dismiss was adopted.<sup>36</sup> The decision was adopted by a vote of 47 deputies in favor, three against, and two abstentions. PDC deputies took part in the decision.<sup>37</sup>

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<sup>29</sup>Brief of the TSE to the members of the Political Committee, dated May 25, 1998, p. 143, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>30</sup> Brief from Mr. Eduardo Benjamín Colindres to the Political Committee dated May 26, 1998, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 2, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>31</sup>Report of the Political Committee of June 24, 1998, p. 159, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>32</sup> Brief of the deputies to the officers of the Legislative Assembly dated June 29, 1998, pp. 161-162, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>33</sup> They argued that "the judge's record of disrespect and distrust of the highest organ of the State, by accusing a parliamentary special committee established to ensure his right to a hearing of bias and manipulation, even led to a confrontation between the judicial branch and the highest State organ." They also said that "Mr. Colindres was guilty of contempt by questioning the very deputies who were ensuring his right to a hearing," since, in it, "he not only rejected due process but also insulted a body of the Assembly by expressing offensive and inappropriate opinions about the deputies who were on that Committee." Brief of the deputies to the officers of the Legislative Assembly dated June 29, 1998, pp. 161-162, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>34</sup> Brief of the deputies to the officers of the Legislative Assembly dated June 29, 1998, pp. 161-162, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>35</sup>Legislative Decree No. 348 of July 2, 1998, p. 163, enclosed with the certification issued by the Legislative Assembly for files 1157-4-98 and 1058-3-98, p. 128, Annex 9 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>36</sup> Thus, for example, Deputy Julio Samayoa said that "the Assembly could not dismiss certain officials simply because it elected them." In that connection, he said that "it was not the first time that the Constitution was silent in that respect, since when the Constitution was promulgated there was no provision for the removal of the Prosecutor General or the Procurator General." Therefore, until the "reforms establishing the causes" [for dismissal] were adopted, "the Assembly could not remove them from office because it lacked that authority, in spite of any precipitate act that the Prosecutor General might commit." Verbatim record of the plenary session of the Legislative Assembly of July 2, 1998, pp. 7, 10, and 11, Annex 18 to the petitioner's initial petition of May 4, 2000 (received on that same date).

<sup>37</sup>Verbatim record of the plenary session of the Legislative Assembly of July 2, 1998, p. 51, Annex 18 to the petitioner's initial petition of May 4, 2000 (received on that same date).

#### **4. Remedies Attempted by Judge Colindres Prior to His Dismissal on July 2, 1998**

30. On April 20, 1998, Mr. Colindres filed an application for constitutional relief (*amparo*) (No. 130-98) with the Constitutional Division of the Supreme Court against Decision 281 which created the Special Committee.<sup>38</sup> The Division provisionally suspended the challenged decision;<sup>39</sup> however, on April 30, 1998, it dismissed the application.<sup>40</sup> The decision was based on the fact that the petition lodged “contains a number of flaws that prevent examination of the claim contained in it,” and it indicated that there was “objective indetermination in the decision of the authority against which the suit was brought” and “subjective indetermination with regard to the person aggrieved,” since the petition affirmed that it was a case of persecution to create legal uncertainty for the judges of the TSE.

31. While the *amparo* application was being processed, at the plenary session of April 30, 1998, the Assembly authorized the “formation” of a special committee to look into the institutional implications of the decision of the Supreme Court of Justice in relation to the initially ordered suspension.<sup>41</sup>

32. On April 21, 1998, Judge Colindres presented a petition of habeas corpus,<sup>42</sup> which was ruled inadmissible for not being the suitable remedy.<sup>43</sup> Finally, on May 5, 1998, Judge Colindres filed another application for constitutional relief (No. 147-98) against Decision 281 (which created the Special Committee).<sup>44</sup>

33. On that occasion, Mr. Colindres said that the new proceeding before the assembly constituted a violation of the principle of *res judicata* acquired by the ruling issued by the Division in 1996. He also said that he was being made the target of harassment and persecution by the Assembly, which had the power to “investigate acts of national interest,” not to delegate authority to a committee so that he might exercise his right to a hearing. Judge Colindres said that the actions of the assembly were impairing his “personal liberty to discharge [his] functions as a result of due process violations.” [Tr: Spanish text in quotes confusing] Finally, his petition requested the Division to appoint an enforcement judge and to order the Legislative Assembly and the Special Committee to refrain “from continuing to restrict [his] personal liberty to discharge [his] functions.”<sup>45</sup>

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<sup>38</sup>Initial *amparo* application, No. 130-98, April 20, 1998, p. 5, Annex 10 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>39</sup>Ruling of the Constitutional Division of the Supreme Court admitting *amparo* application No. 130-98, April 20, 1998, Annex 11 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>40</sup>Decision to dismiss *amparo* application 130-98, April 30, 1998, Annex 12 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>41</sup>One deputy said that the committee should examine “this interference and its abusive encroachment on the jurisdiction of this organ of the State.” A deputy of the PDC, for his part, was in favor of investigating the Court to ascertain if “it really is a guarantor of the rule of law in our country.” Record of the plenary session of April 30, 1998, in relation to the discussion on item No. 4-A, pp. 78 and 85. Annex to the petitioners’ brief received on February 22, 2002. Record of the plenary session of April 30, 1998, in relation to the discussion on item No. 4-A, pp. 78 and 85. Annex to the petitioners’ brief received on February 22, 2002.

<sup>42</sup>Petition of habeas corpus 210-98, April 21, 1998, Annex 14 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>43</sup>Ruling of inadmissibility on habeas corpus petition 210-98, May 4, 1998, Annex 15 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>44</sup>Initial *amparo* application, No. 147-98, May 5, 1998, p. 6, Annex 16 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>45</sup>Initial *amparo* application, No. 147-98, May 5, 1998, p. 6, Annex 16 to the petitioner’s initial petition of May 4, 2000 (received on that same date).



34. On June 11, 1998, the Division declared the application inadmissible, saying that the “mere fact that proceedings have been instituted” did not amount to an injury.”<sup>46</sup>

## **5. Remedies Attempted by Judge Colindres after His Dismissal on July 2, 1998**

35. On July 15, 1998, Mr. Colindres filed another *amparo* application (No. 231-98) with the Constitutional Division against Decree 348, by which he was dismissed. Among other things, the application argued that the Assembly lacked authority to remove him from office,<sup>47</sup> that he was not given any real opportunity to exercise his right to defend himself owing to the irregularities committed by the Special Committee,<sup>48</sup> and that one of the grounds invoked for his dismissal was “disobedience” (*desacato*).<sup>49</sup> On January 11, 1999, the “Court Prosecutor” presented a brief which argued that the Special Committee lacked jurisdiction to examine the case.<sup>50</sup> The brief held that parliamentary special committees lack competence to ensure the right to a hearing because their express power, granted by Article 131 (32) of the Constitution, is to investigate “matters of national interest.” The brief states that Article 86<sup>1</sup> of the Constitution provides that government officials only have those powers that are expressly accorded to them by the law and not those that are arbitrarily attributed to them.<sup>51</sup>

36. On May 4, 1999, by a majority vote, the Constitutional Division adopted a ruling declaring the application “unfounded.” The Division reiterated that neither the Constitution nor the Electoral Code determined which was the competent authority to remove a judge of the TSE.<sup>52</sup> However, “it is reasonable to surmise that said power resides with the organ that decided the appointment.” It also rejected Mr. Colindres’ argument that he had been tried twice on the same charges.<sup>53</sup>

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<sup>46</sup>Ruling of inadmissibility on *amparo* application No. 147-98, June 11, 1998. Annex 17 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>47</sup>On this point, Mr. Colindres said that Article 131 (37) of the Constitution enshrines the powers of the Legislative Assembly, while Article 131 (38) authorizes it to “exercise the other powers indicated by the Constitution.” He said that “no provision” of the Constitution gives the Assembly the power to remove or dismiss TSE judges. Mr. Colindres said that the right to appoint does not in and of itself give the Assembly the right to dismiss, and that proof of that were the cases of the Prosecutor General of the Republic, the Procurator General of the Republic, and the National Judiciary Council, in which the Constitution had to be reformed in order to give the Assembly that power. Initial *amparo* application No. 231-98, April 15, 1998, p. 4, Annex 19 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>48</sup>Mr. Colindres said that for a right to be deprived there had to be due process and respect for the right to a hearing, which had not been ensured in his case because the Special Committee lacked jurisdiction and because of the fact that it had concealed evidence by informing the plenary on May 21 that it had not yet received the report of the TSE, in spite of the fact that said tribunal had already sent that information. Mr. Colindres also mentioned as another irregularity that the Special Committee presented its report on May 21, 1998, to the plenary of the Legislative Assembly, and the Speaker of the Assembly decided on his own to forward it to the Political Committee. Mr. Colindres said that the Political Committee also concealed evidence that he had submitted, since it did not present to the legislative plenary the brief of May 26, 1998, by which Mr. Colindres denounced the violations of which he considered himself a victim. Initial *amparo* application No. 231-98, April 15, 1998, p. 7, Annex 19 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>49</sup>Mr. Colindres said that in the “piece of correspondence” that served as the basis for his removal from office he was accused of disobedience as a new cause for dismissal, which is an offense that, under Article 236 of the Constitution required the institution of a preliminary proceeding against him, which did not occur. Initial *amparo* application No. 231 231-98, July 15, 1998, Annex 19 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>50</sup>Brief presented by the court prosecutor stating that the Special Committee lacked jurisdiction, dated January 11, 1999. Annex 20 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>51</sup>Brief presented by the court prosecutor stating that the Special Committee lacked jurisdiction, dated January 11, 1999. Annex 20 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>52</sup>Ruling of the Constitutional Division of the Supreme Court declaring *amparo* application No. 231-98 unfounded, p. 20, Annex 21 to the petitioner’s initial petition of May 4, 2000 (received on that same date) and enclosed with the State’s brief of November 14, 2000 (received on November 22, 2000).

<sup>53</sup>Ruling of the Constitutional Division of the Supreme Court declaring *amparo* application 231-98 unfounded, pp. 34 and 35. Annex 21 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

37. It was accompanied by the dissenting opinion of Judge José Enrique Argumedo, who considered that the Assembly did not have disciplinary powers.<sup>54</sup> Specifically, he considered that the Assembly only had the powers granted it by Article 131 (38) of the Constitution. He added that, absent any regulations, the only way to remove a member of the TSE from office was by applying Article 236 of the Constitution concerning the responsibility of public servants for the commission of offenses.<sup>55</sup>

38. On July 27, 1999, Mr. Colindres filed another *amparo* application (No. 588-99) against Decree 348 in which he argued, among other things, that the Constitutional Division had not pronounced on the violation of due process and the right to a hearing, or on the inclusion of disobedience as grounds for his dismissal.<sup>56</sup> The application was refused on November 5, 1999.<sup>57</sup> The Division held that in essence the claim “was based on a mere disagreement with the procedure followed by the Legislative Assembly” and that “the Division is not the body to review the opinions expressed by the Legislative Assembly in Legislative Decree No. 348, or the material assessments or proceedings under Article 11 of the Constitution.”<sup>58</sup>

## **6. Petition for Damages in Relation to the First Dismissal**

39. On January 12, 1999, Mr. Colindres filed suit for damages with the First Civil Chamber of the First Section of the Center,<sup>59</sup> requesting payment of moral damages, consequential damages, and lost earnings between November 22, 1996 (the date of his first dismissal), and November 4, 1997 (the date of the judgment of the Constitutional Division).<sup>60</sup> After a series of motions, on December 22, 2009, the Supreme Court decided to confirm the decision of the First Civil Chamber of the First Section of the Center, which ordered the payment of a sum of money in Mr. Colindres’ favor.<sup>61</sup> That judgment was issued in 2001 and a cassation appeal was filed against it. Therefore, the decision on the cassation appeal took more than eight years. There is no information in the record about any procedures or steps taken in that interval.

40. As the State has recognized, that decision became final on February 23, 2010.<sup>62</sup> Although the State has reported in its briefs that progress had been made with the necessary steps to make the budget appropriation available, as of this writing the Commission has no information as to whether or not that payment was actually made.

## **B. LEGAL ANALYSIS**

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<sup>54</sup>Ruling of the Constitutional Division of the Supreme Court declaring *amparo* application 231-98 unfounded, p. 36. Annex 21 to the petitioner’s initial petition of May 4, 2000 (received on that same date) and enclosed with the State’s brief of November 14, 2000 (received on November 22, 2000).

<sup>55</sup>Ruling of the Constitutional Division of the Supreme Court declaring *amparo* application 231-98 unfounded, p. 36. Annex 21 to the petitioner’s initial petition of May 4, 2000 (received on that same date) and enclosed with the State’s brief of November 14, 2000 (received on November 22, 2000).

<sup>56</sup>*Amparo* Application No. 588-98, p. 3. Annex 22 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>57</sup>According to the ruling, Judge José Enrique Argumedo again voted against the decision because he felt that the fact that the Special Committee and the Political Committee had concealed evidence from the legislative plenary and that the former had not even considered the petitions contained in his brief at the hearing, were not mere legal technicalities.” He also said that nothing had been done in relation to the evidence, despite the fact that it existed, given that it was concealed from the plenary. Judge Mario Solano Ramírez also dissented from the decision and added that the dismissal by the Assembly reflected excessive discretionality in its decisions that verged on the arbitrary. Ruling of inadmissibility on *amparo* application No. 588-98, p. 6. Annex 23 to the petitioner’s initial petition of May 4, 2000 (received on that same date) and enclosed with the State’s brief of November 14, 2000 (received on November 22, 2000).

<sup>58</sup>Ruling of inadmissibility on *amparo* application No. 588-98, p. 4. Annex 23 to the petitioner’s initial petition of May 4, 2000 (received on that same date) and enclosed with the State’s brief of November 14, 2000 (received on November 22, 2000).

<sup>59</sup>Civil suit for damages, p. 1. Annex to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>60</sup>Civil suit for damages, p. 6. Annex 6 to the petitioner’s initial petition of May 4, 2000 (received on that same date).

<sup>61</sup>Ruling on civil cassation appeal No. 22-C-2001, p. 26. Appended by the petitioners on March 14, 2012 (received on that same date).

<sup>62</sup>State’s report of July 18, 2012. Enclosed with the State’s note No. 161/2012, received on July 19, 2012.

41. The Commission will now consider whether the State violated the rights recognized in Articles 8(1),<sup>63</sup> 8(2),<sup>64</sup> 9,<sup>65</sup> 23(1)(c),<sup>66</sup> and 25(1)<sup>67</sup> of the Convention, taking into account the implications deriving from the principle of judicial independence and its protection under the American Convention.

## 1. The Principle of Judicial Independence

42. The principle of judicial independence is an inherent requirement of a democratic system and a fundamental prerequisite for the protection of human rights.<sup>68</sup> It is enshrined as one of the fair-trial guarantees protected by Article 8(1) of the American Convention; moreover, that principle gives rise in turn to “strengthened”<sup>69</sup> guarantees that states must provide to judges to ensure their independence.<sup>70</sup> The organs of the Inter-American system have interpreted the principle of judicial independence as incorporating the following guarantees: an appropriate selection process, guaranteed tenure and the guarantee against external pressures.<sup>71</sup> Specifically insofar as is relevant to this case, with respect to the guarantee of tenure, the Court has established that it “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

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<sup>63</sup>Article 8 (1) of the Convention provides: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

<sup>64</sup>Article 8 (2) of the Convention provides: “Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: [...] b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; [...] h. the right to appeal the judgment to a higher court.”

<sup>65</sup>Article 9 of the American Convention provides: “No 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.”

<sup>66</sup>Article 23(1)(c) provides: “Every citizen shall enjoy the following rights and opportunities: {...} c. to have access, under general conditions of equality, to the public service of his country.”

<sup>67</sup>Article 25(1) of the American Convention provides: “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

<sup>68</sup>IACHR, Report on Merits 12.816, Report No. 103/13, November 5, 2013, par. 112. See United Nations, Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, 23 August 2007, para. 19. In that same connection, see *Habeas corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, par. 30. See also IACHR, *Democracy and Human Rights in Venezuela*, Ch. III, *Independence and Separation of Public Powers*, December 30, 2009, par. 80.

<sup>69</sup>I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 67; IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009, par. 185. Available at: <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, par. 359.

<sup>70</sup>Thus, for example, the Inter-American Court has held that the obligations of the State with respect to persons subject to judicial proceedings in the courts give rise, in turn, to “rights for judges,” which, according to the Court, include “the guarantee of not being subject to removal at will signifies that, in the case of judges, the disciplinary and punishment procedures must necessarily respect the guarantees of due process, and those subject to such procedures must be provided, among other matters, with an effective remedy.” I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, par. 147.

<sup>71</sup>IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, pars. 56, 109 and 184, I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 191.

terminated.”<sup>72</sup> When a judge’s tenure is arbitrarily impaired, “the right to judicial independence recognized in Article 8(1) of the American Convention is violated.”<sup>73</sup>

**2. Right to a Fair Trial (Article 8 of the American Convention in Conjunction with Articles 1(1) and 2 thereof); Principle of Legality (Article 9 of the American Convention in Conjunction with Articles 1 and 2 thereof), Right to Judicial Protection (Articles 25 (1) and 25 (2) (c))**

43. In proceedings of a punitive nature, apart from the guarantees contained in Article 8(1) of the Convention,<sup>74</sup> those recognized in Article 8(2) thereof are also applicable. The latter “are not exclusive to criminal proceedings, but may also apply to proceedings of a punitive character,”<sup>75</sup> which are likewise an expression of the power of states to impose punishment. As is mentioned above, in the case of disciplinary proceedings against judges, such guarantees are strengthened since those proceedings have to do with the principle of judicial independence. Furthermore, those harmed must be offered an effective remedy<sup>76</sup> to challenge any possible human rights violations committed in the context of such proceedings.

44. In light of the foregoing and taking into account the arguments of the parties and the established facts, the Commission will analyze the following aspects enshrined in Articles 8(1) and 8(2) of the Convention: (i) the competence, independence, and impartiality of the disciplinary authority; (ii) the right to a defense and the guarantee of a hearing; and (iii) the right to appeal the punitive decision. The Commission will also analyze the civil suit filed by Mr. Colindres in connection with his first dismissal, taking into account the guarantee of a reasonable time and the duty to comply with the decisions of the domestic courts.

**a. Competence of the Disciplinary Authority and the Respective Proceedings**

45. Article 8(1) of the Convention recognizes the right to a trial by “a competent ... tribunal, previously established by law.” Thus, people “have the right to be tried, in general, by a competent tribunal, in accordance with legally established procedures.” The State should not create courts that do not apply duly established procedural norms in substitution of the jurisdiction that would normally correspond to the [regular] courts.”<sup>77</sup> The purpose of this is avoid people being tried by special opr ad hoc tribunals.<sup>78</sup>

46. States are entitled to design and organize their internal disciplinary proceedings. Such processes should be applied in accordance with previously established procedures that indicates the appropriate authorities and the procedural rules.<sup>79</sup> That guarantee is satisfied when the disciplinary authority

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<sup>72</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 192.

<sup>73</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 192.

<sup>74</sup> I/A Court H.R., *Case of Maldonado Ordoñez v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, par. 72.

<sup>75</sup> I/A Court H.R., *Case of Maldonado Ordoñez v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, par. 75.

<sup>76</sup> I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, par. 147.

<sup>77</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206, par. 75.

<sup>78</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206, par. 75.

<sup>79</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, par. 50.

originates from a rule established in advance of the proceeding,<sup>80</sup> and correlatively, that rule is broken when the disciplinary body lacks the competence recognized by law.<sup>81</sup>

47. The Commission considers that only a transparent designation process, based on objective criteria and that guarantees the equality of all the candidates, is a fundamental guarantee for the independence of the judiciary.<sup>82</sup> Precisely in light of the important function performed by the organs entrusted with the processes of appointment, promotion, and disciplinary sanctions, and the objectivity required for their activity, the Commission has considered that it is advisable for the states to establish an independent organ whose functions include the appointment, promotion, and removal of judges.<sup>83</sup>

48. In the instant case, the fact that the Constitution did not expressly grant the Legislative Assembly authority to remove or dismiss judges of the TSE is not in dispute. Nor is it in dispute that there were no regulations whatsoever governing the proceeding for disciplining members of that Tribunal.

49. To begin with, the Commission finds that the pronouncement of the Constitutional Division that considered that that power belonged to the authority that appointed them cannot itself substitute the law's function of offering, in advance of the proceeding in this particular case, the necessary legal certainty as regards foreknowledge of the competent authority and, therefore, the extent of said competency. The foregoing is even more significant considering that the case involved a punitive proceeding against a judge and bearing in mind the strengthened tenure that those who hold such an office enjoy in order to safeguard their independence.

50. The Commission considers that in this case, keeping in mind the principle of judicial independence, the interpretation of the Constitutional Division in the sense of according competence to the appointing authority is all the more troubling when one considers how judges of the TSE are appointed. Although the appointment process is not under examination in this case, which is confined to the removal from office of Mr. Colindres, the Commission cannot help but note the political and partisan influence in relation to three of the TSE's five members—one of them, the alleged victim.

51. Taking into account that Mr. Colindres was elected from a political party's shortlist, the application by analogy of the powers and requirements related to his appointment to his removal from office essentially meant that what the Legislative Assembly debated in the proceeding it conducted were the contents of the judgments that he signed and whether or not they were favorable to the interests of a faction of his party that was then embroiled in a dispute. The Commission underscores that the principle of judicial independence entails that judges not be removed from office for their decisions (save in the event of some inexcusable error, which was not invoked in this case), the rationale for which must be challenged by the appropriate remedies against such decisions.

52. The Commission also finds that the lack of clarity with respect to the authority of the Assembly to remove members of the TSE from office was denoted not only by the absence of regulations and by the information regarding the debates in the plenary of the Legislative Assembly—in which deputies explained that in the absence of regulatory provisions for the dismissal of certain officials (elected on the basis of the same rules as TSE judges) it was impossible to dismiss them until legal reforms were adopted (see footnote 35 above)—but also in the dissenting opinion of a member of the Constitutional Division (see footnote 51 above).

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<sup>80</sup>*Cf. I/A Court H.R., Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela.* Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, par. 53.

<sup>81</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras.* Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 221.

<sup>82</sup>IACHR, *Democracy and Human Rights in Venezuela*, 2009, par. 187.

<sup>83</sup>See IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, par. 374.

53. Second, the Commission notes that apart from the absence of regulations on the authority of the Legislative Assembly, there were also no rules whatever on the procedure to follow, which would have afforded Mr. Colindres foreknowledge of what steps he should follow, how to exercise his defense, and what remedies would be available to him in the event of an unfavorable decision. That guarantee is also envisaged in Article 8(1) of the Convention.

54. The Commission finds that although the State is empowered to dismiss government officials, including judges who commit the disciplinary faults envisaged by the law as grounds therefor, to exercise that power the State has the responsibility to establish the necessary institutional framework, including express rules on competencies and procedures, so that it may use that power in a manner consistent with its international obligations, particularly those relating to due process, which, as mentioned, are strengthened where judicial authorities are concerned.

55. Bearing in mind the foregoing, the Commission concludes that the Legislative Assembly lacked the authority to remove Judge Colindres from office and that the State had not previously adopted regulations governing the applicable procedures for dismissing members of the tribunal to which he belonged. Consequently, the State of El Salvador bears responsibility for violation of Article 8(1) of the Convention to the detriment of Mr. Colindres, in relation to the obligations established in Article 1(1) of that treaty. Furthermore, given that under Article 2 of the Convention, States are required to adopt necessary measures to “harmonize [their] domestic law” with respect to “the procedure to be followed and the competent bodies to decide disciplinary proceedings,”<sup>84</sup> the Commission considers that the State also violated Article 2 of the American Convention.

56. It having been determined that the Legislative Assembly was not the competent body in this case and that there was no previously established procedure, all the decisions that flowed from that body in the framework of the ad hoc procedure that was adopted in the case violated Article 8 of the American Convention, rendering it unnecessary to analyze the other guarantees of due process.<sup>85</sup> The foregoing notwithstanding, in order that the State may adopt appropriate measures to avoid a recurrence of events such as those that occurred in the instant case, the Commission considers it pertinent to analyze the guarantees that apply to a disciplinary procedure of the kind instituted against Mr. Colindres.

### ***b. Impartiality of the Disciplinary Authority***

57. Judge Colindres was removed from office by the Legislative Assembly; in other words, a political organ. Broadly speaking, the inter-American system has recognized impeachment as a legitimate form of control.<sup>86</sup> However, because of its nature, giving the legislative branch the power to separate judges from office is problematic vis-à-vis the guarantee of independence.<sup>87</sup> The Commission is of the view that “the use of impeachment in the case of justice operators should be gradually eliminated in the region, as impeachment poses a significant threat to judicial independence.”<sup>88</sup>

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<sup>84</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 215.

<sup>85</sup> I/A Court H.R., *Case of Camba Campos et al. v. Ecuador*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 268, par. 223 and *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 241.

<sup>86</sup> IACHR, *Case 12.600 Hugo Quintana Coello et al. (CSJ) v. Ecuador (Merits)*, August 2, 2011, par. 84. In the case of the *Constitutional Tribunal v. Peru*, the Inter-American Court stated that: Under the rule of law, the impeachment proceeding is a means of controlling senior officials of both the Executive and other State organs exercised by the Legislature. However, this control does not mean that the organ being controlled—in this case the Constitutional Court—is subordinate to the controlling organ—in this case the Legislature; but rather that the intention of the latter is that an organ that represents the people may examine and take decisions on the actions of senior officials. I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, par. 63.

<sup>87</sup> IACHR, *Guarantees for the Independence of Justice Operators*, December 5, 2013, par. 204.

<sup>88</sup> IACHR, *Guarantees for the Independence of Justice Operators*, December 5, 2013, par. 205.

58. In any event, in disciplinary proceedings instituted by the legislative branch, the guarantee of impartiality (Article 8(1) of the Convention) remains wholly applicable since the decisive aspect for determining the respective guarantees is the punitive nature of the power being exercised by the authority in question. The guarantee of impartiality entails that the members of the Legislative Assembly “have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy.”<sup>89</sup> When impartiality is being determined, regard must be had, from a subjective standpoint, to the personal conviction and behavior of a judge in a given case, but also, from an objective perspective, if sufficient guarantees are offered to exclude any legitimate doubt in that respect.<sup>90</sup>

59. In the instant case, from a purely institutional standpoint, it is difficult to rationalize that the Legislative Assembly was an impartial organ to punish members of the TSE; that is, the highest authority for such matters, which adjudicated cases in which the parties from which the members of the Legislative Assembly came had an interest. The Commission notes that, according to available information, the above risk to judicial independence materialized precisely in the case of Judge Colindres, since he was dismissed by members of the PDC for conduct attributed to him in relation to cases that involved their own party.

60. Thus, in relation to the first dismissal, Decree 899 established that Mr. Colindres had “acted with bias” in relation “to the internal problems of the Christian Democrat Party.” The record shows that that decree was adopted by the plenary of the Assembly, in which the vice speaker of the Assembly, who belonged to the PDC, took part (see par. 20 above). As for the second dismissal, Decree 348 reiterated the grounds set out in Decree 899 and was adopted by a majority vote of the Legislative Assembly in which deputies belonging to the PDC participated (see par. 28 above). In addition, there were various statements by members of the PDC who took part in the proceedings that clearly evince their interest that Judge Colindres be removed from office for jeopardizing the interests of a faction of that party. Specifically, party members said that Judge Colindres should be removed in view of his behavior in relation to cases that involved the party, or even that his conduct “breached” a constitutional principle since he had been nominated by the PDC (see pars. 22, 23, and 27 above).

61. In sum, having analyzed information presented by the parties, the Commission finds it sufficiently demonstrated that the deputies of the PDC who belonged to the Legislative Assembly and who, therefore, were part of the disciplinary organ, had the intention of punishing Judge Colindres for the way he had acted in cases that involved the PDC, having had a vested interest in the outcome of those cases. The foregoing is incompatible with the guarantee of impartiality recognized in Article 8(1) of the Convention, which was ignored to Mr. Colindres' detriment.

### *c. The Principle of Legality and the Obligation to Justify Decisions*

62. The principle of legality contained in Article 9 of the American Convention governs the actions of State organs in the exercise of their punitive power.<sup>91</sup> That principle applies to disciplinary processes, which are “an expression of the punitive powers of the State” given that they entail an impairment or alteration of the rights of individuals as a consequence of illicit conduct.<sup>92</sup>

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<sup>89</sup>I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, par. 146.

<sup>90</sup> See, ECHR, *Case of Thomann v. Switzerland*, Judgment of 10 June 1996, § 30.

<sup>91</sup>I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, par. 176. Cf. I/A Court H.R., *Baena Ricardo et al. v. Panama*. Preliminary Objections. Judgment of November 18, 1999. Series C No. 61, par. 107.

<sup>92</sup> Cf. I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 257, and *Case of Maldonado Ordoñez v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, par. 89. I/A Court H.R., *Baena Ricardo et al. Case v. Panama*. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, pars. 106 and 108.

63. The Commission has indicated that compliance with the principle of legality enables persons effectively to determine if their conduct is lawful.<sup>93</sup> As the IACHR has held, "The principle of legality has a specific role in the definition of crimes; on the one hand, it guarantees individual liberty and safety by pre-establishing the behavior that is penalized clearly and unambiguously and, on the other hand, it protects legal certainty."<sup>94</sup>

64. 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.<sup>95</sup> However, it 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."<sup>96</sup>

65. The obligation to justify decisions, translates as the "reasons justification" that allows the judge to arrive at a conclusion.<sup>97</sup> That guarantee is closely related to the principle of legality since on the premise that the disciplinary grounds must be established in the State's legal framework in accordance with the above-describe standards, the justification for a ruling and certain administrative decisions should disclose "the facts, reasons and standards on which the authority for the decision was based."<sup>98</sup> In that regard, the justification for the punitive decision is what discloses how the facts supporting the proceeding align with or fall within the scope of the grounds invoked. On this point, in *Cruz Flores v. Peru*, the Court stressed the need that in all punitive decisions there be a link between the conduct of which the person is accused and the provision on which the decision is based.<sup>99</sup> As regards the applicable penalty, the "principle of maximum severity" of the punishment of dismissal of a judge implies that it is only appropriate for "clearly reproachable conduct" and "genuinely serious reasons of misconduct or incompetence."<sup>100</sup>

66. In the instant case, the State had not adopted legislative measures to establish a disciplinary regime for judges of the TSE, which meant that at the time of the events there were no applicable disciplinary grounds or penalties in place. A disciplinary proceeding in such circumstances was, in and of itself, contrary to the principle of legality.

67. Furthermore, neither Decree 348 nor Decree 899 describe concrete acts committed by Mr. Colindres in the performance of his official duties by which to match his behavior to any grounds for disciplinary measures, which, as noted, did not even exist. The Legislative Assembly omitted to mention in the dismissal decision the specific matters in which Judge Colindres had purportedly intervened, or the acts that seemingly compromised his impartiality, necessitating the imposition of the most severe penalty.

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<sup>93</sup>IACHR, *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116.Doc 5 rev. 1, corr., October 22, 2002, par. 225, and Executive Summary, par. 17.

<sup>94</sup>IACHR, Application and submissions to the Inter-American Court of Human Rights in the case of *De la Cruz Flores v. Peru*; referenced in: I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Merits, Reparations and Costs. Judgment of November 18, 2004, Series C No. 115, par. 74.

<sup>95</sup>*Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 257.

<sup>96</sup>*Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 259.

<sup>97</sup>I/A Court H.R., *Case of Maldonado Ordoñez v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, par. 87.

<sup>98</sup>I/A Court H.R., *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, par. 78, and *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, par. 224.

<sup>99</sup>I/A Court H.R., *Case of De la Cruz Flores v. Peru*. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115, par. 84.

<sup>100</sup>I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, Series C No. 302, par. 259.



68. As to cause, although Decree 348 references Decree 899, which, in its turn, included a reference to legal and constitutional provisions, those provisions relate to the appointment requirements for members of the TSE. The Commission has previously set out its position regarding the incompatibility with the Convention of the application by analogy of appointment requirements in the exercise of disciplinary authority from the point of view of the principle of judicial independence, especially when the appointment is essentially political in nature. In that regard, the Commission adds that application by analogy also violates the principle of legality.

69. That violation was reflected in the abstract and ambiguous justifications that were attributed in Decree 899 to Mr. Colindres, such as, for example, causing “widespread malaise”; “preventing the TSE from operating as it should”; not “meeting the administration’s needs and requirements”; “clear lack of training and probity”; or “disobedience,” which, moreover, were unsupported by regulatory provisions establishing them as cause for disciplinary action.

70. In light of the foregoing, the Commission concludes that the State violated the obligation to provide justification for decisions and the principle of legality established in Articles 8(1) and 9 of the Convention, taken in conjunction with the obligations contained in Articles 1 and 2 thereof, to the detriment of Mr. Colindres.

#### *d. The Right to a Hearing and the Right of Defense*

71. The right to a hearing (Article 8(1) of the Convention) includes the right of access of all persons to the tribunal or state organ responsible for determining their rights and obligations.<sup>101</sup> The right of defense, for its part, includes the obligation of prior notification in detail to the accused of the charges against him (Article 8(2)(b) of the Convention) and that he be afforded adequate time and means for the preparation of his defense (Article 8(2)(b) of the Convention). The two rights—to a hearing and defense—are interrelated, since “To provide a hearing to a person under investigation implies permitting him to defend himself adequately.”<sup>102</sup> The right to a hearing need not necessarily be exercised orally in all proceedings; it may be exercised in writing.<sup>103</sup> The authority in charge of the disciplinary proceeding must act in accordance with the procedure established for that purpose and allow the right of defense to be exercised.<sup>104</sup> That right is impaired, for example, when the amount of time granted to mount a defense is not adequate for examining the case and the body of evidence.<sup>105</sup>

72. In this case, the Commission has already concluded that the absence of a regulatory framework created uncertainty with regard to the grounds for disciplinary measures and the applicable procedure. Furthermore, the special committee set up to ensure the right to a hearing is not expressly mentioned among the types of committees that the Legislative Assembly may establish under the Constitution.<sup>106</sup> In the Commission’s opinion, all of this, in addition to the violations already found, seriously

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<sup>101</sup> I/A Court H.R., *Cf. Genie Lacayo Case v. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, par. 74, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, par. 140.

<sup>102</sup> Thus, the Commission has held: “To provide a hearing to a person under investigation implies permitting him to defend himself adequately, with the assistance of an attorney, in knowledge of all the evidence mounted against him; to provide him with a hearing is to permit him to be present at the examination of any witnesses that testify against him, to permit him to challenge their testimony, and to cross-examine them in order to discredit their incriminating statements as contradictory or false; to provide an accused with a hearing is to give him the opportunity to deny and to detract from the documents sought to be used against him.” IACHR, Report No. 50/00, Case 11.298, *Reinaldo Figueredo Planchart vs. Venezuela*, par. 112.

<sup>103</sup> I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, par. 75.

<sup>104</sup> I/A Court H.R., *Case of the Constitutional Court v. Judgment of January 31, 2001*. Series C No. 74, pars. 73 and 74. IACHR, Report No. 30/97, Case 10.087, Merits, *Gustavo Carranza (Argentina)*, September 30, 1997, par. 68

<sup>105</sup> I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, pars. 81-83.

<sup>106</sup> According to the State, under Article 131 of the Constitution, the Legislative Assembly has the power to “appoint special committees for the investigation of matters of national interest and to adopt the agreements or recommendations that are considered  
[continues ...]

impaired the predictability of the procedure and the opportunities for Judge Colindres to prepare a defense Mr. Colindres had no way of knowing that he would have three days in which to exercise his right of defense because there were no regulations in that regard. In any event, the Commission considers that that amount of time was excessively short to prepare a defense, a fact aggravated by the vagueness of the offenses and behavior described in the motion for dismissal.

73. In addition, the Commission finds that, among other things, (i) Mr. Colindres did not have the opportunity to comment on the brief submitted by the PDC deputies to the officers of the Legislative Assembly (see par. 27 above); (ii) there is nothing in the record to suggest that the brief that he presented to the Special Committee in his defense was included in the case file that the Legislative Assembly had before it when it decided to remove him from office (see par. 26 above); and (iii) the information submitted by the TSE to the Special Committee that would have had an effect in clarifying the alleged conduct with which Judge Colindres was charged was not forwarded by the Special Committee, nor was Mr. Colindres offered a formal opportunity to present his observations in that regard; indeed, to the contrary, it was Mr. Colindres himself who relayed that information (see par. 25 above).

74. The Commission finds the sum of the above-mentioned irregularities amounted to a serious impairment of the principle of equality of arms, with the result that Judge Colindres was at a great disadvantage in terms of his possibilities of preparing and offering evidence in his defense at his hearing by the committee established for that purpose. Therefore, the Commission concludes that the State violated Mr. Colindres' rights to a hearing and defense recognized at Articles 8(1) and 8(2)(b) and (c) of the American Convention, taken in conjunction with the obligations set forth in article 1(1) thereof.

#### *e. Review of the Punitive Decision and the Right to Judicial Protection*

75. The right of appeal is recognized as a part of due process of law by Article 8(2)(h) of the Convention.<sup>107</sup> With respect to this guarantee, the United Nations Basic Principles on the Independence of the Judiciary provide that "[d]ecisions in disciplinary, suspension or removal proceedings should be subject to an independent review."<sup>108</sup> The review of a conviction demands the possibility of a comprehensive examination of the appealed decision,<sup>109</sup> which requires that it be verified by a higher body that can analyze the questions as to fact, evidence, and law on which the challenged judgment is based.<sup>110</sup>

76. In the instant case, the Commission notes that the State has not demonstrated the availability of a remedy in the applicable legal framework that guarantees a review of a conviction in the context of a disciplinary proceeding. As regards the *amparo* application, the Constitutional Division's decision of November 25, 1999 clearly states that "the Division is not the body to review the opinions expressed by the Legislative Assembly in Legislative Decree No. 348, or the material assessments or proceedings." There is no evidence whatever to suggest a habeas corpus application, also attempted by Mr. Colindres, could potentially have succeeded in bringing about a review of the decision. Consequently, since there were no rules governing the possibility of appealing against the Legislative Assembly's decision, the State violated Mr. Colindres' right recognized in Article 8(2)(h) of the Convention, taken in conjunction with Articles 1(1) and 2 of that treaty.

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[... continuation]

necessary based on the reports of such committees." See response of the State of El Salvador to the communication of the petitioners in Case 12.311, Eduardo Benjamín Colindres, May 22, 2006. Enclosed with the State's note OEA-104/06 of May 20 326. The Assembly's lack of authority to create such a committee was also pointed out by the "Court Prosecutor" (see par. 31 above).

<sup>107</sup> I/A Court H.R., *Case of Herrera Ulloa vs. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004, par. 158.

<sup>108</sup> Basic Principles on the Independence of the Judiciary, Principle 20.

<sup>109</sup> I/A Court H.R., *Case of Herrera Ulloa vs. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004. Series C No. 107, par. 165.

<sup>110</sup> I/A Court H.R., *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013, Series C, No. 260, par. 245.

77. In addition, under Article 25 of the Convention, States are required to provide a suitable and effective remedy for acts that violate their rights, whether those established in the Convention or in the law.<sup>111</sup>

78. The Commission observes that in the remedies invoked by Mr. Colindres, he alleged a variety of violations of due process, including the Legislative Assembly's lack of authority to remove a judge of the TSE from office, lack of jurisdiction and irregularities on the part of the special committee in ensuring his right of defense, and violation of the principle of legality (see pars. 31 and 33 above). The Commission notes that the response of the Constitutional Division was basically devoted to validating the interpretation by which the Assembly was competent to order the removal of TSE judges, while failing properly to examine Mr. Colindres' arguments.

79. The Commission considers that, although Mr. Colindres had access to the application for constitutional relief (*amparo*) as a protection mechanism with the potential to protect his rights, the Constitutional Division did not analyze the consistency of the arguments advanced by Mr. Colindres bearing in mind the rights protected in the Constitution and in the American Convention, as it was obliged to do. Notwithstanding that, as has been demonstrated, Mr. Colindres' submissions in the context of the *amparo* applications filed coincide with the violations of the American Convention already established in this report, against which the victim was entitled to judicial protection. On the contrary, those violations were validated by the Constitutional Division's findings.

80. At the same time, the Commission cannot overlook that while the *amparo* application filed by Mr. Colindres—which provisionally suspended enforcement of the challenged decision—was being processed, the record shows that the Legislative Assembly authorized the “formation” of a special committee to look into the institutional implications of the decision of the Supreme Court of Justice. According to certain deputies, that suspension in the context of a judicial proceeding on an application for constitutional relief was an “interference” and warranted investigating the Court to ascertain if “it really is a guarantor of the rule of law in our country.” The Commission has no information regarding that committee's proceedings; however, it notes that it became a kind of watchdog monitoring the decisions of the Supreme Court of Justice and, therefore, a possible source of external pressure on its activities.

81. In view of the above, the Commission finds that the Salvadoran State is also responsible for violation of the right to judicial protection recognized at Article 25 of the American Convention taken in conjunction with Article 1(1) of the same instrument.

#### ***f. Reasonable Time and Right to Judicial Protection in Relation to the Civil Suit***

82. As is established in the proven facts, Mr. Colindres filed a civil suit seeking reparation for his first dismissal. That proceeding lasted from January 12, 1999, until December 22, 2009; in other words, almost 11 years. Furthermore, there is nothing in the information available to suggest that the State complied with reparation as ordered. In that connection, the Commission feels it pertinent to analyze that suit and its compliance taking into account the reasonable-time guarantee and the duty to comply with judicial decisions.

83. Article 8(1) of the American Convention establishes as one of the elements of a fair trial that tribunals reach a decision on cases submitted for their consideration within a reasonable time. Therefore, a long delay may per se constitute a violation of the principle of due process.<sup>112</sup> The Commission and the Court

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<sup>111</sup> I/A Court H.R., *Castillo Páez Case v. Peru*. Merits. Judgment of November 3, 1997. Series C No. 34, par. 82; *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations, and Costs. Judgment of September 19, 2006. Series C No. 151, par. 131, and *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 183, par. 78.

<sup>112</sup> I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166; *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, par. 85; and *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 160.

have consistently relied on the following elements to analyze reasonableness of time: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the general effects on the legal situation of the person involved in the proceeding.<sup>113</sup>

84. The IACHR has also held that “[i]f the judicial branch is to serve effectively as an organ for the control, guarantee and protection of human rights, it must not only be constituted formally, but it also has to be independent and impartial, and its rulings must be carried out.”<sup>114</sup> The Court has held that one of the components of the right to judicial protection recognized in Article 25 the American Convention is that states must “ensure the means to enforce the decisions and final judgments issued by . . . competent authorities.”<sup>115</sup> Thus, effectiveness of judgments depends on their enforcement.<sup>116</sup>

85. As regards reasonableness of time, the Commission notes, first, that the State did not offer any explanation for the almost 11 years that it took for the final judgment to be rendered.

86. In spite of that, the Commission finds that there is nothing in the record to suggest that the suit and its settlement were particularly complex such as to justify the above delay. As regards the activity of the judicial authorities, as stated in the proven facts, although the decision at first instance was rendered on December 23, 1999, and the one at second instance on June 13, 2001, the cassation appeal was not disposed of until more than eight years later. The Commission notes that given the nature of the cassation appeal, the debate essentially centered on questions of law. Apart from that, the Commission has no information about the proceedings conducted during that interval and, as was mentioned, no justification was forthcoming from the State either. As to the activity of the interested party, there is nothing in the record to suggest that Mr. Colindres did anything to hinder the process.

87. Based on the above, the Commission considers that the civil suit did not conform to the guarantee of reasonable time, in violation of Article 8(1) of the American Convention taken in conjunction with Article 1(1) of that instrument, to Mr. Colindres' detriment.

88. Finally, as of this writing, the Commission has received no information that Mr. Colindres has received the reparation ordered in the context of the civil suit. Consequently, the Commission finds that apart from taking unreasonably long in the terms analyzed above, that mechanism was also not enforced in a timely manner, in violation of Article 25(2)(c) of the American Convention.

### **3. Right of Access to Public Service**

89. Article 23(1)(c) recognizes the right of judges to have access to public service under “under general conditions of equality.” The Court has interpreted that article to mean that the arbitrary impairment of the tenure of judges violates the right to judicial independence enshrined in Article 8(1) of the Convention in conjunction with the right to have tenured access under general conditions of equality, to the public service of one’s country, has established in Article 23(1)(c).<sup>117</sup>

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<sup>113</sup> I/A Court H.R., *Case of the Massacre of Santo Domingo v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, par. 164.

<sup>114</sup> IACHR, Case 12.357, Application to the Inter-American Court, Discharged and Retired Employees of the Office of the Comptroller, Peru, April 1, 2008, par. 52.

<sup>115</sup> I/A Court H.R., *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, par. 65; and *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010, Series C No. 216, par. 166.

<sup>116</sup> I/A Court H.R., *Case of Mejía Idrovo v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 5, 2011. Series C No. 228, par. 104.

<sup>117</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, par. 192.

90. In the instant case, the institution of disciplinary proceedings against Mr. Colindres was motivated by his actions as a judge of the TSE in relation to matters concerning the PDC. As has been shown, Mr. Colindres was removed from office in an arbitrary proceeding in which due process and the principle of legality were violated in the manner described herein. In such circumstances, and consistent with the interpretation contained in the preceding paragraph, the Commission considers that the State also violated Article 23(1)(c) of the American Convention taken in conjunction with Article 1(1) of that instrument to Mr. Colindres' detriment.

## **V. CONCLUSIONS**

91. The Commission concludes that the State is responsible for violation of the right to a fair trial, the principle of legality, the right to participate in government, and the right to judicial protection recognized in Articles 8(1), 8(2)(b), 8(2)(c), 8(2)(h), 9, 23(1)(c), 25(1) and 25(2)(c) of the Convention taken in conjunction with Articles 1(1) and 2 of that treaty, to the detriment of Mr. Colindres.

## **VI. RECOMMENDATIONS**

92. Based on the above conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF EL SALVADOR:**

1. Reinstate Mr. Benjamín Eduardo Colindres in a position similar to the one he held, with the same pay, welfare benefits and rank as he would enjoy at present had he not been dismissed, for the length of time that remained under his term; or, if for justified reasons his reinstatement is not possible, pay him an alternative indemnity.

2. Provide reparation for the consequences of the violations established in this report, including both material and nonpecuniary damages

3. Take steps to implement the necessary legal reforms and training to ensure that disciplinary proceedings against judges of the Supreme Electoral Tribunal, both in terms of their regulation and in practice, are conducted in conformity with the guarantees of competency, independence, and impartiality, and in strict observance of the right of defense, and that the applicable disciplinary grounds and penalties are compatible with the principle of legality.