

**REPORT No. 63/19**  
**CASE 13.036**  
MERITS  
NORKA MOYA SOLIS  
PERU<sup>1</sup>  
May 4, 2019

## **I. INTRODUCTION**

1. On March 21, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission” or “the IAHCR”) received a petition submitted by Norka Moya Solís (hereinafter “the petitioner”) alleging the responsibility of the Republic of Peru (hereinafter “the State,” “the Peruvian State,” or “Peru”) for the violation of several rights enshrined in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) to the detriment of Ms. Moya Solís for the alleged violation of due process in the decisions that removed her from her position of Judicial Secretary of the Third Court for Labor and Labor Communities.

2. The Commission adopted Admissibility Report No. 37 on August 12, 2016.<sup>2</sup> On September 1, 2016, the Commission notified the parties of that report, and placed itself at their disposal to pursue a friendly settlement, without the conditions being present for solving the case using that procedure. The parties had the times as set forth in the Rules of Procedure for submitting additional observations on the merits. All the information received from either party was forwarded to the other party.

## **II. THE PARTIES' POSITIONS**

### **A. Petitioner**

3. By way of context the petitioner indicated that on July 3, 1973, she was appointed auxiliary in Court VII-2 of the Labor jurisdiction and on December 31, 1979, she was appointed clerk of court V-2 in the Fifth, Ninth, and Tenth Labor Courts. She said that at the time of the facts she was working as Clerk of Court of the Tenth Labor and Labor Communities Court.

4. She indicated that in December 1981, Laws No. 23344 No. 23369 regulated the procedures for the appointment and ratification of judicial officers, including clerks of court. To carry out this legislation a Commission of Judges was formed by Supreme Decree No. 003-82 JUS, in December 1982, to proceed to ratify the clerks of court.

5. She said that on September 13, 1982, she was verbally informed that after reviewing the case files under her charge, and of undertaking an evaluation of her work, the Commission on Ratification had decided not to ratify her in her position as clerk of court.

6. She said that the decision violated the procedure established in Laws No. 23344 and No. 23369, because the Commission on Ratification, made up of 10 judges, was stalemated on the decision as to whether to ratify her in her position. In the petitioner’s view the decision should have been based on the principle of *in dubio pro operario* or the President of the Chamber should have cast a tiebreaker vote in keeping with the rules governing the procedure.

7. She said that in response to that decision, she proceeded to file a motion for review (*recurso de revisión*) against the decision issued by the Tribunal of Labor and Labor Communities for Lima *en banc* before the

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<sup>1</sup> Pursuant to Article 17(2) of the IACHR Rules of Procedure, Commissioner Francisco José Eiguren Praeli, a Peruvian national, did not take part in the discussion or the decision-making process of the instant case.

<sup>2</sup> IACHR, Report No. 37/16, Petition 124-00. Admissibility, Norka Moya Solís, Peru, August 12, 2016, para. 27. In that report the IACHR found the petition admissible for possible violations of the rights enshrined in Articles 8 and 25 of the American Convention, in conjunction with the obligation established in Article 1(1) of the same instrument.

Supreme Court of Justice, which on October 12, 1983, determined that the motion for review was unfounded, without giving her the opportunity to present evidence in support of her case.

8. She indicated that she filed an *amparo* motion (*acción de amparo*) against the resolution of October 12, 1983, before the 12<sup>th</sup> Civil Court of Lima, which found this action inadmissible on June 14, 1985.

9. She argued that on July 1, 1985, she filed a motion of appeal (*recurso de apelación*) against the *amparo* decision, before the Third Civil Chamber, which upheld the ruling on September 2, 1985. She said she then filed a motion for nullity (*recurso de nulidad*) before the same Chamber, which removed the proceedings up to the Second Civil Chamber of the Supreme Court of Justice.

10. She said that the Supreme Prosecutor told that Chamber that the resolutions on the *amparo* action of June 14, 1985 and on the *amparo* appeal of September 2, 1985 were issued without taking into account the record of the ratification process such that it was not possible for it to determine whether the Labor Tribunal (Tribunal de Trabajo) had or had not committed the irregularities alleged by the petitioner.

11. She indicated that following that opinion, on August 4, 1986 the Supreme Court of Justice voided the judgment of September 2, 1985 and ordered the judge in the case to issue a new ruling, taking into account the record from the ratification process.

12. The petitioner indicated that more than 10 years later, on December 30, 1996, the 16<sup>th</sup> Civil Court of Lima issued a new *amparo* decision in which it once again determined that the action was unfounded. She said that this ruling ignored what was ordered by the Supreme Court; accordingly, she filed a motion of appeal (*recurso de apelación*) on May 19, 1997, which was denied by the Transitional Corporative Chamber Specialized in Public Law, on March 20, 1998.

13. She stated that in response to that decision, she filed a motion for nullity before the Supreme Court, arguing that a series of procedural errors made by the Corporative Chamber led it to find the motion inadmissible on October 29, 1998.

14. With respect to the law, she argued a violation of her rights to **judicial guarantees and judicial protection**, because in the context of the proceeding that removed her from her position she did not have an opportunity to defend herself or present evidence, and because of the unreasonable delay in the proceeding, which lasted more than 16 years.

15. She also argued a violation of the **right to work**, because she was removed from her employment through an irregular proceeding that did not comply with due process standards.

## **B. The State**

16. The State did not controvert the facts of the process narrated by the petitioner. In this respect, it indicated that the alleged victim was subjected to a process of ratification in keeping with Law No. 23369, which establishes that those public officials that were not ratified in this process would have the opportunity to file a motion for review before the Supreme Court. It stated that as this process unfolded Ms. Moya Solís was not ratified, thus she filed a motion for review before the Supreme Court, which declared the motion unfounded on October 12, 1983.

17. As regards the law, the State indicated that there were no violations of **judicial guarantees or judicial protection**. It indicated that in the context of the proceedings that culminated in the separation of the petitioner from her position as clerk of court all due process guarantees were respected and the proceedings were conducted fairly, impartially, and speedily. It specifically said that the petitioner had the opportunity to mount her defense, and to pursue all judicial remedies available in the domestic legislation. The State further argued that the fact of having received unfavorable results does not imply a violation of the rights to judicial guarantees and judicial protection.

### **III. FINDINGS OF FACT**

#### **A. On Norka Moya Solís**

18. Ms. Norka Moya Solís was 27 years old at the time of the facts. She had a secondary school degree in business administration, was a student of law and political science, and had worked as a clerk of court since 1973.<sup>3</sup> At the time of the facts she served as Clerk of Court of the Tenth Labor and Labor Communities Court (Décimo Juzgado del Fuero Privativo del Trabajo y Comunidades Laborales).<sup>4</sup>

#### **B. Relevant legal framework**

19. Law No. 23344 of December 19, 1981, established at the relevant part:

Article 5. The clerks of Courts (Juzgados) shall be ratified every three years by the Superior Court of the corresponding judicial district. The first ratification should be within 60 days of the entry into force of this law.<sup>5</sup>

20. In addition, Law No. 23369, issued December 31, 1981 established:

Article 1. Once the ratification of all the Judges of the Republic has concluded, the Superior Court of Justice shall proceed to ratify the Clerks of Court and Court Reporters, within 60 days of the conclusion of the ratification of the Judges. In addition, the Agrarian Tribunal and the Labor Tribunal shall proceed to ratify their Clerks and Reporters, and the clerks of their respective Courts, within the time indicated.

Article 2. The public servants who are not ratified as per the preceding article may file a motion for review before the Supreme Court, within 10 days of learning of the resolution, the ruling on which shall be conclusive and final.<sup>6</sup>

21. Supreme Decree No. 003-82-JUS of January 13, 1982 established the procedure for carrying out the process of ratification of the clerks of court as follows:

Article 1. Within five days of the publication of this Regulation, the President of the respective Superior Court – or whoever might be replacing him or her in the position – shall designate a Commission made up of no more than seven of the judges with greatest seniority in the case of Lima....

Article 2. The members of said Commission shall distribute the work such that they present themselves in the offices of the Clerks of the Courts of First Instance for Civil, Criminal, Juvenile, Coercive, and Peace Matters. Lawyers from the respective judicial district. Once present, the Judge Commissioned shall proceed to:

- a. Review the case files in process so that when they issue the corresponding report it gives the clearest idea of the actions of the Clerk in charge of them;
- b. Specify the cases of breach of the legal obligations by the Clerk, preparing the corresponding certificate; and,
- c. Obtain a written report from the Clerk on the cases indicated in the preceding subsection, and receive from him or her such evidence for the Clerk as is admissible.

Article 3. The Judge to which the preceding article refers shall obtain from the corresponding judges written reports about the performance and conduct of each of the Clerks assigned to their Court.

<sup>3</sup> Annex 1. Resolutions ratifying Ms. Moya Solís in her position as clerk of court in 1973, 1974, and 1979. Annexes 2, 3 and 4 to the petitioner's brief of March 21, 2000.

<sup>4</sup> Annex 1. Resolution ratifying Ms. Moya Solís in the position of clerk of court in 1979. Annex 4 to petitioner's brief of March 21, 2000.

<sup>5</sup> Annex 2. Copy of Law No. 23344 of 1981. Annex 5 to the petitioner's brief of March 21, 2000.

<sup>6</sup> Annex 3. Copy of Law No. 23369. Annex 6 to the petitioner's brief of March 21, 2000.

They may also request written reports on those aspects from the bar association (Colegio de Abogados) of the Judicial District or, as the case may be, from the Association of Attorneys of the province and such institutions and persons as he or she deems advisable....<sup>7</sup>

Article 4. With the document and the reports referred to in the foregoing articles, the Judge Commissioned shall constitute one file for each Clerk of Court. Once the visit to the province has concluded, the Judge Commissioned shall issue his written report to the President of the Commission of which he is a part. Once the Commission is in session ... it shall be forwarded to the President of the Superior Court, within 30 days following the designation of the Commission.

Article 5. Once the first provincial report is received from the Commission the President of the Superior Court shall summons the Court *en banc* to sit in permanent session and, as the other provincial reports are received, rule on the ratification or non-ratification of the Clerks of the Judicial District.

### **C. Process of ratification**

22. According to what was reported by the petitioner, the process of ratification that culminated in her removal began in 1982. According to available information, on September 13, 1982, a document of non-ratification was issued by the Labor and Labor Communities jurisdiction with respect to Ms. Norka Moya Solís in her employment as clerk of court. The document indicated as follows:

#### **CERTIFIES:**

That in the Book of Decisions of the Court *en banc* No. 2 of the Labor and Labor Communities jurisdiction, one finds, from folio ... to folio 18, the Minutes of the Court *en banc* of September 10, 1982, which reads ... as follows:

The Judges of the Labor and Labor Communities Tribunal Luis Felipe Barrientos, Sara Collazos de Manchego, Juan Parra Solís, Gonzalo Iturry Iturry, Victoria ... de Fuertes, Felipe ..., Eduardo Gutiérrez Ballón, Jaime Beltrán Quirosa, and Edmundo Villecorte Ramirez met ... *en banc*, under the Presidency of Mr. Pedro Pablo Gutiérrez Ferreyra; serving as clerk on this occasion was the last of the Judges mentioned, based on seniority. The President began the meeting stating that ... the Court *en banc* was to implement Law No. 23369, on the ratification of the ... and clerks of the Labor and Labor Communities Tribunal of all the ... public, (RELEVANT PART) Ms. NORKA MOYA DE ROCHA has a favorable report in part; the Court was informed that said clerk has economic debts amounting to approximately ..., and evidence of this situation appears to be the ... raised before the Commission on Ratifications by a worker of the Jurisdiction. In addition, it was reported that Ms. Moya had her own business, which absorbed her time. Next there was a vote, with five white ballots against five black ballots. (NOT RATIFIED).<sup>8</sup>

23. The petitioner argued that she was not notified of said decision. The State did not controvert that assertion.

### **1. Motion for review**

24. On September 21, 1982, the petitioner filed a motion for review before the Supreme Court of Justice, arguing that the provision of her services had been "excellent," that in the ratification process she did not have an opportunity to present evidence, and that despite having requested a copy of the minutes of the meeting where her performance as clerk of court was evaluated, it was never given to her.<sup>9</sup>

<sup>7</sup> Annex 4. Copy of Supreme Decree No. 003-82-JUS. Annex 7 to petitioner's brief of March 21, 2000.

<sup>8</sup> Annex 5. Copy of the Minutes of the Commission of Judges in which the decision not to ratify was made. Annex 8 to petitioner's brief of March 21, 2000.

<sup>9</sup> Annex 6. Copy of the motion for review of September 17, 1982, filed by Ms. Moya Solís. Annex 9 to petitioner's brief of March 21, 2000.

25. On October 12, 1983, the Labor Chamber of the Supreme Court of Justice, *en banc*, declared that the motion for review filed by Ms. Moya Solís was unfounded. In that decision it indicated as follows:

Having seen the motion for review filed by Ms. Norka Moya Solís de Rocha against the decision of the Labor and Labor Communities Tribunal *en banc*, which resolved not to ratify her in the position of Clerk of the 10<sup>th</sup> Labor and Labor Communities Court of Lima; WHEREAS: based on the record before this Court, which gave rise to the non-ratification of the appellant, it appears that the Commission on Ratifications found serious shortcomings in the performance of her functions, finding that in one situation the minutes did not include the judge's signature, but instead that of the clerk; having authorized a certification of notice when the file did not indicate any date of notice; not having forwarded the official notes ordered in the record; having failed to annotate the dates on which deposits were made; as well as the deliveries, and not annotating the number of the certificate or the quantity; therefore the appellant has not properly discharged her functions; in addition, the appellant has not paid the debts contracted, which harms the image of the Tribunal; in keeping with what was reported by Mr. Ugarte del Pino, and reviewing the decision in an *en banc* session held on this date, IT IS RESOLVED: To find unfounded the motion for review filed by Ms. Norka Moya Solís de la ROCHA.<sup>10</sup>

## 2. Motion for *amparo*

26. On February 17, 1984 the petitioner filed a motion for *amparo* against the Supreme Resolution of October 12, 1982, before the 16<sup>th</sup> Civil Court of Lima, alleging that it had relied on a negative report regarding her functions of which she had not been given notice during the proceeding. She alleged that she only came to learn of this document on December 14, 1983, the date on which she was notified of the decision regarding the motion for review, and therefore did not have the opportunity to present evidence against it, nor to study the rest of the records in the proceeding, and that consequently her constitutional rights were violated during the judicial proceeding.<sup>11</sup>

27. On June 14, 1985 the 16<sup>th</sup> Civil Court of Lima declared unfounded the motion for *amparo* filed by the petitioner, arguing that it was not in line with Law No. 23506, on *habeas corpus* and *amparo*, which establishes that guarantee actions are not in order when the violation or threat of violation has ceased, or has become irreparable.<sup>12</sup>

28. That Court indicated:

Notwithstanding that the moving party's non-ratification is based on the considerations that have already been reviewed by the Supreme Court of the Republic *en banc*, consequently, it cannot make out or constitute a violation or threat of violation of a constitutional or fundamental right enshrined in the Constitution.<sup>13</sup>

## 3. Motion of appeal

29. On July 1, 1985 the petitioner appealed the judgment handed down by the 16<sup>th</sup> Civil Court of Lima, asking that the reviewing entity rule on the merits of the matter and not focus on the procedural aspects of the case.<sup>14</sup>

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<sup>10</sup> Annex 7. Copy of the October 12, 1983 decision of the Supreme Court of Justice on the motion for review. Annex 10 to petitioner's brief of March 21, 2000.

<sup>11</sup> Annex 8. Copy of the *amparo* action of February 17, 1984 filed by Ms. Moya Solís in response to the decision made regarding the motion for review. Annex 11 to petitioner's brief of March 21, 2000.

<sup>12</sup> Law No. 23506 on *Habeas Corpus* and *Amparo* of the Republic of Peru.

<sup>13</sup> Annex 9. Copy of the June 14, 1985 decision of the 16<sup>th</sup> Civil Court of Lima in response to the *amparo* action filed by Ms. Moya Solís. Annex 12 to petitioner's brief of March 21, 2000.

<sup>14</sup> Annex 10. Copy of the motion of appeal of July 1, 1985 filed by Ms. Moya Solís in response to the decision of the 16<sup>th</sup> Civil Court of Lima with respect to the *amparo* action. Annex 13 to petitioner's brief of March 21, 2000.

30. On September 2, 1985, the Third Civil Chamber of the Supreme Court of Justice upheld the decision of June 14, 1985, indicating that:

Intervening as the Judge writing for the Chamber, Mr. Urrutia Carrillo; in keeping with the opinion of the Prosecutor at folio 29; on its basis: THEY AFFIRMED: the judgment appealed at folio 24 of June 14 last that declared Unfounded the *amparo* action filed at folio 45 by Ms. Norka Moya Solís de Rocha.<sup>15</sup>

#### 4. Motion for nullity

31. On September 17, 1985, the petitioner filed a motion for nullity before the Third Civil Chamber of Lima, alleging that “it is sought to declare an Administrative Resolution immutable as though it were *res judicata*.”<sup>16</sup>

32. On January 17, 1986, the Office of the Attorney General stated its position regarding the decision of the Supreme Court, indicating that:

The judgment of first instance, like the judgment on appeal, has been issued without having at hand the record of ratifications in which the moving party Norka Moya Solís de Rocha was separated from her position. Without taking account of that proceeding it cannot be known whether the Labor Tribunal committed the irregularities on which the *amparo* action is based. Such was understood by the judge to refer the official note, a copy of which is at folio 9 of the Civil Chamber, on issuing the resolution at folio 14. Without that record one could not by any means issue a ruling if one considers that the copy of folio 3 is illegible and does not allow one to form an idea of the bases that underpin that resolution.<sup>17</sup>

33. The Office of the Attorney General indicated that taking into account the foregoing, it considered it proper to find the resolution of September 2, 1985 null and void, and overturned the decision of June 14, 1985, and that accordingly the court should issue a new judgment, giving consideration to the record.<sup>18</sup>

34. On August 4, 1986, the Supreme Court of Justice declared null and void the resolution of September 2, 1985, issued by the Labor Chamber of the Supreme Court of Justice, and overturned the judgment of first instance of June 14, 1985.<sup>19</sup> In that decision it explained:

In keeping with the opinion of the Prosecutor; they declared: NULL AND VOID, the judgment at folio 30, of September ..., 1985, and OVERTURNED the one appealed at folio 24, of June 14, 1985; THEY ORDERED: that the judge in the case should issue a new judgment mindful of the record of ratifications; in the proceedings brought by Ms. Norka Moya Solís de Rocha against the decision of the Labor and Labor Communities Tribunal sitting *en banc*; regarding the *amparo* action; and they remanded them.<sup>20</sup>

#### 5. Second ruling in response to the *amparo* action

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<sup>15</sup> Annex 11. Copy of the decision of September 16, 1985 of the Third Civil Chamber of the Superior Court of Lima in response to the motion of appeal filed by Ms. Moya Solís. Annex 14 to petitioner’s brief of March 21, 2000.

<sup>16</sup> Annex 12. Copy of the motion for nullity of September 19, 1985 filed by Ms. Moya Solís in response to the decision on the motion of appeal. Annex 15 to petitioner’s brief of March 21, 2000.

<sup>17</sup> Annex 13. Copy of the pronouncement of the Office of the Attorney General of January 17, 1986, before the Supreme Court of Justice in the case of Ms. Moya Solís. Annex 16 to petitioner’s brief of March 21, 2000.

<sup>18</sup> Annex 13. Copy of the pronouncement by the Office of the Attorney General of January 17, 1986, before the Supreme Court of Justice in the case of Ms. Moya Solís. Annex 16 to petitioner’s brief of March 21, 2000.

<sup>19</sup> Annex 14. Copy of the decision of August 4, 1986 of the Supreme Court of Justice in response to the motion for nullity filed by Ms. Moya Solís. Annex 17 to petitioner’s brief of March 21, 2000.

<sup>20</sup> Annex 14. Copy of the Supreme Court of Justice decision of August 4, 1986 in response to the motion for nullity filed by Ms. Moya Solís. Annex 17 to petitioner’s brief of March 21, 2000.

35. The Commission takes note that subsequent to that decision, the alleged victim sent several submissions to the 16<sup>th</sup> Civil Court in Lima expressing that it should request the record of ratifications from the Labor Tribunal and asking that a decision be issued in her case.<sup>21</sup> According to available information, in November 1986, September 1987, and January 1990, the 16<sup>th</sup> Civil Court of Lima requested the record of ratifications of the alleged victim from various courts.<sup>22</sup> The Commission does not have the response to those requests.

36. In June 1995, the 33<sup>rd</sup> Civil Court of Lima made the same request.<sup>23</sup> On March 4, 1996, the Administrative Delegate of the Chambers and Courts answered the request made by the 33<sup>rd</sup> Civil Court of Lima, stating:

Having performed the search in the archives that are in this Administrative office, which has the archives of the former Secretary General of the Labor and Labor Communities Tribunal, no case file or record whatsoever is found regarding the above-noted ... and certification issued by the Secretary General dated September 10, 1992, which is attached in photocopies.<sup>24</sup>

37. On December 30, 1996 the 16<sup>th</sup> Civil Court of Lima issued a new ruling in response to the *amparo* action filed in 1983 by the alleged victim. In this ruling the Court established as follows:

First: That the *amparo* action, as it is a mechanism for effective protection of a private individual, when there is an evident and certain threat or violation of a constitutional right; in which case, its purpose is to return to the *status quo ex ante*, as indicated in the first and second articles of Law 23506; Second: That, as appears from the prayers for relief, the moving party pursues the *amparo* remedy calling into question the Supreme Resolution of October 12, 1983, by which her motion for review filed against her non-ratification as Clerk of Court assigned to the Tenth Labor and Labor Communities Court of Lima was declared to be without foundation; by which, she argues, her fundamental rights, indicated in her complaint brief, have been violated; Third: That, as appears from the foregoing, as well as from the facts set forth in the complaint, the moving party questions the Resolution indicated, but not the decision of the Session of the Labor Tribunal *en banc* of September 10, 1982, by which it was decided not to ratify her in the position of clerk of court, as noted; in that case the *litis* should focus on the first resolution indicated, and one should verify whether its issuance violated any constitutional right of the moving party; Fourth: That, as can be noted from the administrative record, the moving party in the processing of the motion for review filed before the Supreme Court has fully exercised her right to defense, so much so that she has even produced several briefs making use of that right, as can be seen at folios 14, 17, 19, 25, 31, 32, and others that appear in that record, which were presented before the issuance of the resolution that is challenged by her in this proceeding; Fifth: That from what was indicated in the foregoing considerations, one concludes that with the issuance by the Supreme Court of the Resolution of October 12, 1983, no constitutional right whatsoever of the moving party has been impinged upon or violated, as it has been issued in the performance of duties; accordingly, the provisions contained in Articles 1 and 2 of Law 23506 do not apply to the instant case; thus rendering the action filed inadmissible; in view of the foregoing;

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<sup>21</sup> Annex 15. Communications sent by Ms. Moya Solís to the 16<sup>th</sup> Civil Court in Lima updating information in the case and asking that it rule again on the *amparo* action in keeping with what was ordered by the Supreme Court of Justice. These were sent on the following dates: February 27, 1986, March 13, 1987, April 1, 1987, February 10, 1988, August 16, 1989, February 3, 1995, August 8, 1995, September 25, 1995, February 7, 1996, and August 2, 1996. Annex 25 to petitioner's brief of March 21, 2000.

<sup>22</sup> Annex 16. Communication of November 1986 from the 16<sup>th</sup> Civil Court of Lima to the President of the Supreme Court of Justice, asking for the record of ratifications referring to the petitioner's case. Annex 25.17 to petitioner's brief of March 21, 2000; Annex 17. Communication of March 1987 from the 16<sup>th</sup> Civil Court of Lima to the President of the Labor and Labor Communities Tribunal, requesting the record of ratifications referring to the petitioner's case. Annex 25.16 to petitioner's brief of March 21, 2000; Annex 18. Communication of September 1987 from the 16<sup>th</sup> Civil Court in Lima to the President of the Labor and Labor Communities Tribunal requesting the record of ratifications referring to petitioner's case. Annex 25.15 to petitioner's brief of March 21, 2000.

<sup>23</sup> Annex 19. Communication of June 1995 from the 33<sup>rd</sup> Civil Court of Lima, requesting of the Superior Court of Lima the Record of Ratifications in the ratification process, September 10, 1982. Annex 25.12 to petitioner's brief of March 21, 2000.

<sup>24</sup> Annex 20. Response of March 4, 1996 from the Administrative Delegate of the Chambers and Courts to the President of the Superior Court of Justice in response to the request for the record of ratifications by the 33<sup>rd</sup> Civil Court of Lima, noting that the record requested is not to be found. Annex 25.18 to petitioner's brief of March 21, 2000.

JUDGMENT: the *amparo* action filed by Ms. Norka Moya Solís de Rocha against the judicial branch is deemed UNFOUNDED.<sup>25</sup>

## 6. Motion of Appeal

38. On May 19, 1997 the alleged victim appealed the ruling of December 30, 1996 to the 16<sup>th</sup> Civil Court of Lima, arguing that she had no knowledge of the decision of the Commission of Judges (Comisión de Vocales) in which her non-ratification was decided, and that the record of ratifications had not been taken into account in making this decision, since the document that was in the proceeding before the 16<sup>th</sup> Court was a copy of the Act of Ratification sent by the Administrative Clerk to the Court, since the record of ratifications had not been found.<sup>26</sup> She also indicated that only recently had she come to learn of this Act, due to the fact that earlier she had not been informed of the bases for her non-ratification; accordingly, she asked that said resolution be revoked.<sup>27</sup>

39. On March 20, 1998, the Transitory Corporative Chamber Specialized in Public Law affirmed the judgment that was appealed, stating:

FIRST: That *Amparo* actions are in order when the act constituting the violation attacks a constitutional right, in a manner that is certain and imminent, and that can be put back in the same position as prior to the threat of the violation; SECOND: That in the instant case the complainant alleges facts that require proof, a situation that cannot happen in a constitutional proceeding, in which there is no evidentiary phase in light of the residual and highly urgent nature of guarantee actions; on these bases; THEY AFFIRMED: the judgment appealed from folios 108 to 110, of December 30, 1996, declaring UNFOUNDED the constitutional *amparo* action brought at folios 4 ff. by Norka Moya Solís de Rocha against the Judicial Branch.<sup>28</sup>

## 7. Motion for nullity

40. On April 8, 1998 the alleged victim filed a motion for nullity against the pronouncement of March 20, 1998. In that motion she indicated that: first, the 16<sup>th</sup> Civil Court had not taken into account the record of ratifications from the alleged victim's proceeding in making the decision on the *amparo* action subsequent to the order of the Supreme Court of Justice. Second, that the Transitory Corporative Chamber Specialized in Public Law, on resolving the appeal of the second pronouncement by the 16<sup>th</sup> Court, had indicated that the petitioner should have challenged the non-ratification of September 10, 1982, by the Commission of Judges, even though she was only told verbally of this Decision and the resolution of non-ratification; she was never notified of them. Finally, it stated that the 16<sup>th</sup> Court had indicated that the motion could not go forward since an evidentiary stage was necessary, which was not to be found in the *amparo* action, even though the petitioner had not requested any evidence. Therefore, the alleged victim stated that this judgment violated the mandate expressed by the Supreme Court.<sup>29</sup>

41. On October 29, 1998, the Chamber on Constitutional Law and Social Matters of the Supreme Court of Justice declared the action filed by the petitioner unfounded due to:

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<sup>25</sup> Annex 21. Copy of the decision of December 30, 1996 of the 16<sup>th</sup> Civil Court of Lima in response to the *amparo* motion, after the judgment of the Supreme Court of Justice. Annex 18 to petitioner's brief of March 21, 2000.

<sup>26</sup> Annex 22. Copy of the motion of appeal of May 19, 1997, in response to the second decision on the *amparo* motion filed by Ms. Moya Solís. Annex 19 to petitioner's brief of March 21, 2000; Annex 28. Response of March 34, 1996 from the Administrative Delegate of the Chambers and Courts to the President of the Superior Court of Justice in response to the request for the record of ratifications by the 33<sup>rd</sup> Civil Court of Lima, indicating that the record requested is not to be found. Annex 25.18 to petitioner's brief of March 21, 2000.

<sup>27</sup> Annex 23. Copy of the *amparo* action of May 19, 1997, in response to the second decision on the *amparo* motion filed by Ms. Moya Solís. Annex 19 to petitioner's brief of March 21, 2000.

<sup>28</sup> Annex 24. Copy of the decision of the Specialized Transitory Corporative Chamber of Public Law of March 20, 1998 in response to the second *amparo* action filed by Ms. Moya Solís. Annex 20 to petitioner's brief of March 21, 2000.

<sup>29</sup> Annex 25. Copy of the motion for nullity of April 8, 1998, in response to the second decision on the *amparo* motion filed by Ms. Moya Solís. Annex 21 to petitioner's brief of March 21, 2000.

First: That the purpose of this action is to annul the Administrative Resolution issued by the Supreme Court of Justice, of October 12, 1983, declaring unfounded the motion for review stemming from the administrative proceeding in which the complainant was not ratified in the position of clerk of the labor court; Second: That, as appears at folios 29 and 30 of the administrative record, the moving party has not been ratified in her position for not having fully performed her functions, incurring in irregularity in the processing of the case files, among others, which in the view of the Evaluating Commission merited her separation from the position; Third: That, from those records, one notes that the moving party has made use of all the means of defense and for bringing challenges afforded by the law; Fourth: That the claim of the moving party to undercut the conclusions and consequences of the resolution that is the subject of the *amparo* motion should be debated in a more suitable forum in which the evidence necessary is called for and considered ... accordingly they found that THERE WAS NO NULLITY.<sup>30</sup>

42. The Commission takes note that one judge cast a dissenting opinion in that decision, indicating that a decision should be made *de novo* based on the record of ratifications, for the purpose of determining whether there was a violation of due process during the ratification proceeding in the case of Ms. Moya Solís.<sup>31</sup>

#### IV. CONCLUSIONS OF LAW

##### A. General considerations on the guarantees applicable to sanction-imposing administrative proceedings

43. The Commission recalls that both organs of the inter-American human rights system have indicated that the guarantees established at Article 8 of the American Convention are not limited to criminal proceedings, but also apply to other types of proceedings.<sup>32</sup> Specifically, in the case of proceedings that may result in the imposition of sanctions, both organs have indicated that the guarantees established at Article 8(2) of the American Convention apply by analogy.<sup>33</sup> In addition, the principle of legality is applicable to those disciplinary proceedings that are “an expression of the State’s punitive power” since they imply an impairment or alteration of the rights of persons as the result of some wrongful conduct.<sup>34</sup>

44. In keeping with the foregoing, to determine which are the guarantees that the State was obligated to grant in the specific case one must make reference to the nature of the proceeding in question.

45. In the instant case the alleged victim was separated from her position as Clerk of Court with the 10<sup>th</sup> Labor and Labor Communities Court as a result of the ratification procedure enshrined in Peru’s domestic legislation, which established that mechanism and applied it to clerks of court every three years. In view of the nature and effects of the proceeding, and taking into account that the essential purpose of disciplinary oversight is to evaluate the conduct, suitability, and performance of a public servant, the Commission is of the view that it was a sanction-imposing proceeding and, therefore, the applicable guarantees include, by way of analogy,

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<sup>30</sup> Annex 26. Copy of the decision of October 29, 1998 of the Chamber of Constitutional and Social Law of the Supreme Court of Justice, in response to the motion for nullity of April 8, 1998 filed by Ms. Moya Solís. Annex 23 to petitioner’s brief of March 21, 2000.

<sup>31</sup> Annex 27. Dissenting vote of Judge Castillo La Rosa Sánchez in relation to the decision of the Chamber of Constitutional and Social Rights of the Supreme Court of Justice in response to the motion for nullity filed by Ms. Moya Solís. Annex 24 to petitioner’s brief of March 21, 2000.

<sup>32</sup> 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; I/A Court HR. Case of Baena Ricardo *et al.* v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Serie C No. 72, paras. 126-127; Case of the Constitutional Court v. Peru. Merits, Reparations and Costs. Judgment of January 31, 2001. Serie C No. 71, paras. 69-70; and Case of López Mendoza v. Venezuela. Merits, Reparations and Costs. September 1, 2011 Series C No. 233, para. 111.

<sup>33</sup> 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; I/A Court HR. Case of Baena Ricardo *et al.* v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Serie C No. 72, paras. 126-127.

<sup>34</sup> IACHR, Report No. 99/11, Case 12,597, Merits, Miguel Camba Campos *et al.* “Case of the Constitutional Tribunal,” Ecuador, July 22, 2011, para. 94; I/A Court HR, Case of López Lone *et al.* v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257; and Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 89. I/A Court HR. Case of Baena Ricardo *et al.* v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 106 and 108.

and *mutatis mutandis*, those related to a criminal proceeding. In particular, the guarantees established at Articles 8(1), 8(2), and 9 of the American Convention are relevant for the analysis.

**B. The right to prior and detailed information regarding the accusation<sup>35</sup> and the right to have adequate time and means to prepare the defense<sup>36</sup>**

46. As regards the guarantee of prior and detailed knowledge of the accusation, the Commission recalls that Article 8(2)(b) of the American Convention “orders competent judicial authorities to notify the accused of the charges against him, the reasons for them and for what crimes or violations he is being held responsible.”<sup>37</sup>

47. In this respect, in the case of *Barreto Leiva v. Venezuela*, the Inter-American Court indicated: “To comply with Article 8(2)(b) of the Convention, the State must notify the accused not only of the charges against him, that is, the crimes or offenses he is charged with, but also of the reasons for them, and the evidence for such charges and the legal definition of the facts. The defendant has the right to know, through a clear, detailed and precise description, all the information of the facts in order to fully exercise his right to defense and prove to the judge his version of the facts. The Court has considered that timely compliance with Article 8(2)(b) is essential for the effective exercise of the right to defense.”<sup>38</sup> In the same case the Inter-American Court indicated: “The person being investigated, before rendering a statement, has to officially learn about the facts he is charged with, not just infer them from the public information or the questions that are made to him. In this way, his response may be effective and without the margin of error that the guesswork produces.”<sup>39</sup> In addition, this right applies even before an “accusation” is lodged, strictly speaking. In order for article to attain the purposes inherent to it, notice must occur prior to the accused giving his or her first public statement to any public authority.<sup>40</sup>

48. The guarantee of adequate means to mount a defense, contained in Article 8(2)(c) of the American Convention, implies that the accused has access the record in the matter, and to the proceedings records related to the charges and the detention<sup>41</sup>, while also respecting the principle of adversarial procedure that ensures the involvement of the accused in analyzing the evidence.<sup>42</sup> In a similar vein, the Commission has indicated that pursuant to Article 8(2)(c) of the Convention, the State should ensure that the persons can “prepare their defense, formulate their claims and submit evidence.”<sup>43</sup>

49. The Commission also recalls that the right to defense implies that the person subjected to a proceeding, including an administrative one, is able to defend his or her interests or rights effectively and in “conditions of procedural equality ... being fully informed of the charges against him or her,”<sup>44</sup> so that, in the face of the punitive power of the State, the person accused is able to put forth evidence tending to refute the accusation with all the information necessary. The right to defense should necessarily be exercised from the moment a

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<sup>35</sup> Article 8(2)(b) refers to prior and detailed communication to the accused of the accusation that has been made.

<sup>36</sup> Article 8(2)(c) refers to giving the accused adequate time and means to prepare his or her defense.

<sup>37</sup> Inter-American Commission on Human Rights, Application before the Inter-American Court of Human Rights, Oscar Barreto Leiva, Case 11,663, against the Bolivarian Republic of Venezuela, para. 78; I/A Court HR, Case of López Álvarez. Judgment of February 1, 2006. Series C No. 141, para. 149; I/A Court HR, Case of Palamara Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 225; I/A Court HR, Case of Acosta Calderón. Judgment of June 24, 2005. Series C No. 129, para. 118; and I/A Court HR, Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 187.

<sup>38</sup> I/A Court HR. Case of Barreto Leiva, Merits, Reparations and Costs. Judgment of November 17, 2009. Series C no. 206, para. 28.

<sup>39</sup> I/A Court HR. Case of Barreto Leiva, Merits, Reparations and Costs. Judgment of November 17, 2009. Series C no. 206, para. 47.

<sup>40</sup> I/A Court HR. Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009, Series C No. 206, para. 29.

<sup>41</sup> I/A Court HR. Case of Bulacio v. Argentina. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para.32.

<sup>42</sup> See I/A Court HR. Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009, Series C No. 206, para. 29; I/A Court HR. Case of Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, para. 83.

<sup>43</sup> IACHR. Report No. 136/11. Case 12,474. Pacheco Tineo Family. Bolivia. October 31, 2011, para. 118 citing IACHR. Report No. 49/99. Case 11,610. Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz. Mexico. April 13, 1999, para. 60; IACHR. Report No. 84/09. Case 12,525. Nelson Iván Serrano Sáenz. Publication. Ecuador. August 6, 2009, paras. 61 and 62.

<sup>44</sup> I/A Court HR. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 117.

person is accused of being the possible perpetrator or participant in a punishable act, and only culminates once the proceeding has concluded, including, as the case may be, the stage of enforcing the penalty.<sup>45</sup>

50. The Commission recalls that in the instant case, during the ratification process, the alleged victim was not given notice of the charges or accusation against her, nor was she informed of the allegations or complaints so as to have enabled her to submit evidence including exculpatory evidence with respect to such allegations or complaints. The IACHR recalls that the legal framework in force at the time did not provide for formulating charges or any accusation so as to enable the person to learn the reasons underpinning the decision not to ratify her, which made it impossible for her to defend herself or present evidence, for she did not know what the charges against her were, and those charges were the basis for her evaluation. As appears in the record, in the course of the proceeding a negative report was submitted regarding the alleged victim's performance; nonetheless, she was not given notice of it, so as to be able to present arguments and evidence on her behalf with respect to that report.

51. Moreover, as regards the right to defense, the IACHR recalls that the alleged victim argued that she was given verbal notice of the decision not to ratify, an assertion that was not disputed by the State. The verbal notification negatively affected the right to defense on appeal because the alleged victim did not know the reasons that led the Commission of Judges to decide not to ratify her. In addition, as indicated in the record, neither in the consideration of the motion for review nor in the *amparo* motion did the competent authorities afford the alleged victim access to the record of ratifications, which may have set forth the detailed reasons and evidence presented against her that led to her not being ratified, so as to be able to controvert them with her arguments, or present exculpatory evidence.

52. In view of the foregoing, the IACHR concludes that the Peruvian State violated the rights established in Articles 8(2)(b) and 8(2)(c) of the American Convention in relation to Articles 1(1) and 2 of the same instrument, to the detriment of Norka Moya Solís.

### **C. The right to have duly reasoned decisions<sup>46</sup> and the principle of legality<sup>47</sup>**

53. The principle of legality recognized in Article 9 of the Convention applies to the action of State organs when exercising the State's punitive power.<sup>48</sup> That principle is applicable to disciplinary proceedings insofar as they are "an expression of the State's punitive power" since they entail an impairment or alteration of the rights of persons as a result of some wrongful conduct.<sup>49</sup>

54. The Commission has indicated that respecting the principle of legality allows persons to effectively determine their conduct based on the law.<sup>50</sup> As the IACHR has stated: "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>51</sup>

<sup>45</sup> I/A Court HR. Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009, Series C No. 206, para. 29.

<sup>46</sup> Article 8(1) of the American Convention provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>47</sup> 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. Nor may a heavier penalty 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>48</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/Doc.49/15, December 31, 2015, para. 253.

<sup>49</sup> I/A Court HR, Case of López Lone *et al.* v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257; and Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 89. I/A Court HR. Case of Baena Ricardo *et al.* v. Panama. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 106 and 108.

<sup>50</sup> IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 225, and Executive Summary, para. 17.

<sup>51</sup> IACHR, Application and arguments before the Inter-American Court of Human Rights in the Case of De la Cruz Flores v. Peru; referred to in: I/A Court HR, Case of De la Cruz Flores v. Peru, Judgment of November 18, 2004 (Merits, Reparations and Costs), Series C. No. 115, para. 74.

55. The degree of specificity required of a sanction-imposing provision may be distinct from that required by criminal law, due to the nature of the conflicts each is called upon to resolve.<sup>52</sup> Nonetheless, it should be foreseeable “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>53</sup>

56. As regards the duty to provide an explanation, it translates into a “reasoned justification” that enables the judge to reach a conclusion.<sup>54</sup> That guarantee is intrinsically related to the principle of legality, for beginning with the requirement that disciplinary grounds should be established in the legal framework of the State, in keeping with the standards described above, the argument of a ruling allows one to know “what were the facts, reasons, and provisions the authority relied on in reaching its decision.”<sup>55</sup> In that sense, it is the reasoning of the sanction-imposing decision that allows one to understand how the facts that were the basis of the proceeding fall within the scope of the grounds invoked. On this point, in the case of *De la Cruz Flores v. Peru*, the Court highlighted the need, in every sanction-imposing decision, for a link between the conduct attributed to the person and the provision on which the decision is based.<sup>56</sup> In addition, in the case of *López Lone v. Honduras*, the Inter-American Court indicated that “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.”<sup>57</sup>

57. The Inter-American Court has established that the duty to state reasoning is one of the “due guarantees” included in Article 8(1) to safeguard the right to due process.<sup>58</sup> Both the Commission and the Court have indicated that the duty to state reasoning is “a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society.”<sup>59</sup>

58. In the instant case the Commission observes that the legal framework of the ratification proceeding did not establish grounds that were duly spelled out so as to enable the alleged victim to understand the conduct being evaluated by the Commission of Judges entrusted with the ratification process. The relevant provisions merely indicated that a member of the Commission of Judges would review the case files under the charge of the Clerk examined to form an idea of his or her work, specify the cases in which legal obligations were breached, and obtain a strict report from the Clerk concerning the same. The legislation did not establish what type of factual situations constituted “breach of legal obligations.”

59. The IACHR also underscores that in the decision not to ratify, issued by the Commission of Judges, it was noted that said conclusion was reached based on two elements: (i) that the Clerk has economic debts; (ii) that she has a business of her own that “absorbed her time.” The Commission observes that the decision lacks adequate reasoning so as to justify why those issues merited not ratifying her in the position, which in practice was tantamount to a dismissal. By their very nature it is apparent that they are not related to the performance of her functions, thus there does not appear to be any correlation between the conduct identified and the sanction imposed. In addition, the Commission underscores that the decision not to ratify certifies that the

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<sup>52</sup> I/A Court HR, Case of López Lone *et al.* v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257.

<sup>53</sup> I/A Court HR, Case of López Lone *et al.* v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 259.

<sup>54</sup> I/A Court HR, Case of Maldonado Ordóñez v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 87.

<sup>55</sup> IACHR, Report No. 103/13, Case 12,816, Merits, Adán Guillermo López Lone *et al.*, Honduras, para.145.

<sup>56</sup> I/A Court HR. Case of De la Cruz Flores v. Peru. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115, para. 84.

<sup>57</sup> I/A Court HR, Case of López Lone *et al.* v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 271.

<sup>58</sup> I/A Court HR. Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para. 118.

<sup>59</sup> I/A Court HR. Case of Chocrón Chocrón v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227, para.118.

alleged victim “has a favorable report in part,” nonetheless, there is no analysis about the evidentiary weight of that document, or why, despite that report, the alleged victim should not be ratified.

60. Finally, regarding that report of non-ratification, the Commission notes that it indicates that the vote was five votes in favor of ratifying, and five votes against. The Commission does not know the reasons why ten participated in the decision even though the legislation established that the Commission of Judges should be made up of seven persons; nonetheless it considers that the tie merited the Commission of Judges giving the reasons why, even though an equal number of votes were cast for and against ratification, it was determined not to ratify the alleged victim in her position.

61. Second, the Commission notes that the Supreme Court of Justice, in ruling on the motion for review filed by the petitioner, indicated that the decision not to ratify took into account the alleged victim’s non-performance of job duties, which consisted of “one act did not include the judge’s signature,” “having authorized a certification of notice when the record does not show date of notice,” “not having sent out the official communications that were ordered by the court,” “having failed to note the dates on which deposits were made, as well as the deliveries, and not noting the number of the certificate or the quantity.” In addition, it indicated that “the appellant does not pay debts contracted, a situation that harms the image of the court.” The IACHR underscores that in that decision, the Court did not justify how such conduct was related to pre-established criteria for these definitions, nor was it sufficiently serious so as to justify the non-ratification of the alleged victim. Nor did it indicate the reasons why having debts could merit a decision which, in practice, entailed her dismissal from her position.

62. In view of all the considerations set forth in this section the IACHR concludes that the Peruvian State is responsible for violating Articles 8(1) and 9 of the American Convention, in relation to the obligations set forth at Articles 1(1) and 2 of the same instrument, to the detriment of Norka Moya Solís.

#### **D. The rights to a reasonable time and to judicial protection<sup>60</sup>**

63. The IACHR recalls that the State is under a general obligation to provide effective judicial remedies to the persons who allege being victims of human rights violations, which should be substantiated in keeping with the rules of due process. In order for there to be an effective remedy it does not suffice for it to be provided for in law, but it must be suitable for establishing whether there has been a violation of human rights, and provide as necessary to remedy it.<sup>61</sup>

64. The Commission recalls that for the purposes of determining the reasonableness of the time a matter has been under consideration, inter-American case-law has developed four elements: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities; and (d) the impairment to the legal situation of the person involved in the proceeding.<sup>62</sup>

65. In addition, Article 25(2)(c) of the Convention provides that the states undertake to “ensure that the competent authorities shall enforce such remedies when granted.” The Inter-American Court has indicated that in the terms of Article 25 of the Convention, it is possible to identify two specific responsibilities of the State. “The first one is that the States have the responsibility to embody in their legislation and ensure due application of effective remedies before the competent authorities, which protect all persons subject to their jurisdiction from acts that violate their fundamental rights or which lead to the determination of the latter’s rights and

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<sup>60</sup> Article 25(1) of the Convention stipulates: 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>61</sup> I/A Court HR, 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; I/A Court HR, Case of Yakyé Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125, para. 61; I/A Court HR, Case of “Five Pensioners.” Judgment of February 28, 2003. Series C No. 98. Para. 136.

<sup>62</sup> IACHR, Report No. 75/15, Case 12,923. Merits. Rocío San Miguel Sosa *et al.* Venezuela. October 28, 2015, para. 200; I/A Court HR, Case of Kawas Fernández v. Honduras, Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, para.112.

obligations. The second one is that States must guarantee effective mechanisms to execute the decisions or judgments delivered by such competent authorities so that the declared or recognized rights are protected effectively. The process should lead to the materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling.” Therefore, “the effectiveness of judgments depends on their enforcement. This is because a judgment that has become *res judicata* confers certainty on the right or dispute at issue in the concrete case, and, therefore, has as one of its effects the obligatory nature or necessity of enforcement. The contrary would be tantamount to denying the right involved. To achieve the full effectiveness of the judgment, enforcement should be complete, perfect, comprehensive, and prompt.”<sup>63</sup>

66. In the instant case, the Commission observes that after the decision not to ratify, the alleged victim pursued the remedies of review (*revisión*), *amparo*, appeal (*apelación*), and annulment (*nulidad*). Nonetheless, all were rejected without any substantive analysis of the due process violations that the alleged victim argued occurred as a result of her non-ratification, especially of the right to defense.

67. In particular, the IACHR emphasizes that in response to the dismissal of the first writ of *amparo*, the alleged victim filed a motion of appeal (*recurso de apelación*) and subsequently a motion for nullity (*recurso de nulidad*) against the dismissal of the motion for appeal, arguing that the decisions on *amparo* and on appeal were made without taking into account the record of ratifications, which would make it possible to determine whether due process violations were committed in the context of the proceeding that culminated in her non-ratification. On August 4, 1986 the Supreme Court of Justice found null the judgments on *amparo* and appeal, and ordered the judge in the case to issue a new ruling, taking into account the record of ratifications.

68. The Commission observes that said decision was not handed down during more than 10 years, despite the constant requests by the alleged victim, and that it was not until December 30, 1996, that the 16<sup>th</sup> Civil Court of Lima issued a new judgment dismissing the *amparo* action. After that, the motions for appeal and nullity filed against this second *amparo* decision were denied. The IACHR considers it is not necessary to analyze the elements of reasonable time with respect to the second *amparo* decision, and considers that more than 10 years for issuing a decision on a motion for *amparo* ordered by a competent judicial organ is clearly unreasonable, and also constitutes a violation of the right to the effective enforcement of judicial decisions without delay.

69. In view of the foregoing, the IACHR finds that the Peruvian is responsible for violating Articles 8(1), 25(1), and 25(2)(c) of the American Convention in relation to the obligations established at Article 1(1) of the same instrument, to the detriment of Norka Moya Solís.

## **E. Political rights**

70. Article 23(1)(c) establishes that all citizens should enjoy the following rights and opportunities: to have access, under general conditions of equality, to the public service of his or her country.

71. The Inter-American Court has found that when the permanence of judges in their positions is affected arbitrarily, that right is violated, in conjunction with the right to judicial independence, enshrined in Article 8(1) of the American Convention.<sup>64</sup> In addition, the IACHR has extended the application of that right to situations in which the labor stability of prosecutors is affected.<sup>65</sup> Following those criteria and the literal meaning of Article 23(1)(c) the IACHR considers that when the permanence of public servants in their positions is affected arbitrarily, that right is violated.

72. As established in earlier sections, in the instant case it has been established that the alleged victim was separated from her position in an arbitrary process marked by several violations of both the right to due process and the principle of legality, in the terms described throughout this report on the merits; accordingly,

<sup>63</sup> I/A Court HR. Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2011. Series C No. 228, paras. 104 and 105.

<sup>64</sup> I/A Court HR. Case of López Lone *et al.* v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

<sup>65</sup> IACHR, Report No. 159/18. Case 12,993. Merits. Jorge Luis Cuya Lavy *et al.* Peru. December 7, 2018, para. 101.

in observance of the criterion indicated in the previous paragraph, the Commission considers that the State also violated Article 23(1)(c) of the American Convention, to the detriment of Norka Moya Solís.

73. By virtue of the foregoing, the Commission finds that the State violated Article 23(1)(c) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of Norka Moya Solís.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

74. The Commission concludes that the Peruvian State is responsible for violating the rights established at Articles 8(1), 8(2)(b), 8(2)(c) (judicial guarantees), 9 (freedom from ex post facto laws), 23(1)(c) (political rights), and 25(1) (judicial protection) of the American Convention on Human Rights, in relation to the obligations established at Articles 1(1) and 2 of the same instrument.

75. Based on the analysis and conclusions of this report,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF PERU:**

1. To reinstate Norka Moya Solís, if that is what she wishes, in a position similar to that which she held in the Judicial Branch, with the same remuneration, social benefits and rank adjusted to what would correspond to her today had she not been removed. If for well-founded reasons reinstatement is not possible, to pay an alternate form of compensation.

2. To make full reparation for the violations of rights found in this report, including both the material and non-material aspects.

3. To order the measures of non-repetition needed to ensure that the processes for ratification of public servants in the Judicial Branch, as a matter of law and practice: (i) duly regulate the errors or omissions committed that give rise to the non-ratification of a public servant of the Judicial branch, based on objective criteria, and proportionally; and (ii) allow the public servant subjected to the process to be able to defend himself or herself in the face of the specific charges against him or her, in light to those objective criteria, and to have an effective remedy to amend possible due process violations.