REPORT No. 21/18
CASE 12,955
MERITS[1]
DANIEL URRUTIA LAUBREAUX
CHILE
February 24, 2018

I. SUMMARY

1. On December 5, 2005, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition presented by the Center for Justice and International Law (CEJIL) and Daniel Urrutia Laubreaux (hereinafter "the petitioner")[2] alleging that Chile (hereinafter "the Chilean State," "the State," or "Chile") was internationally responsible to the detriment of Daniel Urrutia Laubreaux.[3]

2. The Commission approved Admissibility Report 51/14 on July 21, 2014.[4] On August 15, 2014, the Commission notified the parties of the report and made itself available to help them reach a friendly settlement. However, both parties did not express interest in doing so. The parties were given the time provided for in the Rules of Procedure to submit additional comments on the merits. All the information received was duly transferred between the parties.

3. The petitioner alleged that the State violated the right to freedom of expression of the alleged victim—who held the position of guarantee judge in the city of Coquimbo—when the Supreme Court of Justice of Chile ordered the application of a disciplinary sanction because of an academic paper he presented during a course on human rights in which he criticized the stances taken by the Judicial Branch during the Chilean dictatorship. The petitioner held that the disciplinary proceeding also failed to comply with a series of due process guarantees, such as the right to defense, impartiality of the disciplinary authority, and the principle of presumption of innocence.

4. The State maintained that an administrative process within the Judicial Branch was applied to the alleged victim that respected all due process guarantees. Specifically, it stated that the sanction was applied after conducting a serious investigation and that the alleged victim had opportunity to appeal it. Consequently, it stated that the case did not involve any violation of the rights of Mr. Urrutia.

5. Based on the considerations of fact and of law, the Inter-American Commission concluded that the Chilean State is responsible for the violation of the rights enshrined in articles 8(1), 8(2)(b), 8(2)(c) (fair trial), 9 (principle of legality), 13(2) (freedom of thought and expression), and 25(1) (judicial protection) of the American Convention on Human Rights (hereinafter the American Convention" or "the Convention"), in conjunction with the obligations established in articles 1(1) and 2 of the Convention, to the detriment of Daniel Urrutia Laubreaux. The Commission made the corresponding recommendations.

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[1] Conforme a lo dispuesto en el artículo 17.2 del Reglamento de la Comisión, la Comisionada Antonia Urrejola Noguera, de nacionalidad chilena, no participó en el debate ni en la decisión del presente caso. Pursuant to the provision of Article 17.2 of the Rules of Procedure of the Commission, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or in the decision of this case.

[2] Later, in a letter dated August 13, 2012, CEJIL indicated it wished to withdraw as the petitioner and representative and identified IDHEAS as the new representative. In a letter dated September 18, 2013, the alleged victim appointed Fabián Sánchez Matus as his representative. A letter dated September 1, 2015, stated that Javier Cruz Angulo Nobara and José Antonio Caballero Juárez had been appointed as representatives. Lastly, Fabián Sánchez Matus was again appointed as representative.

[3] Due to an error in admissibility report 51/14 of the IACHR, the name of the alleged victim was spelled Daniel Urrutia Labreaux rather than Daniel Urrutia Laubreaux.

[4] IACHR. Report No. 51/14. Case 12,955. Daniel Urrutia Labreaux. July 21, 2014.

II. POSITION OF THE PARTIES

A. Petitioner

6. The alleged victim stated that on March 2, 2004, in his capacity as a guarantee judge for the city of Ovalle, Fourth Region, Chile, he asked the Supreme Court of Chile for a secondment to Santiago to attend classes for a Human Rights and Processes of Democratization certificate program offered by the Human Rights Center of the Universidad de Chile in conjunction with the International Center for Transitional Justice.

7. He stated that on April 8, 2004, the Supreme Court of the Republic granted him the corresponding permission in accordance with the provisions of Article 340 of the Organic Tribunals Code.

8. He said that on November 30, 2004, he submitted a paper to the Supreme Court titled "public policy proposal for introducing a human rights focus to the work of the Judicial Branch of the Republic of Chile," to demonstrate he had successfully finished the certificate program.

9. Regarding the content of the paper, he said it conducted an analysis of the need to change the structure of the country's system of justice, suggested reforming the disciplinary regime because it did not comply with due process guarantees, and proposed that judges be selected, promoted, and trained under a new model of administration of justice that was committed to defending human rights, in accordance with the stage of the transition that the State was currently in.

10. He also stated that the paper included proposed actions that the Supreme Court could take, such as recognizing the conclusions of the report from the National Truth and Reconciliation Commission and the report from the National Commission on Torture; issuing a public apology to the victims of human rights violations and to officials who were removed from the judiciary based on their political opinions; and making a clear commitment to guarantees of non-repetition.

11. He stated that on December 20, 2004, the Supreme Court ordered a copy of the aforementioned paper be sent to the La Serena Appellate Court with the note "for your information and all relevant purposes."

12. He stated that on December 27, 2004, in official letter 6183, the Secretary of the Supreme Court of Justice returned the paper to him with the note "because the referenced report includes appraisals deemed unsuitable for this tribunal. From the Secretary of this Supreme Court by order of the President."

13. He said that in Official Letter No. 87, dated January 12, 2005, the La Serena Appellate Court asked for information within five days "on the reasons for sending the Supreme Court a copy of the paper" within "administrative case file AD-175-2004 and remitted to this Court for all relevant purposes."

14. He said that on January 17, 2005, he sent his response, in which he stated that "the reasons taken into account by the undersigned judge were to demonstrate to the Supreme Court that he had successfully completed the course, inform it of the high grade he obtained, and deliver the final product of his research—that is, the aforementioned paper. It is stated that the aforementioned report is intended to be strictly academic."

15. He said that with no further proceedings, on March 31, 2005, the La Serena Appellate Court ruled to sanction him with the disciplinary measure of a "written censure." According to the petitioner, the ruling found that the paper submitted "without question includes expression that is unconscionable and improper in the form of a judge of the Republic alluding to the actions of his superiors, thereby violating the principle of the chain of command that governs the legal structure of the Judicial Branch."

16. He said that a decision by the Appellate Court found "a violation of the prohibitions established in subparagraphs 1 and 4 of Article 323 of the Organic Code of Tribunals of Chile, which essentially ban judiciary

officials from criticizing authorities for their actions or publishing or attacking in any way the official conduct of other magistrates."

17. He indicated that on April 5, 2005, he appealed the ruling before the Supreme Court, arguing that should the sanction be upheld, it would restrict judges from reviewing past judiciary practices or decisions, and he reiterated that the purpose of his paper was to send a copy and demonstrate the outcome of the course he took during the secondment he was granted.

18. He said that on May 6, 2005, the Supreme Court ruled to uphold the decision and reduce the punishment to a "private admonishment," on finding that his intention was not to demonstrate the outcome of the secondment granted by submitting an academic paper, but to issue veiled criticism of the highest court. The Plenary ordered that the sanction be included on the alleged victim's personnel record.

19. He stated that the decision of the Plenary of the court was not unanimous, with 6 of the 17 magistrates dissenting. One of the dissenting magistrates stated that "even in the absence of agreement with his conclusions, it is not appropriate to apply a disciplinary sanction to the Magistrate, as this would mean punishing ideas." He stated that on June 6, 2005, he was notified of the Supreme Court's ruling.

20. Elsewhere, following release of the admissibility report, the alleged victim reported on other disciplinary processes and alleged acts of harassment against him.

21. He said that in light of the circumstances, he requested unpaid leave and moved to Mexico to pursue activities related to his experience as a judge in the Chilean adversarial system of criminal justice. He said this lasted three years and nine months. In February 2012, with opportunities to renew his unpaid leave exhausted, he rejoined the judiciary as a judge with the Seventh Guarantees Court of Santiago, continuing with the work assigned to that role.

22. He stated that on September 4, 2013, the Joint Chiefs of Staff appealed a ruling issued by the alleged victim on the right to vote of those deprived of liberty. He said the appeal was made to the Supreme Court to challenge the ruling through a disciplinary process rather than an ordinary process. It asked for "direct corrective administrative actions to be taken as deemed necessary to nullify the orders and actions" of the alleged victim. The petitioner stated that his ruling was overturned, but no information is available as to whether he was sanctioned again.

23. He said this case should be dealt with based on his status as a human rights defender and what should be examined was whether the State's actions had a chilling effect that could spread to other members of the judiciary.

24. With regard to his rights, he alleges the State violated his **right to a fair trial.** Specifically, he alleged that the right to defense was not guaranteed because the communication from the Appellate Court dated January 12, 2005, asking him to explain within five days why he had sent a copy of his paper to the Supreme Court, did not include a formal notification of the launch of a disciplinary procedure, nor was any prior communication provided detailing the charges against him. He said he was only given five days to respond, with no preliminary hearing to present his defense, as provided for in Article 536 of the Organic Code of Tribunals. He also alleged that the decisions to sanction him were not well founded. He added that the State failed to comply with **its obligation to adopt domestic legal effects** because the disciplinary system did not provide due process guarantees.

25. He argued that the State violated the **principle of legality** because the disciplinary measure applied to him was based on broadly ambiguous grounds and interpreted at the discretion of the authorities, causing a lack of foreseeability as to what could be sanctionable conduct.

26. He said the State violated his **right to freedom of thought and expression** because sending the paper entitled "Public Policy Proposal for Introducing a Human Rights Focus" was a form of disseminating or communicating his ideas. He said that through the conduct of its Judicial Branch, the Chilean State impinged

upon the free expression of ideas originated through academic research and production work by imposing a disciplinary measure that affected the alleged victim's access to a better position in the judiciary. He said this sanction constituted censorship and a disproportionate restriction on the right to freedom of expression. He said his academic work addressed an issue of general interest—the role that the Judicial Branch played during the dictatorship—and that Chilean society has the right to access this type of information.

27. He also alleged that his right to **judicial protection** was violated in conjunction with the guarantee of impartiality because he did not have access to an effective remedy for challenging the ruling to sanction him. He noted that it was the Supreme Court that ruled on his appeal, the same court that had expressed its opinion when it sent the paper to the La Serena Appellate Court to launch the disciplinary proceeding with the note that it contained "appraisals deemed unsuitable for this tribunal."

28. He alleged that the State violated his **labor rights** because the Supreme Court's decision of May 6, 2005, remained on his personnel record, which will affect his access to promotions and ability to climb the ranks of the Judicial Branch.

B. State

29. The State's response was limited to one page, with annexes. In it, it only addressed the disciplinary process related to the academic paper the alleged victim sent to the Supreme Court and stated that the procedure gave the victim an opportunity to make his pleadings and arguments in his defense, as well as to appeal the corresponding rulings. It indicated that the procedure involved a serious investigation to determine whether the alleged victim was administratively responsible, and that all due process guarantees were respected.

III. ESTABLISHED FACTS

A. About Daniel Urrutia Laubreaux

30. According to the case file, Mr. Daniel Urrutia Laubreaux began his career in the judiciary as a trial and guarantees judge in the city of Freirina in 2001, in the Third Region of Atacama. In January 2003, he was promoted to guarantee judge in the city of Ovalle, in the Fourth Region of Coquimbo.[5]

31. In May 2006, he was appointed judge of the Seventh Guarantee Court in the city of Santiago. He belongs to the National Association of Judicial Branch Magistrates of Chile, where he served two terms—in 2007 and 2013—as coordinator of the Human Rights and Gender Committee.[6]

B. Relevant legal framework

32. Article 79 of the Constitution of Chile[7] establishes the following:[8]

> The Supreme Court is entrusted with the administrative, disciplinary, and financial oversight of all the Courts of the nation.

33. In the section pertinent to the present case, the Organic Code of Tribunals[9] establishes the following:

[5] Brief of the petitioner with comments on the merits of the case, submitted on December 26, 2014. Information in addition to the December 18, 2014, communication.

[6] Brief of the petitioner with comments on the merits of the case, submitted on December 26, 2014. Information in addition to the December 18, 2014, communication.

[7] Promulgated on October 21, 1980.

[8] The content of this article relevant to this case is established in the text of Article 82 of the Constitution currently in force.

[9] Law 7421, published on July 9, 1943.

Article 323. Judiciary officials are prohibited from:
1 °. Congratulating or criticizing the Executive Branch, public officials, or public entities for their actions;
(…), and
4 °. Publishing, without authorization from the President of the Supreme Court, writing defending their official conduct or attacking, in any way, other judges or magistrates.

Art.535. Appellate Courts are responsible for maintaining judicial discipline throughout the territory of their corresponding jurisdictions, immediately supervising the conduct of their magistrate members and junior judges, and ensuring compliance with all the duties required of them by the law (...)

Art. 536: Pursuant to the authority ascribed in the previous article, Appellate Courts will hear and settle—without trial—the complaints brought by injured parties against judges for any shortcoming or abuses they may have committed during the course of the performance of their duties; and, following a hearing with the judge in question, will hand down the measures necessary to quickly address the misconduct that led to the complaint.

Art. 537: The shortcomings or abuses referred to in the foregoing article can by corrected by the Appellate Courts through one or more of the following measures:
1. Private admonishment
2. Written censure (...).

Article 337. For all legal purposes, a judge is assumed to be performing poorly in any of the following cases: (...)
2 °. If more than three disciplinary measures are ordered against a judge over a period of three years; (...)

Article 551. The only remedy to which rulings handed down by single judge and multi-judge courts in their exercise of their disciplinary authorities are subject to is appeal. (...)

C. Academic work of the alleged victim

34. According to the case file, on April 8, 2004, the Supreme Court of Justice of Chile authorized the alleged victim to attend the Human Rights and Processes of Democratization certification program offered by the Universidad de Chile Law School and the International Center for Transitional Justice[10]from March 29 to September 10, 2004.

35. On November 30, 2004, the alleged victim informed the Supreme Court that he had passed the certificate program and submitted his final paper, titled "Public Policy Proposal for Introducing a Human Rights Focus to the Work of the Judicial Branch of the Republic of Chile," with the note "to be made available to the plenary for the purposes deemed pertinent."[11]

36. The paper propose that the Judicial Branch adopt a human rights focus and made a series of criticisms of its actions, specifically with regard to its role during the Chilean military dictatorship. Specifically, the alleged victim's paper stated that the Truth and Reconciliation Commission found that "the Judicial Branch did not react vigorously enough to human rights violations which, along with other factors, prevented it from effectively protecting the essential rights of persons (…)." He stated that its attitude "aggravated the process of

[10] Annex 1. Official Letter No. 3690 of April 12, 2004, addressed to Judge Daniel Urrutia Laubreaux and signed by the Secretary of the Supreme Court of Chile. Annex 1 of the initial petition of December 5, 2005.
[11] Annex 2. Official Letter No. 242 of April 30, 2004, addressed to the President of the Supreme Court and signed by Judge Daniel Urrutia Laubreaux. Annexed to the comments from the State dated October 11, 2016.

systematic violation of human rights by failing to provide protection in the cases reported and gave the agencies conducting the repression confidence that their illegal actions would remain in impunity."

37. Based on the findings of the Truth and Reconciliation Commission, the alleged victim's paper stated the following:

> To effectively reposition the Judicial Branch morally and ethically as a protector of the rights of citizens, the highest governing authority of the Judicial Branch has the moral duty, given current political viability, to recognize clearly and without excuses the State's responsibility in the extremely grave human rights violations described in the Commission's conclusions. We honestly believe this is the only way for the judiciary to begin winning back the community's trust that it lost during the dark night for human rights that was the violation of human rights during the military regime.[12]

38. The alleged victim also proposed that the Judicial Branch take the following measures: "a. a public act of recognition by the plenary of the Supreme Court of the National Truth and Reconciliation Commission and the National Commission on Torture's conclusions regarding the Judicial Branch. b. A public apology to the more than 3000 people who were victims of human rights violations in the form of disappearances and their families and Chilean society as a form of symbolic reparations for the Judicial Branch's responsibility in those violations. c. a public act of recognition for the functionaries, judges, rapporteurs, and magistrates dismissed from the Judicial Branch for their political opinions or for what others thought were their political opinions. (...) d. a clear commitment to guarantees of non-repetition (...) the proposal is for the creation of a Special Secretariat within the Office of Supreme Court Studies that would be in charge of implementing and then evaluating the measures deemed necessary to introduce a human rights focus into the Chilean Judicial Branch."[13]

D. Disciplinary process initiated against the alleged victim

39. On December 22, 2004, the Secretary of the Supreme Court sent the La Serena Appellate Court "records on a report sent to this Court by Mr. Daniel Urrutia Laubreaux, Judge of the Guarantee Court of Ovalle."[14]

40. In a letter dated December 27, 2004, from the Secretary of the Supreme Court, the alleged victim was informed that "pursuant to the orders of the Plenary of this Court, the so-called 'final paper' sent is hereby returned (...). This is because the referenced report includes appraisals deemed unsuitable and unacceptable for this tribunal. From the Secretary of this Supreme Court by order of the President."[15]

41. On January 12, 2005, the president of the La Serena Appellate Court sent an official letter to the alleged victim stating that "it has been ordered that you be asked for information on your reasons for sending the Supreme Court a copy of your report, 'Public Policy Proposal for Introducing a Human Rights Focus to the Work of the Judicial Branch of the Republic of Chile,' which it received and filed under administrative case file AD-175-2004, sent to this court for the requisite purposes, and for which a response is required within five days (...)"[16] The alleged victim was notified of the official letter on January 13, 2005.

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[12] Annex 3. "Public Policy Proposal for Introducing a Human Rights Focus to the Work of the Judicial Branch of the Republic of Chile." Annex II to the initial petition of December 5, 2005, and annex to the comments of the State of October 11, 2016.

[13] Annex 3. "Public Policy Proposal for Introducing a Human Rights Focus to the Work of the Judicial Branch of the Republic of Chile." Annex 2 of the initial petition of December 5, 2005.

[14] Annex 4. Official Letter No. 6151, Administrative Record. AD-175-2004 of December 22, 2004, addressed to the President of the Appellate Court signed by the secretary of the Supreme Court. Annexed to the comments from the State dated October 11, 2016.

[15] Annex 5. Official Letter No. 6183 of December 27, 2004, addressed to Judge Daniel Urrutia Laubreaux and signed by the Secretary of the Supreme Court of Chile. Annex 3 of the initial petition of December 5, 2005.

[16] Annex 6. Official Letter No. 87 January 12, 2005, addressed to Judge Daniel Urrutia Laubreaux and signed by the President and Secretary of the La Serena Appellate Court. Annex 4 of the initial petition of December 5, 2005.

42. On January 17, 2005, the alleged victim sent the report requested by the La Serena Appellate Court, stating therein that "the reasons taken into account by the undersigned judge were to demonstrate to the Supreme Court that he had successfully completed the course, inform it of the high grade he obtained, and deliver the final product of his research—that is, the aforementioned paper. It is stated that the aforementioned report is intended to be strictly academic."[17]

43. On March 31, 2005, the La Serena Appellate Court sanctioned the alleged victim with the disciplinary measure of a written censure. In the ruling, it stated that:

> (...) upon reading the paper, it appears its author—a Judge of the Republic—has used it in certain sections on the actions of the judicial branch to make value judgments rebuking or criticizing specific conduct, actions, or omissions by his ranking superiors. He even states that to effectively reposition the Judicial Branch morally and ethically as a guarantor of the rights of citizens, the highest governing authority of the Judicial Branch—that is, the Supreme Court—had the moral duty to recognize clearly and without excuses its responsibility for human rights violations. He even proposes the measures that, in his judgment, the Supreme Court should take.
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> (...). The fact that judge Urrutia Laubreaux made manifest his personal opinion on certain actions and omissions of his ranking superior and even proposed specific activities to amend the actions he criticizes, and to justify making this criticism, used the vehicle of an academic paper, which he specifically sent to the Supreme Court "to be made available to the plenary for the purposes deemed pertinent," makes it without question expression that is unconscionable and improper coming from a judge of the Republic in reference to the actions of his ranking superiors, thereby violating the principle of the chain of command that governs the legal structure of the Judicial Branch. In addition, it is a violation of the prohibition established in subparagraphs 1 and 4 of Article 323 of the Organic Code of Tribunals of Chile, which in its essence bans judiciary officials from criticizing authorities for their actions or publishing or attacking in any way the official conduct of other magistrates.

44. The Appellate Court found that as it had competence to maintain judicial discipline, in accordance with Article 535 of the Organic Code of Tribunals, "Guarantee Judge of Coquimbo Mr. Daniel Urrutia Laubreaux is hereby given the disciplinary measure of written censure."[18]

45. On April 5, 2005, the alleged victim appealed the ruling of the La Serena Appellate Court of March 31, 2005, to the Supreme Court. In the brief challenging the ruling, the alleged victim stated that "the analysis made in the paper, which has not been published, does not refer to any specific official in particular, and especially not to any current officials. Rather, it is an assessment of the Supreme Court's role as an institution at a historically decisive moment, and it academically recommends and argues that the Supreme Court make a moral recognition (...)."[19]

46. The alleged victim also stated that "understanding the restriction on criticism that applies to judges as the La Serena Appellate Court does would protect the judiciary's past practices or decisions from all intellectual inquiry and academic criticism, which in this case was not even made public." The alleged victim's appeal requested the "removal of the disciplinary sanction of written censure" and acquittal for that charge.[20]

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[17] Annex 7. Report on administrative case no. 679-2004, dated January 17 2005 and signed by Daniel Urrutia Laubreaux. Annex V to the initial petition of December 5, 2005, and annexed to the comments of the State of October 11, 2016.

[18] Annex 8. Ruling of the La Serena Appellate Court of March 31, 2005, No. 679-2004. Annex VI to the initial petition of December 5, 2005, and annex to the comments of the State of October 11, 2016.

[19] Annex 9. Appeal submitted by Daniel Urrutia Laubreaux of administrative proceedings No. 679-2004. Annex VII to the initial petition of December 7, 2005, and annex to the comments of the State of October 11, 2016.

[20] Annex 9. Appeal submitted by Daniel Urrutia Laubreaux of administrative proceedings No. 679-2004. Annex VII to the initial petition of December 7, 2005, and annex to the comments of the State of October 11, 2016.

47. On May 6, 2005, the Supreme Court upheld the ruling being challenged but changed the sanction to "private admonishment"[21] and ordered that the sanction be included on the alleged victim's personnel record.[22]

48. The ruling stated:

> (...) That what was relevant this case is not the academic nature that may be attribute to the paper written by the judicial official in question nor the fact that in sending it to this Court, the intention may have been to demonstrate having performed the secondment authorized by this Court. Far from it; rather, the censure is for the lack of judgment, prudence, moderation, and basic respect and consideration revealed by both the attempt to give instructions to the "highest governing authority of the Judicial Branch"—in the words of the author—and the fact that the paper includes a veiled criticism of this Supreme Court.
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> (...) effectively, with regard to the former, review of the research or paper—sent by the aforementioned judge "to be made available to the plenary for the purposes deemed pertinent"—reveals that the judicial official states that this Supreme Court has "the moral duty" to take a certain stance, even spelling out the specific measures it should take. The goal, in his view, is the "effective moral and ethical repositioning" of this Branch of State as a protector of the rights of citizens. As for the latter, there is no question it amounts to a censure—at least an implicit one—of the highest judicial authority, as based on the declared objective of sending these proposals to the Plenary of the Court, one can only conclude that the intention was to portray omission or lack of the specific measures proposed as a failure to fulfill a supposed "moral duty" (...).

49. The Supreme Court concluded that the conduct in question violated "the provision in Article 323, paragraph 4, of the Organic Code of Tribunals prohibiting all judicial officials from attacking 'in any way' the official conduct of other judges or magistrates. Consequently, in accordance with Article 544, paragraph 8, of the same Code, the corresponding disciplinary authorities shall be exercised."[23] The Court reduced the sanction to "private admonishment," taking into account that "the severity of the infraction found could be offset by the inexperience of the official (four years in his position) with how he should behave toward his ranking superiors (...)."

50. The Commission observes that six of the 17 magistrates who adopted the decision issued dissenting opinions to the decision. Specifically, three magistrates stated that:

> although the paper includes criticisms of the work of the Judicial Branch, in particular of the Supreme Court of the time for its actions during the period beginning on September 11, 1973, criticisms that have been voiced over time by distinguished figures, such as the 'Rettig Commission and, lately, the 'Valech Commission,' whose conclusions this Court rejected by agreement on December 9, 2004, it is no less true that, due to the nature of the paper, the fact that the author sent it to his ranking superior, who did not publicize it in any way, the respect that should be granted an academic paper written to pass a course on the paper's topic and that was authorized by his ranking superior, and the guarantee of freedom of opinion established in the Political Constitution of the Republic, should lead to the conviction that even

[21] Annex 10. ruling of May 6, 2005, of the Supreme Court on the appeal submitted by Daniel Urrutia Laubreaux of administrative proceedings No. 679-2004. Annex VIII to the initial petition of December 8, 2005, and annex to the comments of the State of October 11, 2016.

[22] Annex 10. ruling of May 6, 2005, of the Supreme Court on the appeal submitted by Daniel Urrutia Laubreaux of administrative proceedings No. 679-2004. Annex VIII to the initial petition of December 5, 2005, and annex to the comments of the State of October 11, 2016; a note dated May 16, 2005, is also on the record indicating: "note for the record that the ruling was included on his personnel record removing the disciplinary measure of private admonishment imposed on Mr. Daniel Urrutia Laubreaux, Judge of the Guarantee Court of Ovalle. Santiago, sixteen of May two thousand and five." AD-218-2005.

[23] Annex 10. ruling of May 6, 2005, of the Supreme Court on the appeal submitted by Daniel Urrutia Laubreaux of administrative proceedings No. 679-2004. Annex VIII to the initial petition of December 5, 2005, and annex to the comments of the State of October 11, 2016.

in the absence of agreement with his conclusions, it is not appropriate to apply a disciplinary sanction to the Magistrate, as this would mean punishing ideas.[24]

51. Likewise, three other magistrates issued similar opinions, finding that the facts of the process did not constitute disciplinary infractions.[25]

52. The Commission recalls that the disciplinary measures are placed on the personnel record of the sanctioned individuals, and as noted, the Organic Code of Tribunals establishes that judges are presumed to have committed misconduct when three disciplinary measures have been issued against them over a period of three years.

E. Other disciplinary proceedings

53. The Commission observes that following release of the admissibility report, the alleged victim pointed to other disciplinary processes and alleged acts of harassment against him, supposedly for exercising his freedom of expression.

54. He said that in 2006, the Santiago Appellate Court opened a disciplinary proceeding against him because in June of that year, in response to a complaint from an individual deprived of liberty in the Santiago I Pretrial Detention Center, he conducted an special visit to the jail and issued a report—later leaked to the media—indicating that more than 100 people deprived of liberty slept outdoors during the winter. He said the purpose of the disciplinary process was to determine if he had authority to conduct that visit. He said he was acquitted after a year and a half, but the plenary of the Court ordered him to "be more respectful of the government and the Court of Santiago."[26]

55. He stated that in May 2008, the Appellate Court launched a new process against him in connection with a complaint filed by the Ministry for Internal Affairs after he rejected criminal suits brought against students for alleged crimes of public disorder in the context of student protests. The objective of the process was to determine if he "had abdicated his role as a judge by becoming a defender of the demonstrators." The file on the process was later closed.[27]

56. He stated that in June 2008, the Ministry of Justice filed a complaint with the alleged victim's ranking superior, the President Magistrate of the Court of Santiago, alleging that the alleged victim tried to visit a Santiago prison with a video camera to record interviews with people deprived of liberty who had previous reported the use of torture at the facility. He said his ranking superior "retaliated" against him for his actions.[28]

57. He said that he criticized the President Magistrate in his report on his visit to the detention center for having recommended he take certain actions, and that she was later appointed Magistrate of the Supreme Court. He alleged that from her position, the magistrate sought three disciplinary sanctions against the alleged victim with the goal of expelling him from the Judicial Branch, as pursuant to the Organic Code, a judge is dismissed after three sanctions of the course of three years. He said that based on this, he sought unpaid leave and moved to Mexico for three years and nine months, from April 2009 to January 2012. He rejoined the Chilean Judicial Branch in February 2012.

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[24] Annex 10. ruling of May 6, 2005, of the Supreme Court on the appeal submitted by Daniel Urrutia Laubreaux of administrative proceedings No. 679-2004. Annex VIII to the initial petition of December 5, 2005, and annex to the comments of the State of October 11, 2016.

[25] Annex 10. ruling of May 6, 2005, of the Supreme Court on the appeal submitted by Daniel Urrutia Laubreaux of administrative proceedings No. 679-2004. Annex VIII to the initial petition of December 5, 2005, and annex to the comments of the State of October 11, 2016.

[26] Brief from the petitioner with comments on the merits of the case, submitted on December 26, 2014. Information in addition to the December 18, 2014, communication.

[27] Brief from the petitioner with comments on the merits of the case, submitted on December 26, 2014. Information in addition to the December 18, 2014, communication.

[28] Brief from the petitioner with comments on the merits of the case, submitted on December 26, 2014. Information in addition to the December 18, 2014, communication.

58. Finally, the record shows that on August 22, 2013, the alleged victim issued a ruling on the right to vote of people deprived of liberty that ordered the Electoral Service to "provide the means necessary for citizens who are in pretrial detention and not charged by the Seventh Guarantees Court of Santiago to fully exercise the political rights guaranteed by our laws, especially the ability to vote in the upcoming presidential elections."[29]

59. Later, the Joint Chiefs of Staff of the State asked the Supreme Court to adopt the measures necessary to nullify the orders issued by the alleged victim on the grounds that he lacked competence to issue them.

60. The decision of the alleged victim was overruled by the Santiago Appellate Court on October 7, 2013. The court found that the decision reached by the alleged victim "falls outside the scope of his competence, and he lacks the legal authority to issue it."[30]

IV. ANALYSIS OF LAW

A. Prior considerations

61. The Commission notes that in his initial petition, the alleged victim only made reference to the disciplinary sanction applied to him for the academic paper he sent to the Supreme Court after completing the Human Rights and Democratization Processes certificate program of the Universidad de Chile. Based on those facts, on July 21, 2014, the IACHR declared the petition admissible for examination of the alleged violation of the rights of Daniel Urrutia enshrined in articles 8, 9, 13, and 25, in conjunction with articles 1(1) and 2 of that treaty. Following approval of the admissibility report, the alleged victim pointed to other disciplinary processes brought against him in the context of his position with the judiciary. As they were not admitted in the admissibility report and are not sufficiently connected to the facts declared admissible, and as the IACHR does not have sufficient evidence on them, in this section the Commission will only address the facts found in the initial petition that were admitted by this Commission in its report of July 21, 2014.

B. Right to a fair trial, principle of legality, and judicial protection (Articles 8, 9, and 25 of the American Convention)

1. General considerations on the applicable guarantees

62. The Commission recalls that both bodies of the inter-American system have indicated that the guarantees established in Article 8 of the American Convention are not limited to criminal processes; rather, they also apply to processes of other natures.[31] Specifically, as regards sanctioning processes, both bodies have indicated that by analogy, the guarantees established in articles 8(1) and 8(2) of the American Convention do apply.[32] Taking into account that in this case, the alleged victim received a disciplinary sanction related to his position as a judge of the Guarantees Court of Coquimbo, the due process guarantees established in Article 8(2) of the Convention are applicable.

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[29] Annex 11. Ruling AD-1170-2013 of Daniel Urrutia Labreaux of August 23, 2013. Annexed to the comments from the State dated October 11, 2016.

[30] Annex 12. Official Letter No 187-2.013 of November 11, 2013 de la Santiago Appellate Court, addressed to the President of the Supreme Court. Annexed to the State's comments dated October 11, 2016.

[31] IACHR Report No. 65/11, Case 12,600, Merits, Hugo Quintana Coello et al. (Justices of the Supreme Court), Ecuador, March 31, 2011, para. 102; Inter-American Court. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127;. Case of the Constitutional Court v. Peru. Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; and Case of López Mendoza v. Venezuela. Merits, Reparations and Costs. Judgment of September 1, 2011, Series C No. 233, para. 111.

[32] IACHR. Access to Justice as a Guarantee of Economic, Social and Cultural Rights. A review of the standards adopted by the Inter-American system of human rights. OEA/Ser.L/V/II.129. September 7, 2007, paras. 98-123; and Case No. 12,828, Report 112/12, Marcel Granier et al., Venezuela, Merits, November 9, 2012, para. 188; Inter-American Court. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127.

63. The IACHR also highlights that disciplinary processes conducted against operators of justice should be compatible with the principle of judicial independence. The bodies of the inter-American system have interpreted the principle of judicial independence to include the following guarantees: an adequate appointment process, tenure, and protection from external pressures.[33]

2. Right to prior notification in detail of charges and adequate time and means for defense[34]

64. The Commission recalls that the right to defense means ensuring that individuals subjected to a process, including an administrative process, can defend their interests or rights effectively and on an equal footing, being fully informed of the accusations formulated against them.[35] Specifically with regard to procedures for disciplining judges, the Inter-American Court has followed the provisions of the Basic Principles by indicating that the authority in charge of the disciplinary process should conduct itself in compliance with established procedures and permit exercise of the right to defense.[36] The Court has found that the right to defense must necessarily be exercised from the outset of the identification of an individual as a potential perpetrator of or participant in a punishable act, and its exercise only concludes once the process is complete.[37] In keeping with what was indicated previously, this is equally applicable to disciplinary processes that can resulting in a sanction.

65. In this case, the IACHR observes that the alleged victim was never notified that he was subject to a disciplinary procedure. In this regard, the record shows that on January 12, 2005, the La Serena Appellate Court asked the alleged victim to report his motive for sending a copy of his academic paper to the Supreme Court, but did not tell him its request was part of a disciplinary process, nor the alleged infraction for which he was accused. Without knowledge of this, on January 17, 2005, the alleged victim sent the information requested. On March 31, 2005, the La Serena Appellate Court applied the disciplinary measure of written censure to him, and on May 6, 2005, the Supreme Court confirmed this decision, although it changed the sanction to private admonishment. The Commission additionally highlights that pursuant to Article 536 of the Organic Code of Tribunals, a preliminary hearing should have been held to present his defense. This also did not take place in this case.

66. It can be concluded from this that the alleged victim was not informed of the disciplinary process brought against him, the reasons for it, or the rules he may have violated with his conduct. This affected not only his right to prior notification in detail of the charges, but also his right to prepare an adequate defense, as on one hand, he did not formulate his response as a form of defense, and on the other, the process did not comply with the legally established requirement of a hearing.

67. Based on these considerations, the IACHR concludes that the State violated articles 8(2)(b) and 8(2)(c) of the American Convention, in conjunction with Article 1(1) of the same instrument, to the detriment of Daniel Urrutia Laubreaux.

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[33] IACHR, Report on Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, December 5, 2013, paras. 56, 109 and 184, Inter-American Court. Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 191.

[34] The pertinent part of Article 8(2) reads as follows: 2. 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;

[35] Inter-American Court. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 117.

[36] IACHR Report No. 103/13, Case 12,816, Merits Report, Adan Guillermo López Lone et al., Honduras, para. 143.

[37] Inter-American Court, Case of Barreto Leiva v. Venezuela. Merits, Reparations, and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 29. Citing *mutatis mutandis* the Inter-American Court, Case of Suárez Rosero *v*. Ecuador. Judgment of November 12, 1997. Series C No. 35, para. 71; and Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment dated August 12, 2008. Series C No. 186, para. 148.

3. Right to an impartial disciplinary forum[38] and the right to judicial protection[39]

68. The IACHR recalls that "the authorities that handle disciplinary proceedings must always ensure the guarantees of independence, competence and impartiality, as this is a materially jurisdictional function and a condition sine qua non of due process, regardless of whether the disciplinary authority is a formal court."[40]

69. Regarding the impartiality of the disciplinary authority, the IACHR has indicate that it requires that intervening authority approach the facts of the case objectively, without any preconceived notions or bias, and that it offer sufficient objective guarantees to dispel any doubt that the accused or the community might harbor with respect to the absence of impartiality.[41] Impartiality of the forum means that its members do not have a direct interest, have not taken a position, have no preference for any of the parties, and are not involved in the dispute.[42] Like the European Court, the inter-American system "has found that personal or subjective impartiality is to be presumed unless there is proof to the contrary. For its part, the so-called objective approach consists of determining whether the authority that performed the jurisdictional functions offered guarantees sufficient to preclude any legitimate doubt or suspicions as to the authority's prejudice or bias."[43]

70. Finally, the IACHR recalls that States have a general obligation to provide effective judicial remedies to people who allege having been victims of human rights violations (Article 25), which should be in accordance with the rules of legal due process (Article 8(1)). For a remedy to exist, it is not enough for it to be provided for by law; rather, it must be truly effective in establishing whether there has been a violation of human rights and in providing redress.[44]

71. The Commission observes that in this case, after the alleged victim sent his paper to the Supreme Court, the court forwarded it to the La Serena Appellate Court. Likewise, on December 27, 2004, the Supreme Court returned the alleged victim's paper "because the referenced report includes appraisals deemed unsuitable and unacceptable for this tribunal."

72. The IACHR recalls that it was the Supreme Court itself, which had already made a value judgment of the content of the paper, that heard the appeal of the sanction imposed on the alleged victim, meaning the court had already take a position on whether the alleged victim sending his paper to the Supreme Court merited some kind of rebuke. For these reasons, the IACHR concludes that the Supreme Court does not meet the conditions of impartiality for deciding on appeal whether the disciplinary sanction against the alleged victim was merited.

73. The Commission likewise concludes that this demonstrates that the alleged victim did not have an effective remedy for appealing the decision to sanction him, in keeping with the rules of due process. The Commission also observes that on hearing the appeal, the Supreme Court of Justice did not protect Mr.

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[38] Article 8.1 of the American Convention establishes that, 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

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

[40] IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 188.

[41] IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 200.

[42] IACHR Report No. 103/13, Case 12,816, Merits, Adán Guillermo Lopez Lone et al., Honduras, November 5, 2013, para.136.

[43] IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 200.

[44] Inter-American Court, Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.). Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C No. 158. Para. 125; Inter-American Court, Case of the Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125. Para. 61; Inter-American Court, Case of the "Five Pensioners." Judgment of February 28, 2003. Series C No. 98. Para. 136.

Daniel Urrutia Laubreaux from violation of the right to defense, as already established, nor did it properly balance the alleged affects of his academic paper against the right to freedom of expression as enshrined in the Constitution and the Convention.

74. Based on this, the Commission concludes that the Chilean State is responsible for the violation of the rights enshrined in articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) of the same instrument, to the detriment of Daniel Urrutia Laubreaux.

4. Principle of legality[45]

75. The principle of legality recognized in Article 9 of the Convention governs the actions of State bodies when they move to exercise their power to punish.[46] The principle is applicable to disciplinary processes that are "an expression of the punitive power of the State" because illegal conduct in these processes can harm or affect the rights of individuals.[47]

76. The IACHR has stated that disciplinary procedures against justice operators must include clear rules on the grounds and procedure for removing judges from office. Absence thereof, in addition to fueling doubts about the independence of the judiciary, can lead to arbitrary abuses of power, with direct repercussions for the rights of due process.[48]

77. Regarding this, the law should provide detailed specifications of the infractions that could lead to the imposition of disciplinary measures, including the gravity of the infraction and the type of disciplinary measure to be applied if applicable. The European Court has found in the case of Maestri v. Italy that the principle of legality not only requires the disciplinary grounds to have a basis in domestic law, but also that the law establishing those grounds be accessible to the people to whom it applies. It also must be sufficiently precise so as to make the circumstances and consequences of actions to which disciplinary measures apply foreseeable.

78. In the context of the independence of judges, the Office of the Rapporteur has indicated that, "vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities are incompatible with the American Convention because they can support potentially arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech."[49]

79. In the case of López Lone, the Inter-American Court found that "it is impossible to codify all assumptions in disciplinary matters, so that ultimately, there must always be a relatively open clause concerning professional duties. However, in these assumptions and when open or indeterminate disciplinary offenses are used, it is fundamental to provide a statement of reasons when applying them, because it is incumbent on the disciplinary court to interpret these norms respecting the principle of legality and observing the greatest rigor when verifying the existence of punishable conduct."[50]

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[45] Article 9 of the American Convention establishes that "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.

[46] IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/Doc.49/15, December 31, 2015, para. 253.

[47] Inter-American Court, Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 05, 2015. Series C No. 302, para. 257 and Case of Maldonado Ordoñez v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 89. Inter-American Court. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment dated February 2, 2001. Series C No. 72, paras. 106 and 108.

[48] IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 206 and 207.

[49] IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 209.

[50] Inter-American Court, Case of López Lone et al. v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 05, 2015. Series C No. 302, para. 271.

80. In this case, the Commission recalls that the alleged victim was sanctioned based on paragraphs 1 and 4 of Article 323 of the Organic Code of Tribunals, which prohibits judiciary officials from "Congratulating or criticizing the Executive Branch, public officials, or public entities for their actions" and "Publishing, without authorization from the President of the Supreme Court, writing defending their official conduct or attacking, in any way, other judges or magistrates."

81. The IACHR underscores the excessive broadness of paragraph 4 of Article 323, especially the part on "attacking in any way" the conduct of judges or magistrates. The Commission finds that this grounds is in itself incompatible with the principle of legality, which, as indicated is applicable to disciplinary procedures and must be applied with particular rigor in disciplinary processes against judges, in light of the principle of judicial independence.

82. The Commission finds that this broadness prevents the alleged victim for having clarity on what the law requires, as it would not be reasonable to infer that a critical analysis of the stance of the Judicial Branch during the military dictatorship could be classified as an attack on one's superiors. The Commission also notes that the document does not attack or offensively criticize any individuals belonging to the Supreme Court or the Judicial Branch. The Commission thus underscores that the way the disciplinary grounds is worded not only affected to foreseeability of the conduct that is reproachable under the rule but also gives disciplinary authorities extremely broad discretion for deciding what could be considered an "attack."

83. Based on these considerations, the IACHR finds that the State violated Article 9 of the American Convention, in conjunction with articles 1(1) and 2 of the same instrument, to the detriment of Daniel Urrutia Laubreaux.

C. Freedom of Thought and Expression[51]

84. The Commission recalls that freedom of expression is the right of every person, under conditions of equality and without discrimination of any kind. As the case law has held, ownership of the right to freedom of expression enshrined in the American Convention cannot be confined to a specific profession or group of persons, or to the realm of freedom of the press The broad perspective adopted in the American Convention includes public officials, who do not forfeit their basic rights upon taking office; instead they enjoy the same broad freedom of expression that every other person enjoys.[52]

85. According to inter-American case law, exercise of the right to freedom of expression by public officials, especially judges, has certain connotations and specific characteristics; this right may be restricted if it affects the independence and impartiality that they must have in the cases in which they participate.[53]

86. In the report on the merits in the case of Adriana Beatriz Gallo regarding Argentina, the IACHR indicated with regard to the freedom of expression of judges that the full exercise of the right to express one's own ideas and opinions and disseminate available information, as well as the ability to deliberate openly and without inhibitions on matters of public interest are crucial for democratic systems to function properly. For this reason, expression on matters of public interest enjoys greater protection under the American Convention. This means that the State must be especially careful to refrain from limiting these forms of expression. Given the importance of the role of freedom of expression in monitoring public administration, any restriction of political dialogue or issues in the public interest must have a narrow range of application and be strictly necessary in a democratic society.

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[51] Article 13(2) of the American Convention establishes that "The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.

[52] IACHR Report No. 103/13, Case 12,816, Merits, Adán Guillermo Lopez Lone et al., Honduras, OEA/Ser.L/V/II.149, Doc.27, November 5, 2013, para. 201.

[53] IACHR, Guarantees for the Independence of Justice Operators. Towards strengthening access to justice and the rule of law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013; also see IACHR Report No. 43/15, Case 12,632. Merits (publication) Adriana Beatriz Gallo, Ana María Careaga, and Silvia Maluf de Christin. Argentina, July 28, 2015, para. 234.

87. Likewise, in the Case of López Lone, the Inter-American Court found that freedom of expression, particularly on matters of public interest, "is a cornerstone upon which the very existence of a democratic society rests. Without an effective guarantee of freedom of expression the democratic systems is weakened and there is a breakdown of pluralism and tolerance; the mechanisms of control and complaint that citizens have may become inoperable and, indeed, a fertile ground is created for authoritarian systems to take root."[54] The Court also indicated that the defense of democracy is not only the exercise of a right but the fulfillment of a duty. [55]

88. Along these same lines, the IACHR has stated that legitimate protection of the principles of independence and impartiality of the judiciary cannot entail the expectation that judges remain silent on all matters of public relevance. Rather, limitations must strike an adequate balance between the right to expression and the duty to maintain discretion and exercise prudence to safeguard the independence and impartiality of their position.[56] In their 2002 joint declaration, the rapporteurs for freedom of expression of the UN, the IACHR, and the OSCE stated that, "Judges' right to freedom of expression, and to comment on matters of public concern, should be subject only to such narrow and limited restrictions as are necessary to protect their independence and impartiality."[57]

89. For their part, the Bangalore Principles of Judicial Conduct establish that "A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary."[58] Likewise, the United Nations Basic Principles on the Independence of the Judiciary recognize that "members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary."[59]

90. Likewise, in the Case of Baka *v*. Hungary, the European Court found that "Issues concerning the functioning of the justice system constituted questions of public interest, the debate of which enjoyed the protection of Article 10 of the Convention."[60] Additionally, in the case of Kudeshkina *v.* Russia, the European Court found that removing a judge for having publicly criticized the lack of independence of the judicial branch violated the judge's right to freedom of expression, as enshrined in Article 10 of the European Convention on Human Rights. Although the European Court recognized that judges are subjected to special duties of confidentiality with regard to cases in which the impartiality and independence of the Judicial Branch can be called into question, it also found that the fact that a certain matter may have political implications is not in itself sufficient grounds for prohibiting a judge from stating an opinion on the matter.[61] In its case law regarding sanctions on judges for exercising freedom of expression, the European Court has taken the following elements into account: the office of the applicant; the content of the statements in question; the context in which the statements were given; and the nature and severity of the sanctions imposed.[62]

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[54] Inter-American Court, Case of López Lone et al. v. Honduras, Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, paras. 165.

[55] Inter-American Court, Case of López Lone et al. v. Honduras, Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para 148.

[56] Inter-American Court, Case of López Lone et al. v. Honduras, Preliminary Objections, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, paras. 157 and 163.

[57] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 2002.

[58] Bangalore Principles of Judicial Conduct, 2002; also see United Nations Office on Drugs and Crime, Commentary on the Bangalore Principles of Judicial Conduct, 2013.

[59] Principle 8 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

[60] European Court of Human Rights, case of Baka *v.* Hungary, Application no. 20261/15, decision of June 23, 2016, para. 159.

[61] European Court of Human Rights, *Case of Kudeshina v. Russia*, decision of February 26, 2009, para. 86 and following; also see European Court of Human Rights, case of Baka *v.* Hungary, Application no. 20261/15, decision of June 23, 2016, para. 159.

[62] European Court of Human Rights, case of Baka v. Hungary, Application no. 20261/15, decision of June 23, 2016, para. 159; also see European Court of Human Rights, case of Wille *v*. Liechtenstein, decision of October 28, 1999, para. 63.

91. The case law of the Commission and the Inter-American Court has indicated that limits on freedom of expression must be exceptional in nature, and to be admissible, they must meet the three basic conditions established in Article 13(2) of the Convention: (a) the limit should be defined precisely and clearly in a law with full force and effect. The IACHR has indicated that, "vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities are incompatible with the American Convention because they can support potentially arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech."[63] Also, for subsequent liability that restricts freedom of expression to be legitimate, it is not enough for it to simply be established clearly and precisely in a law. It also must be determined b) if the objective it pursues is legitimate and justified by the American Convention, and c) is necessary in a democratic society to accomplish its goals, strictly proportional, and appropriate to accomplish the compelling goals it seeks.[64]

92. The Commission observes that in this case, the alleged victim received a disciplinary sanction as a consequences of his expression in the paper he submitted to the Supreme Court of Justice titled "Public Policy Proposal for Introducing a Human Rights Focus to the Work of the Judicial Branch of the Republic of Chile"—specifically, his proposal that the Judicial Branch recognize its responsibility in the human rights violations that took place during the military regime and pursue a "moral repositioning." The first ruling imposed a sanction of "written censure," which on appeal was changed to the sanction of "private admonishment."

93. Based on this, the IACHR observes that the alleged victim was subjected to subsequent liability for the exercise of his freedom of expression. It will therefore be determined if the restrictions met the requirements stipulated in Article 13(2) of the American Convention.

94. Regarding the requirement of legality, the IACHR recalls that in the previous section, it already determined that the disciplinary grounds applied in the case of the alleged victim did not comply with the principle of legality, for which reason the sanction in this case does not even pass the first part of the tripartite test. This in itself is sufficient to declare that Mr. Urrutia Laubreaux's right to freedom of expression was violated. Without prejudice to this, the IACHR considers it appropriate to present some general considerations regarding the other elements of the test.

95. As regards the legitimate goal of the restriction, the IACHR highlights that according to the rationale of the La Serena Appellate Court and the Supreme Court of Justice, the objective of the restriction was to ensure respect for ranking superiors, or as they put it, "the principle of the chain of command that governs the legal structure of the Judicial Branch." The Commission considers that the goal of ensuring respect for the "chain of command" cannot be understood within the goals that Article 13(2) of the American Convention establishes as legitimate to justify the imposition of subsequent liability restrictions, those goals being: (i) respect for the rights or reputation of others; or (ii) to protect national security, public order, or public health or morals.

96. At the same time, the IACHR observes that there is also no means-to-an-end relationship between restricting production of an academic paper and the end sought. Thus, the requirement that the measure be necessary in a democratic society is also not met. The Commission underscores that the academic paper was not made public and contained a criticism of the stance taken by the Judicial Branch during the military regime in order to introduce a human rights focus in the Judicial Branch. It also included a series of proposals for the Judicial Branch to "morally reposition" it and prevent repetition of human rights violations. The Commission finds that the opinions and expressions contained in the academic paper are in the public interest, and therefore, they must be more rigorously protected, as they contribute to the public debate on how the Judicial Branch can respond to allegations of grave human rights violations.[65]

[63] IACHR, 2009 Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, chap. III, para. 71.

[64] IACHR, Report No. 103/13, Case 12,816, Merits Report, Adán Guillermo López Lone *et al*., Honduras, para. 207.

[65] Office of the Special Rapporteur for Freedom of Expression, IACHR, Inter-American Framework on the Right to Freedom of Expression, OEA/Ser.L/V/II CIDH/RELE/INF.2/09, December 30, 2009, para. 35.

97. The IACHR thus finds that the Chilean State placed an arbitrary restriction on the exercise of freedom of expression by imposing subsequent liability that failed to comply with the requirements established in the Convention. Based on this, it concludes that the State violated Article 13(2) of the American Convention, in conjunction with articles 1(1) and 2 of the same instrument, to the detriment of Daniel Urrutia Laubreaux.

V. CONCLUSIONS AND RECOMMENDATIONS

98. The Commission concludes that the Chilean State is responsible for the violation of the rights established in articles 8(1), 8(2)(b), 8(2)(c) (fair trial), 9 (principle of legality), 13(2) (freedom of thought and expression), and 25(1) (judicial protection) of the American Convention on Human Rights, in conjunction with the obligations established in articles 1(1) and 2 of the Convention.

99. Based on the analysis and conclusions found in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF CHILE:

1. Adopt the administrative or any other measures necessary to fully reverse the sanction imposed on Daniel Urrutia Laubreaux, including by eliminating it from his personnel record in the Judicial Branch.

2. Provide comprehensive reparations for the violations declared in this report, including both material and moral damages, through appropriate measures of compensation and satisfaction.

3. Order measures of non-repetition, including adjusting domestic law to eliminate the grounds on which this case was based and ensure that disciplinary grounds related to the right to freedom of expression of judges are compatible with the principle of legality and the right to freedom of expression as analyzed in this report.