

I. INTRODUCTION

1. On September 7, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by the Human Rights Legal Action Center (*Centro para Acción Legal en Derechos Humanos—CALDH*) (hereinafter “the petitioners”) alleging the international responsibility of the Republic of Guatemala (hereinafter “the state,” “the Guatemalan state,” or “Guatemala”) to the detriment of the former employees of the Judiciary for alleged dismissal because they exercised their right to strike.

2. The Commission approved admissibility report No. 78/03 of October 22, 2003.¹ On October 27, 2003, the Commission notified said report to the parties and indicated it was available to reach a friendly solution, but the conditions to initiate said proceeding were not met. The parties benefited from the regulatory delays to submit their additional observations on the merits. All the information that was received was duly forwarded to both parties.

II. POSITIONS OF THE PARTIES

A. Petitioners

3. The petitioners indicated that, in August 1992, the Judiciary Workers Union (*Sindicato de Trabajadores del Organismo Judicial—STOJ*) (hereinafter the “STOJ” or “the Union”) and the Judiciary (*Organismo Judicial*, hereinafter “the OJ”) signed a Collective Working Conditions Agreement. They indicated that the two-year agreement came into force in November 1992. They stated that, after this period had elapsed, on October 18, 1994, the petitioners denounced the above-mentioned agreement to the General Labor Inspectorate for the purpose of negotiating a new working instrument.

4. They argued that after unproductive bargaining with the Judiciary to agree on a new collective agreement, according to the law, it filed an “economic and social dispute” with the First Chamber of the Labor and Social Welfare Appeals Court, which takes over when the parties have not reached an agreement on the terms of the collective working conditions agreement and is aimed at discussing the case directly, setting a time-limit of 30 days for bargaining. On November 21, 1994, said Court ruled that the petition was admissible. In addition, the petitioners subsequently indicated that the Judiciary, represented by the Office of the Attorney General of the Nation, filed various challenges for the purpose of preventing the collective dispute from being pursued.

5. They pointed out that, on November 28, 1995, the First Chamber of the Labor and Social Welfare Appeals Court ruled that direct proceedings had been exhausted and, therefore, on December 12, 1995, a Court of Conciliation was established, a procedure required by law when direct recourse is unsuccessful. They indicated that, on February 14, 1996, the Court of Conciliation made recommendations to the parties, suggesting certain modifications to the new draft of the proposed agreement.

6. They indicated that, on February 15, 1996, the Court ruled that the conciliation proceeding had concluded, because the parties had failed to agree to follow the recommendations from the proposals made by said court.

7. They argued that, on February 16, 1986, the Union submitted a brief to the First Chamber of the Labor and Social Welfare Appeals Court so that the General Labor Inspectorate would proceed to ascertain, by counting, if the employees who started the labor dispute accounted for at least two thirds of the Judiciary in order to declare that the strike was lawful as required by the Labor Code.

8. They pointed out that subsequently the Judiciary filed a brief indicating that the only way to settle the dispute was by means of arbitration.

¹ IACHR. Report No. 78/03. Petition 0453/00. Former Employees of the Judiciary, Guatemala. October 22, 2003. In this report the Commission declared that the petition was admissible in connection with Articles 8, 16, 24, 25, 1(1), and 2 of the American Convention.

9. They alleged that, on March 19, 1996, although the strike's legitimacy had not yet been decided on by the First Chamber of the Appeals Court, certain workers of the STOJ went on strike, which extended to April 2 of that same year. They indicated that, as a result, the Judiciary decided to stop paying the wages of the striking employees. They alleged that, in view of this measure, the Union filed a motion for protection on constitutional grounds (*amparo*) with the Constitutional Court, which ruled in its favor on April 2, 1996, ordering said Court to pay the wages that had been withheld from the employees during March 1996, provided they went back to work immediately. They pointed out that, because of the above, the striking employees went back to work on April 8, 1996.

10. The petitioners pointed out that, on May 13, 1996, the First Chamber of the Labor and Social Welfare Appeals Court ruled that the strike action spearheaded by the STOJ between March 19 and April 2, 1996 was illegitimate and that the Supreme Court of Justice (*Corte Suprema de Justicia—CSJ*) had 20 days to determine who had participated in the strike and terminate their contracts. It indicated that the CSJ drafted a list bearing various inconsistencies, because persons who had not participated in the strike appeared on the list.

11. The petitioners argued that, as of the year 1996 and for more than two years thereafter, they filed a series of appeals to recuse all the chambers of the Appeals Courts that had heard the proceedings on the strike as they deemed that their impartiality had been compromised because they were answerable to the Supreme Court of Justice.

12. They indicated that, as a result of the above, there was no competent court to settle the dispute, because the Supreme Court of Justice, which should have resolved the recusals, was itself involved in the dispute.

13. They indicated that, on December 15, 1997, a series of modifications to the Basic Law on the Judiciary, which established, among other matters, that recusal does not provide the effects of suspension, thus making it possible for the judging court to continue hearing the proceedings even when it has been recused and added that the judgments of the chamber of the Appeals Court in the matter of procedural amendments were final and not subject to appeal.

14. They stated that, on March 17, 1999, the CSJ, when enforcing the new Law on the Judiciary, refused to hear the case because the action being challenged had been ruled upon by a court comprising several judges (*tribunal colegiado*) and therefore it was not susceptible to appeal. They pointed out that, in view of this refusal, on July 8, 1999, they filed an appeal for *amparo*, which was turned down by the Constitutional Court. On August 23, 1999, the judgment ruling that the strike was unlawful was upheld.

15. They indicated that, on September 1, 1999, the CSJ proceeded to move forward with the dismissal of 508 employees. They alleged that, among them, there were members of the Judiciary who benefited from the principle of job security because they were members of the Union's Executive Committee and Advisory Board. They pointed out that, among the persons dismissed, there were employees who did not participate in the strike. They indicated that, on September 24, 1999, they filed an appeal for *amparo* with the Constitutional Court, which turned it down on February 29, 2000.

16. They also indicated that, after a series of protests, in November 1999, the Judiciary proceeded to rehire more than 400 former employees of the 508 who had been dismissed for having allegedly participated in the strike.

17. They alleged the need to modify the regulatory framework for labor in order to provide employees of the Judiciary with procedures different from those of other government workers, because in this case judge and employer are the same person.

18. As for the law, the petitioners argued that the state violated their rights to a **fair trial** and **judicial protection**, as well as their rights to **freedom of association** and **equality before the law**.

19. As for the right to a **fair trial**, they alleged that the guarantees of independence and impartiality were breached because the CSJ acted as both judge and jury, as it was one of the parties to the dispute; nevertheless it decided ruled on certain motions filed in connection with the dispute. It added that, in addition, the CSJ acted arbitrarily when drafting the lists of employees who participated in the strike, without adequately differentiating those who did not participate in the strike from those who did participate.

20. In addition, they argued that these rights were breached because the state retroactively applied Decree 35-96 which amended Article 4 of the Law on Unionization and Strike Regulations for State Employees, including the administration of justice and related institutions into the definition of essential public services. They indicated that the decree was published on May 27, 1996, and it was enforced with respect to the strike starting on March 19 and ending on April 2 of that same year.

21. They argued that the **duty of stating reasons** was violated because 72 employees filed appeals for reconsideration in response to their dismissal, and 14 other employees filed other motions such as regular labor hearings for reinstatement or protection and all were dismissed without any adequate indication of the reasons for the refusal.

22. They pointed out that the state violated the **right to judicial protection** when it failed to provide a rapid and effective remedy for protecting their rights in an independent and impartial court.

23. They stated that the state violated their rights to **freedom of association** and **equality before the law**. They also indicated, regarding this, that the state violated the right to job irremovability enjoyed by the members of the Union's Executive Committee and Advisory Board. They added that the **principle of equality** was violated because the Union's leaders were discriminated against as none of them were rehired and union members who were rehired were stigmatized.

B. State

24. The state of Guatemala argued that none of the rights referred to by the petitioners were violated and that the domestic court rulings adhered to the principles of the National Constitution and the American Convention.

25. With respect to a **fair trial**, specifically, regarding the allegation relative to the absence of independence and impartiality of the Supreme Court of Justice, it indicated that it did not act as judge and jury. Regarding this, it stated that the Supreme Court of Justice judges themselves recused themselves from hearing the proceedings, pursuant to national law. It added that the judges of the CSJ only reviewed the dispute as representatives of the employer-state when ruling on and implementing, on September 1, 1999, the dismissals that had been authorized on May 13, 1996 by an impartial, independent, and competent court, namely, the First Chamber of the Labor and Social Welfare Appeals Court.

26. In connection with the allegation made by the petitioners for the need to establish another court to hear the dispute between the Union's workers and the Judiciary, the state argued that creating a special court would violate the principle of equality for all judicial proceedings. It pointed out that the National Constitution establishes that all regular courts shall hear all disputes under private law to which the state, the municipality, or any other decentralized or autonomous entity are a party.

27. It added that it was the Constitutional Court that was in charge of reviewing human rights violations submitted by the petitioners and that said body is completely separate from the Judiciary. It finally stated that, regarding the lawfulness of the dismissals, it is the Constitutional Court, and not the Supreme Court of Justice, that takes the final decision.

28. Furthermore, regarding **judicial protection**, it indicated that the petitioners had the opportunity to take advantage of all the recourses available under domestic law, which were ruled upon by a competent court.

29. It added that all the dismissed employees had the right to go before a labor court to remedy any unlawfulness that might have been committed to their detriment. It indicated that three years had elapsed from the time the order declaring that the strike was unlawful was issued on May 13, 1996 to its implementation on August 23, 1999. It indicated that, during this time, the Union filed all the motions to challenge the order and filed proceedings for protection on constitutional grounds, for which it was summoned and heard in the corresponding standard and special courts.

30. Regarding the **rights to freedom of association** and **equality before the law**, the state indicated that the ruling issued by the First Chamber of the Labor and Social Welfare Appeals Court granted the state the legitimacy to proceed with the dismissals and did not establish any difference or exception between the Union's leaders and the other employees.

31. The state concluded by indicating that it abided by all Guatemalan laws when it declared the illegitimacy of the strike promote by the STOJ, because it prevented the population from having the right and access to justice, which is guaranteed by the Political Constitution.

III. DETERMINATIONS OF FACT

A. Relevant regulatory framework

32. The Commission took note that the present case involves a labor dispute governed by the Labor Code and the Collective Working Agreement itself signed by the Union and the Guatemalan Judiciary.

33. The most relevant standards of the Labor Code are transcribed below:

Article 51. (...) To negotiate a collective working conditions agreement, the respective union or employer shall transmit to the other party, for its consideration, via the closest administrative authority for labor affairs, the draft agreement so that it can be discussed directly or with the intervention of an administrative authority in labor affairs or any other friendly arbitrator. If, 30 days after the request was filed by the respective union or employer, the parties have not reached a full agreement on their stipulations, any one of them may go to the labor courts, presenting the corresponding collective dispute, so that the item or items subject to disagreement can be settled. (...)

Article 223. The following rules govern the functioning and membership of the Executive Committee:

(...) d) the members of the Executive Committee [of the union] benefit from irremovability from the job they are performing during the entire time they are in office and up to 12 months after they have finished discharging their duties in said office. These members cannot be dismissed unless they give just cause for their dismissal, to be duly substantiated by the employer in a regular proceeding with the competent Labor Court.²

Article 241. For a strike to be declared lawful, the workers must:

- a) strictly adhere to the provision of the first paragraph of Article 239;
- b) exhaust conciliation proceedings; and
- c) include at least two thirds of the persons who are working in the respective company or production center and who have started working there formally before the socio-economic collective dispute arose.³

Article 244. When a strike is declared unlawful and the workers carry it out, the Court must give the employer a delay of 20 days during which the latter, without incurring any liability, can terminate the labor contracts of those workers who are on strike. The same rules apply in the case of de facto or illegitimate strikes (...).

Article 394. If no agreement is reached or commitment made to resort to arbitration, any of the delegates may request, within 24 hours after the failure to achieve conciliation, the respective Labor and Social Welfare judge to rule on the lawfulness or unlawfulness of the strike action, a ruling that must be waited for before engaging in the strike or work stoppage. The corresponding order shall be issued unless without detriment to subsequent causes

² Decree 1441. Amendments to the Labor Code. Article 223.

³ This subparagraph was amended by Decrees 64-92 and 13-2001 of the Congress of the Republic of Guatemala.

changing the qualification that is given and in which case a ruling shall be made about whether or not the requirements set forth in Articles 241 and 246 have been met.⁴

A. The alleged victims

34. The IACHR recalls that, in its Admissibility Report 78/03, it declared that the petition was admissible with respect to 94 persons. The IACHR shall conduct its review of said universe of victims and attaches to the present report the list of persons that it deems are victims on the basis of the following analysis.

B. Proceedings initiated by the alleged victims

1. Background

35. According to available information, on August 17, 1992, the Judiciary Workers Union entered into a two-year collective working conditions agreement with the Judiciary.⁵

36. On October 18, 1994, the Union denounced this agreement at the General Labor Inspectorate for the purpose of starting negotiations directly in order to sign a new agreement. On November 21, 1995, it filed a social and economic dispute with the First Chamber of the Labor and Social Welfare Appeals Court. On November 28, 1995, the First Chamber of the Appeals Court ruled that direct remedies had been exhausted.⁶

37. On December 12, 1995, after failure of the bargaining, a Conciliation Court was established, consisting of three judges of the First Chamber of the Labor and Social Welfare Court, a delegate from the workers, and a delegate from the employers.⁷ On February 14, 1996, said court issued a series of recommendations relative to the draft collective agreement.⁸ Finally, on February 15, 1996, the Court terminated the conciliation process.⁹

38. As indicated by the petitioners, on February 16, 1996, they submitted a brief to the First Chamber of the Appeals Court requesting it to order the General Inspectorate to determine, by counting, whether the workers who entered into the labor dispute accounted for at least two thirds of the Judiciary and as a result to declare the strike's lawfulness as required by the Labor Code.¹⁰

39. On the same day, the First Chamber of the Labor and Social Welfare Appeals Court ruled that the motion was admissible and ordered the General Labor Inspectorate "to order its staff of Labor Inspectors to count the number of Judiciary employees who support the action and those who do not in all the courts of Republic and all the administrative services and agencies of all kinds and ranks making up the Judiciary."¹¹

40. On February 19, 1996, the Judiciary filed a motion for annulment because of violation of the law against the rulings that declared that counting was admissible in order to achieve a lawful strike.¹² On February 20, 1996, the Judiciary submitted a new brief requesting that the harm that a strike by the Judiciary Workers Union would bring to Guatemala must be taken into account.¹³

⁴ Labor Code, Decree 1441 of the Congress of the Republic of Guatemala.

⁵ Annex 1. Collective Working Conditions Agreement signed by the Judiciary and the Judiciary Workers Union on August 17, 1992. Annex 1 to the brief of October 12, 2007 from the petitioners.

⁶ Brief from the petitioners of November 28, 2000.

⁷ Annex 2. Rulings of the Conciliation Court of December 12, 1995. Annex 4 to the admissibility brief of October 12, 2007 from the petitioners.

⁸ Annex 3. Recommendations of the Conciliation Court of February 14, 1996. Annex 5 to the admissibility brief of October 12, 2007 from the petitioners.

⁹ Annex 3. Recommendations of the Conciliation Court of February 14, 1996. Annex 5 to the admissibility brief of October 12, 2007 from the petitioners.

¹⁰ Annex 4. February 16, 1996 Ruling of the First Chamber of the Labor and Social Welfare Appeals Court. Annex to the brief of February 10, 2005 from the petitioners.

¹¹ Annex 4. February 16, 1996 Ruling of the First Chamber of the Labor and Social Welfare Appeals Court. Annex 1 to the brief of February 10, 2005 from the petitioners.

¹² Annex 5. Background to the strike. Annex 10 to the brief of March 10, 2008 from the petitioners.

¹³ Annex 5. Background to the strike. Annex 10 to the brief of March 10, 2008 from the petitioners.

41. On February 23, 1996, the First Chamber of the Labor and Social Welfare Appeals Court ruled that the motion for annulment filed by the Judiciary was inadmissible.¹⁴

42. Subsequently, the state filed an appeal against the previous ruling of the Supreme Court of Justice.¹⁵ Likewise, it was recorded that General Inspectorate consulted the First Chamber to determine whether or not it should proceed with the counting.¹⁶

43. On February 26, 1996, the First Chamber of the Labor and Social Welfare Appeals Court ruled that the counting should be halted until the challenges filed by the state were resolved.¹⁷

2. Holding the strike

44. Between March 19 and April 2, 1996, members of the Judiciary Workers Union held a strike. At that time, the counting remained at a standstill because its legitimacy had not been declared.¹⁸

45. As reported by the petitioners, because of this strike, the Judiciary decided to stop paying the wages of the striking employees, as a result of which they in turn filed a motion for protection on constitutional grounds with the Constitutional Court.¹⁹

46. On April 2, 1996, the Constitutional Court granted a provisional safeguard for the alleged victims and ordered payment of the wages of those employees who went back to work, on the basis of the following terms:

V) (...) as a result it must pay the wages pertaining to the month of March 1996 to the Judiciary employees who immediately go back to work and effectively discharge the duties pertaining to their jobs, without detriment to what the competent courts hearing the collective dispute might rule, on the basis of their legal powers, and whose procedures the parties must strictly comply with.²⁰

47. The state asserted, without providing any document to substantiate it, that the Supreme Court of Justice paid the wages.²¹ As for the petitioners, they contended that only five of them received their wages for the corresponding strike days.²²

48. On April 2, 1996, the Civil Chamber of the Supreme Court of Justice ruled that the motion of appeal filed against the February 23, 1996 ruling of the First Chamber of the Labor and Social Welfare Appeals Court was inadmissible. The Court argued as follows:

(...) The Court for the case proceeded, pursuant to the provisions of Article 394 of the Labor Code, to order that the General Labor Inspectorate conduct a count of the Judiciary employees supporting the action and those who did not, so as to be in a position to rule on the above-mentioned petition. Because it proceeded as indicated, the lower court aligned its conduct to comply with the law on the matter, and therefore it did not infringe the contents of the constitutional and statutory laws invoked by the appellant, nor was there any breach of the law that would require overturning what had been ruled.

(...) It is also deemed that the motions for submitting the collective dispute to arbitration proceedings were filed prematurely because, when carrying out the actions ordered, the Chamber must rule on the Union's intent and, in

¹⁴ Annex 6. February 23, 1996 Ruling of the Chamber of the Labor and Social Welfare Appeals Court. Annex 2 to the brief of February 10, 2005 from the petitioners.

¹⁵ Annex 5. Background to the strike. Annex 10 to the brief of March 10, 2008 from the petitioners.

¹⁶ Annex 7. February 26, 1996 Ruling of the Chamber of the Labor and Social Welfare Appeals Court. Annex 3 to the brief of February 10, 2005 from the petitioners.

¹⁷ Annex 7. February 26, 1996 Ruling of the Labor and Social Welfare Appeals Court. Annex 3 to the brief of February 10, 2005 from the petitioners.

¹⁸ Annex 8. April 2, 1996 Decision of the Constitutional Court. Annex 13 to the brief of March 10, 2008 from the petitioners.

¹⁹ Annex 8. April 2, 1996 Decision of the Constitutional Court. Annex 13 to the brief of March 10, 2008 from the petitioners.

²⁰ Annex 8. April 2, 1996 Decision of the Constitutional Court. Annex 13 to the brief of March 10, 2008 from the petitioners.

²¹ Brief of December 11, 2007 from the State.

²² Brief of March 10, 2008 from the petitioners, p. 14.

addition, on the nature of the service of administering justice, in connection with the provisions of the second paragraph of Article 116 of the Political Constitution of the Republic.²³

3. Declaring the strike's illegitimacy

49. On April 23, 1996, the Office of the Attorney General of the Nation filed preliminary proceedings with the First Chamber of the Labor and Social Welfare Appeals Court for the purpose of securing a declaration of illegitimacy and unlawfulness of the strike produced by the STOJ.²⁴

50. On May 13, 1996, the First Chamber of the Labor and Social Welfare Appeals Court ruled that the preliminary proceedings pending with the Office of the Attorney General of the Nation were admissible and, as a result, it determined that the strike action supported by the members of the Union was illegitimate and notified that the Supreme Court of Justice had 20 days to determine who had participated in the strike and implement the dismissals.²⁵ That Chamber determined that:

VI. In the instant case, the collective work stoppage by part of a given group of Judiciary employees is a public fact that is widely known because it was disseminated by all the media and confirmed personally by the court. It led to the interruption of the public service of the administration of justice (...) without having obtained for that purpose from the present court in charge of processing the collective dispute, a prior ruling on the characterization of the strike action that the Judiciary Workers Union was attempting to carry out (...)

(...) In the case at hand, it merely falls to this court, under the aforesaid provision, to set a period of twenty days for the employer, since the power to terminate labor contracts is the employer's, with respect to workers who effectively took strike action, and that is a situation that must be established administratively and exactly by working through the lists that were submitted as evidence, since an examination thereof indicates certain imprecision that could negatively affect the rights of employees who did not suspend work and are included on the list.

THEREFORE: The present chamber, on the grounds of the above-mentioned considerations and laws: I. DECLARES THAT THE DE FACTO STRIKE ACTION IS UNLAWFUL as supported by groups of Judiciary employees from the nineteenth of March to the seventh of April of the present year and as a result, that the case pending in the Office of the Attorney General of the Nation against the Judiciary Workers Union is ADMISSIBLE.²⁶

4. Remedies to challenge the ruling of the strike's unlawfulness

51. On May 23, 1996, the Workers Union filed a motion for *amparo* against the May 13, 1996 judgment of the First Chamber of the Labor and Social Welfare Appeals Court where the workers' strike was ruled unlawful.²⁷

52. On February 18, 1997, the Chamber of Amparo Appeals and Preliminary Trials of the Supreme Court of Justice ruled that the motion for *amparo* was inadmissible, on the basis of the following reasoning:

Reading the transcribed arguments shows that they are confusing for lack of clarity and because of that, the appeal being filed cannot succeed for the following reasons: a) the appellant states that, because the ruling of May 13, 1996 violated the right guaranteed by the Constitution and the law. Nevertheless, it failed to indicate clearly and precisely what said violations consisted of (...)

b) The appellant argues that the right to constitutional defense and what is required in Article 15 of the Law on the Judiciary was violated because the magistrates comprising the First Chamber of the Labor and Social Welfare Appeals Court are liable for having delayed the administration of justice (...). Regarding this, the present Chamber confirms that the appellant failed to provide documentary evidence that the magistrates of the above-mentioned

²³ Annex 9. April 2, 1996 ruling of the Civil Chamber of the Supreme Court of Justice (CSJ). Annex 6 to the brief of February 1, 2002 from the petitioners.

²⁴ Annex 5. Background to the strike. Annex 10 to the brief of March 10, 2008 from the petitioners.

²⁵ Annex 10. May 13, 1996 Ruling of the First Chamber of the Labor and Social Welfare Appeals Court. Annex 7 to the brief of November 28, 2000 from the petitioners.

²⁶ Annex 10. May 13, 1996 Ruling of the First Chamber of the Labor and Social Welfare Appeals Court. Annex 7 to the brief of November 28, 2000 from the petitioners.

²⁷ As it appears in Annex 11. February 18, 1997 Ruling of the Supreme Court of Justice, Chamber of Amparo Appeals and Preliminary Trials. Annex 8 to the admissibility brief of November 28, 2000 from the petitioners.

chamber are liable for the delay referred to. Nor did the appellant prove that the alleged delay led to the breach of the rights of the Judiciary employees and prevented them from filing remedies.

c) Nor was it in any way evident that the magistrates of the First Chamber of the Labor and Social Welfare Appeals Court, when ruling that the *de facto* strike action was unlawful, had acted in the interest of and in collusion with the Supreme Court of Justice to harm the Judiciary employees (...)

Because it is obviously inadmissible, the appeal for *amparo* filed by the Judiciary employees via their legal representative is dismissed.²⁸

53. On that same day, the Workers Union appealed the judgment and, on June 19, 1997, the Constitutional Court upheld the judgment being appealed, indicating as follows:

(...) The authority being challenged in the ruling of May 13 of that same year dismissed the motion for annulment that was filed and, on that same date, ordered the action being challenged by declaring that the *de facto* strike carried out by the workers was unlawful. Both rulings, the one dismissing the annulment requested and the one declaring that the action was unlawful were notified to the appellant on the fourteenth day of the same month and year.

It is deemed that the authority being challenged should not have issued the last two rulings on the same date because, by doing so, it violated Article 365 of the Labor Code, on the basis of which it is inferred, according to its interpretation, that it is possible, within twenty-four hours the notification, for the aggrieved party to file an appeal and it would not be until after this delay had elapsed that the parties would have used it or, in the event they had not used it, until it had been resolved, when the ruling that is susceptible to being challenged becomes final and only then can the following ruling be issued.

Despite what was considered above, it must be pointed out that, if the appellant observed that the action of the authority being challenged entailed a violation of the law it should have used the ordinary remedy (annulment) as provided for by law to challenge the ruling being questioned and by not doing so the appellant failed to observe the principle of definitiveness which subjects the petition for protection on constitutional grounds to prior exhaustion of ordinary remedies (...). Because of that, the appeal for *amparo* is obviously inadmissible, because of which it must be dismissed.²⁹

54. On February 23, 1999, the First Chamber of the Labor and Social Welfare Appeals Court granted the motion for the appeal filed by the petitioners against the ruling of May 13, 1996, because of which it had to be heard by the Supreme Court of Justice.

55. On March 17, 1999, the Supreme Court of Justice decided it would not hear the motion for appeal arguing that the ruling being challenged was issued by a court comprising several judges (*tribunal colegiado*) and, therefore, it could not be appealed. Regarding this, it stated the following:

That the final part of the first paragraph of Article 140 of the Law on the Judiciary (amended by Article 10 of Decree 112-97 of the Congress of the Republic) establishes the following: "The ruling can be appealed except in those cases in which the laws governing special matters exclude this remedy or when it involves preliminary proceedings ruled on by courts comprising several judges (*tribunal colegiado*) and because, in the case being examined herein, it has been observed that the ruling being challenged by an appeal was issued by a court of several judges, that is, the First Chamber of the Labor and Social Welfare Appeals Court, it is concluded that the ruling was not admissible for appeal, because of which the present Court is not able to hear the above-mentioned appeal and it must be ruled in accordance with the law."³⁰

56. On March 20, 1999, the petitioners filed a motion for *amparo* with the Constitutional Court, arguing that the Law on the Judiciary is not applicable because their right to appeal is contained in Article 6 of the Law on Unionization and Strike Regulations for State Employees and must be governed by the special law for the case, which is this latter.

²⁸ Annex 11. February 18, 1997 Ruling of the Supreme Court of Justice, Chamber of Amparo Appeals and Preliminary Trials. Annex 8 to the brief of November 28, 2000 from the petitioners.

²⁹ Annex 12. June 19, 1997 Ruling of the Constitutional Court. Annex 9 to the brief of November 28, 2000 from the petitioners.

³⁰ Annex 13. Judgment of the CSJ implementing the dismissals. Annex 15 to the updated initial petition of November 28, 2000.

57. On July 8, 1999, the Constitutional Court dismissed the motion for appeal for *amparo*. Regarding this, it argued that:

(...) Of the two positions set forth in the instant case, that of the appellant and that of the authority being appealed, it is that of the latter that the Court finds aligned with the law, because neither Decree 71-86 cited above nor the Labor Code establish, for the accessory matter of stating that a strike is unlawful, a specific procedure in the central collective dispute, because of which it is the mandatory part of the Law on the Judiciary that the actions and decisions taken in this proceeding must be subject to, unless some of them are governed by special laws.

In the role challenging the decision involved in the background to the present action, which accepted the proceeding of the strike's unlawfulness, attention must be paid to what is set forth in the last paragraph of Article 140 quoted above, which expressly admits no appeal against final rulings handed down by courts comprising several judges (*tribunales colegiados*) by means of that proceeding (...).³¹

5. Dismissals by the Supreme Court of Justice and subsequent motions of appeal

58. On September 1, 1999, the Supreme Court of Justice proceeded to dismiss the 404 employees who had participated in the strike.³² The Court indicated that, in order to take this decision, it took into account the following aspects:

- a) The attitude adopted by the employees who went on strike prevented the population from exercising the right and access to justice as guaranteed by the Political Constitution of the Republic of Guatemala, because it involved bringing the public services of the administration of justice to a standstill for twenty days (...)
- b) The harm to justice because of the above-mentioned unlawful strike was a blow to the rule of law.
- c) The employees who participated in the unlawful strike put particular interests above public ones, and the main party impacted was the people of Guatemala (...)
- d) (...) the measures, also *de facto*, that accompanied the strike and which would have merited special punishment on their own, such as: i) Taking court proceeding documents and using them as barricades to prevent access to judges, magistrates, and users, as well as placing the proceeding documents in the elevators of the Building of the Courts. ii) Attempting to open the door of the Plenary Chamber where this Supreme Court of Justice was holding its session. iii) Knocking on the above-mentioned door. iv) Disrupting this Court's sessions, using loudspeakers and insulting authorities. v) Resorting to threats against employees who wished to continue providing their services.³³

59. Subsequently, 72 members of the Union filed motions for reconsideration as it was understood that the lists were not adequately worked through. In particular, the petitioners reported that 20 employees submitted evidence proving that they worked during the time of the strike. The Commission has information that 18 Union members³⁴ submitted evidence indicating they worked during the time of the strike.³⁵

60. On September 6, 1999, the Supreme Court of Justice enlarged and corrected the ruling of September 1 of the same year. On the basis of this ruling, the Supreme Court of Justice noted that certain Union members who had been included on the list of striking employees had been mistakenly identified individually, whether because of an error made about the job they held or because of the court in which they worked. Likewise, the Court included names of more persons who participated in the strike. In particular, it indicated the following:

A) that Gloria Marina Moya Ruiz, Oliverio Edmundo Roldan Castañeda, and Sergio Alfredo Tobías Vazquez do not work in the Justice of the Peace Court of the municipality of Acatenango in the department of Chimaltenango, but rather in the Justice of the Peace Court of the municipality of Patzicía in the same department (...)

³¹ Annex 14. July 8, 1999 Ruling on the Constitutional Appeal by the Constitutional Court. Annex 16 to the updated initial petition of November 28, 2000.

³² Annex 13. Judgment of the CSJ implementing the dismissals. Annex 15 to the updated initial petition of November 28, 2000.

³³ Annex 13. Judgment of the CSJ implementing the dismissals. Annex 15 to the updated initial petition of November 28, 2000.

³⁴ Ajuquejaj Xec Rafael, Arias Carlos Enrique, Arriola Conde Luis René, Caxaj Turnil Mario Juan Humberto, Ejacalon Majzul Irrael, Illescas García de Suarez Rosa Nelly, Leonardo Carlos Antonio, Leonardo Oscar Moisés, López Arias, Edgar Arturo, López Girón Sandra Nineth, Méndez Rodas Rolando Efraín, Morales Matías Edgar Romeo, Moya Ruiz Gloria Marina, Ortiz Domínguez, Edna Araceli, Portillo Dora Carolina, Quevedo Quezada De Marroquín Evelin Marleny, Reyes Martínez María Victoria, and Soto Godoy Sergio Eduardo.

³⁵ Annex 15. Files and Resources of the Petitioners. Annex 8A to the observations on the merits of March 10, 2008 from the petitioners.

B) (...) to include other employees who had participated in the above-mentioned unlawful action [the strike] because it was proven on the basis of the respective documentation, thus also including: Glenda Nineth Figueroa Caceres de Garcia, Officer III, Civil Court/Eco. Coac. Such; Edgard Rolando Lopez, Officer III, Civil Court/Eco. Coac. Chiq; Juan Manuel Hernandez Landaverde, Srio, Instance I, Court of Sentencing Quet; Juan Jose Psquiy Coyoy, Officer III, Court of Sentencing Quet; Edwin Osberto Granados Loarca, Officer III, Court of Sentencing Quet.

C) Because it was noted that the employee Mario Rene Calderón Salazar was dismissed as Clerk III of the Archive of Protocols, in the respective ruling of said Presidency and that it was proven that he is now discharging his duties as Clerk II in the Justice of the Peace Court of Magdalena Milpas Altas in the department Sacatepéquez he must be dismissed from his job in the latter Court of Justice.³⁶

61. On September 25, 1999, the petitioners filed a motion for *amparo* with the Constitutional Court. In the context of this remedy, they argued that:

B) Article 12 of the Political Constitution of the Republic is violated by the magistrates comprising the Supreme Court of Justice because this article establishes constitutional guarantees of due process of law and the right of defense, and because this Court issued the ruling of September 1 of the present year ordering the dismissal of 508 employees of the Judiciary, including among them the leaders of the Union of this body, without previously giving them a hearing as provided for in Article 22 of the Collective Working Conditions Agreement in the case of the former, and failing to abide by the principle of union job irremovability as set forth in Article 12 of that instrument on collective formation in the case of the latter.³⁷

62. On February 29, 2000, the Constitutional Court dismissed the appeal for *amparo* that was filed. The Court determined that:

(...) On the basis of the examination of the background, it was established that the authority being challenged took the decision of dismissing several of its employees, including members of the Executive Committee of the Workers Union of that body, because, as the appointing authority it was required to implement what had been decided by the Labor Chamber which heard the case by virtue of which it was declared that the action being promoted by the Union was unlawful. Because that ruling was a final ruling and, on that basis, had fully established the cause for dismissal, it was unnecessary to file preliminary proceedings of dismissal or a regular trial to determine the contracts according to the case, because the power to terminate labor relationships had already been granted by the competent judicial authority, since it had ruled that the strike was unlawful and as a result concluded that the consequence that pertained to that action was the dismissal of the striking employees, with the only limitation that it should be previously administratively proven that they had gone on strike and because its course of action is to abide by the provisions of the final court ruling, the present Court deems that it has respected court proceedings and is not violating the constitution at all.

Under other circumstances, the personal situation of the members of the Union's Executive Committee and its branches would have merited a different treatment; nevertheless, because in this case it came from a union action whose unlawfulness was fully ruled upon, the legal rights of organized labor as provided for in Article 223, subparagraph d) of the Labor Code are not applicable (...).³⁸

63. The IACHR takes note that a magistrate issued a dissenting vote arguing that "the way in which they were dismissed violates due process of law for dismissing an employee of the Judiciary as established in Article 22 of the Collective Working Conditions Agreement. (...) [T]he appointing authority could well have made the employee the object of a subsequent dismissal in the case referred to for the purpose of observing due process of law by conducting the hearing it would have granted whereby it could have removed said cause by demonstrating his or her possible non-participation in the strike, thus avoiding unfair dismissals."³⁹

³⁶ Annex 16. Correction of mistakes in the dismissal order. Annex 8A to the observations on the merits of March 10, 2008 from the petitioners.

³⁷ Annex 17. Motion for Constitutional Appeal filed with the Constitutional Court. Annex 13 to the brief of November 22, 2000 from the petitioners.

³⁸ Annex 18, February 29, 2000 Ruling of the Constitutional Court. Annex 18 to the updated initial petition of November 28, 2000.

³⁹ Annex 19. Dissenting vote of Justice Amado Gonzales Benitez. Annex 8 to the brief of October 12, 2007 from the petitioners.

64. According to available information, of the total alleged victims who were dismissed, 28 were later reinstated.⁴⁰ The petitioners argued that none of the six members of the Union's Executive Committee were rehired.⁴¹ The state did not dispute said information.

IV. DETERMINATIONS OF LAW

A. General considerations on the guarantees applicable to proceedings of administrative sanctions

65. The Commission recalls that both bodies of the inter-American system have indicated that the guarantees set forth in Article 8 of the American Convention are not confined to criminal proceedings, but are applicable to proceedings of another nature as well.⁴² Specifically, when dealing with proceedings pertaining to sanctions, both bodies have indicated that the guarantees set forth in Article 8.2 of the American Convention are applicable by analogy.⁴³ Likewise, the principle of legality is applicable to disciplinary proceedings which are "an expression of the punitive powers of the State" because they entail impairment or alteration of human rights as a result of unlawful conduct.⁴⁴

66. In line with the above, to determine which of the guarantees the state had the obligation to grant in the concrete case, it is necessary to refer to the character of the process in question. The instant case focuses on the dismissal of 93 employees of the Judiciary of Guatemala because of a strike that took place in 1996. Taking into account the applicable laws, the contents of the domestic rulings issued regarding the case, and the purpose of the proceedings, the Commission deems that it involved a punitive procedure and, therefore, the applicable guarantees include, by analogy and *mutatis mutandis*, those relative to a criminal proceeding.

B. Right to be heard and right of defense⁴⁵

67. The right to a hearing (Article 8.1 of the Convention) means every person's right to have access to the court or state body in charge of determining his or her rights and obligations.⁴⁶ As for the right of defense, it includes the obligation of prior notification in detail to the accused of the charges against him or her (Article 8.2 (b) of the Convention), as well as granting the accused person adequate time and means for the preparation of his or her defense (Article 8.2(c) of the Convention). Both rights—to a hearing and defense—are related to each other, because "to provide a hearing to a person under investigation implies permitting him to defend himself

⁴⁰ The persons who were rehired are as follows: Aparicio De Sagastume Ligia Irasema Estrada, Arana Rivas, Magno Reginaldo, Caxaj Turnil Mario Juan Humberto, Cojti Marcia Carmen, Coroy Can Irma Araceli, De León Estacuy Samuel Guillermo, De León Macal German Eduardo, Echeverría Contreras Mario Joaquín, Ejucalon Majzul Irrael, Illesca García De Suarez Rosa Nelly, Gómez Morales María Coralia, Herrera De Ogaldez María Isabel Merida, Jutzuy Sanic Josefa, Lec Girón De Herrera Nidia Consuelo, López Girón Sandra Nineth, Méndez Rodas Rolando Efraín, Moya Ruiz Gloria Marina, Ortiz Domínguez Edna Araceli, Pellecer Cobar José René Cristian, Piedrasanta Ramírez De León Alba Dina, Reyes Martínez María Victoria, Roldán Castañeda Oliverio Edmundo, Salazar Villaseñor Wellington Francisco, Sipac Sipac Norma Elizabeth, Trejo Castillo Hermelinda Esperanza, Valle Trinidad de Velásquez Lilian Elizabeth, Velásquez Ovalle María Eugenia, and Zamora Constancia Edgar Leonel.

⁴¹ Brief of observations on the merits of March 10, 2009 from the petitioners, p. 9.

⁴² IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello et al. "Magistrates of the Supreme Court of Justice," Ecuador, March 31, 2011, para. 102; I/A Court H.R. 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.

⁴³ 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 H.R. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127.

⁴⁴ IACHR, Report No. 99/11, Case 12.597, Report on the Merits, Miguel Camba Campos et al. "Judges of the Constitutional Court," Ecuador, July 22, 2011, para.94; I/A Court H.R. Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257; and Case of Maldonado Ordoñez v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of 3 de mayo de 2016. Series C No. 311, para. 89. I/A Court H.R. Case of Baena Ricardo et al. v. Panamá. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 106 and 108.

⁴⁵ Article 8.2 establishes that: 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.

⁴⁶ I/A Court H.R. Case of Genie Lacayo v. Nicaragua. Merits, Reparations, and Costs. Judgment of January 29, 1997. Series C No. 30, para. 74; and Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No. 220, para. 140.

adequately.”⁴⁷ The right to a hearing does not imply that it must necessarily be exercised orally and it can be substantiated in writing.⁴⁸ The authority in charge of the disciplinary process must conduct itself in line with the procedure set forth for the purpose and make it possible for the right of defense to be exercised.⁴⁹ This right is affected, for example, when the duration of the delay granted to exercise the defense is not adequate, considering the examination of the case and evidence.⁵⁰

68. In the case of *Baena Ricardo et al. v. Panama*, the Court stated that the right to a fair trial had been violated because of the removal of 270 employees without granting them the opportunity to submit allegations and evidence to defend themselves before their dismissal. Regarding this, the Court considered the following:

The victims of this cause were not subjected to an administrative proceeding prior to the dismissal sanction. The President of the Republic determined that there was a link between the work stoppage of the state workers and the movement of colonel Eduardo Herrera-Hassán and, on such basis, he ordered that the workers who had taken part in said work stoppage be dismissed, in presumption of their guilt. Even the method used to determine who had participated in the organization, convocation or implementation of the national work stoppage held December 5, 1990, that is, the identification of those charged, by the official of each institution, using in some cases “reports” prepared by different heads at the institution, was a denial to the workers of a formal proceeding prior to dismissal. Once the worker who had supposedly violated the rule was identified, she or he was dismissed by the delivery of a letter, without being allowed to present arguments and evidence for her or his defense (...).⁵¹

69. In the instant case, the IACHR recalls that after ruling that the strike was unlawful, on May 13, 1996, the First Chamber of the Labor and Social Welfare Appeals Court set a time-limit of twenty days for the Judiciary to terminate the labor contracts of the striking employees, and on September 1, 1999, the Supreme Court of Justice proceeded to implement the dismissal of four hundred four employees, including the alleged victims.

70. The Commission underscores that the alleged victims were not subjected to an administrative procedure prior to the sanction of dismissal, and therefore they were not notified of the start of a disciplinary procedure against them nor did they have the opportunity to defend themselves regarding this. This led to the dismissal of at least 27 employees who had not participated in the strike because their names had been mistakenly included on the lists of strikers.

71. The IACHR highlights that, although out of a total of 93 alleged victims, 28 were rehired, 65 were not, in spite of the fact that their dismissal took place in a proceeding without any of the guarantees of due process of law. The Commission considers that the argument whereby it was not necessary to conduct a prior procedure with the guarantees of due process because the cause of dismissal had already been provided for in the applicable law and was a direct consequence of the ruling on the strike’s unlawfulness does not provide grounds for depriving the victims of their possibility to defend themselves about whether or not they were involved in the above-mentioned case and whether or not the case should entail a sanction. This is even more evident when taking into account that the imposition of the sanction was not mandatory according to the applicable law, but rather that it was a power, all the more reason for requiring its review in the framework of a proceeding with due guarantees according to the terms indicated above.

72. By virtue of what has been indicated, the Commission concludes that the state violated the right to be heard, as well as the right of defense, as established in Articles 8.1 and 8.2 (b) and (c) of the American Convention, in

⁴⁷ Thus, the Commission has indicated that: “To provide a hearing to a person under investigation implies permitting him to defend himself adequately, with the assistance of an attorney, in knowledge of all the evidence mounted against him; to provide him with a hearing is to permit him to be present at the examination of any witnesses that testify against him to permit him to challenge their testimony, and to cross-examine them in order to discredit their incriminating statements as contradictory or false; to provide an accused with a hearing is to give him the opportunity to deny and to detract from the documents sought to be used against him.” IACHR Report No. 50/00 of Case 11.298, Reinaldo Figueredo Planchart v. Venezuela, para.112.

⁴⁸ I/A Court H.R. Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 5, 2008. Series C No 182, para. 75.

⁴⁹ I/A Court H.R. Case of the Constitutional Court. Judgment of Judgment 31, 2001. Series C No. 74, paras. 73 and 74. IACHR, Report No. 30/97. Case 10.087 (Merits) Gustavo Carranza, Argentina, September 30, 1997, para. 68.

⁵⁰ I/A Court H.R., Case of the Constitutional Court v. Peru. Judgment of January 31, 2001. Series C No. 71, paras. 81-83.

⁵¹ I/A Court H.R. Case of Baena Ricardo et al. v. Panama. Merits, Reparations, and Costs. Judgment of February 2, 2001. Series C no. 72, paras. 132 and 133.

connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of the 65 employees of the Judiciary who were dismissed from their jobs and who were not later rehired.

73. As for the allegation regarding the absence of independence and impartiality of the Supreme Court of Justice to hear the dispute, the Commission observes that, although as the employer it was a party clearly interested in the outcome of the proceeding, the reasons for which said Court dismissed the motion to appeal had to do with the fact that said motion did not proceed against the action being appealed. As a result, the Commission understands that, under domestic law, the Supreme Court of Justice was not called upon to provide substantive rulings on the dispute, and therefore it does not find that the Court's intervention, under the circumstances of the case, would have undermined the principles of independence and impartiality.

C. The right to strike⁵² and the right to work

74. Article 26 of the American Convention establishes an obligation for states parties to achieve progressively the realization of the rights contained in said norm. Both bodies of the inter-American system have reaffirmed their competence to rule on possible violations of Article 26 of the American Convention in the framework of the system of individual petitions and cases. In its rulings on the matter, the Court has emphasized the interdependence and indivisibility of economic, social, and cultural rights with respect to civil and political rights.⁵³

75. The Commission starts by highlighting that the right to strike is protected by Article 26 of the American Convention, whereas Article 45, subparagraph (c) of the OAS Charter expressly integrates it when it provides that: "Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike."⁵⁴

76. Once established, it must be determined if the state concerned failed to fulfill its obligation to "achieve progressively" the full realization of said right or those general obligations to respect and guarantee it. At this second level of review, the nature and scope of the obligations enforceable upon the state under Articles 1.1, 2, and 26 of the Convention, as well as the contents of the right concerned, must be taken into consideration.⁵⁵

77. The Commission has indicated that Article 26 of the American Convention imposes various obligations on the states, which are not confined to a prohibition of regressivity, which is correlative to the obligation of progressivity, but cannot be construed as the only obligation that is justiciable in the inter-American system under this norm. Thus, the Commission asserts that, bearing in mind the interpretative framework of Article 29 of the American Convention, Article 26, seen in the light of Articles 1.1 and 2 of the same instrument, at least the following immediately enforceable obligations are derived: i) general obligations of respect and guarantee, ii) application of the principle of non-discrimination with respect to economic, social, and cultural rights, iii) obligations to take steps or adopt measures to achieve the enjoyment of the rights incorporated into said article; and iv) to provide offer suitable and effective resources for their protection. The methods or sources of analysis that are relevant for each one of these obligations must be established in keeping with the

⁵² Article 26 of the American Convention establishes that: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

⁵³ See for example: I/A Court H.R. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 23, 2018. Series C No. 359, paras. 74-97; I/A Court H.R. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 31, 2017. Series C No. 340, para. 141; and Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru (Preliminary Objection, Merits, Reparations, and Costs), Judgment of July 1, 2009, para. 101.

⁵⁴ IACHR. Seventh Report on the Situation of Human Rights in Cuba, 1983, OEA/Ser.L/V/II.61, Doc. 29, rev.1, October 4, 1983, pp. 159 and 160, paras. 52 and 53.

⁵⁵ IACHR, Report No. 25/18, Case 12.428. Admissibility and Merits. Employees at the Fireworks Factory in Santo Antonio de Jesus and Their Family Members. Brazil. March 2, 2018, para. 130.

circumstances inherent to each case.⁵⁶ In addition, the state has basic obligations that must meet the essential contents of said rights, which are not subject to progressive realization but rather they are of an immediate nature.⁵⁷

78. Beyond the direct reference to the right to strike by the OAS Charter, the IACHR deems that it must take into account the sources, principles, and criteria of international law to set the scope and contents of said right, taking into account Article 29 of the American Convention, which expressly refers to the norms of international law for their interpretation and enforcement.⁵⁸

79. Regarding this, the ILO Committee on Freedom of Association has indicated that “the right to strike is one of the essential legitimate means through which workers and their organizations may promote and defend their economic and social interests. The right to strike may only be restricted or prohibited in the following cases: (1) in public service only for public servants exercising authority in the name of the State; (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); or 3) in the event of an acute national emergency and for a limited period of time.”⁵⁹

80. As for the Committee of Experts of the ILO, it has indicated that striking is a basic right that employees and their organizations have available to defend their interests. It is not an end in itself but rather the last resort that workers organizations have available, because their consequences are grave not only for the employers but also for the workers, their families, and the organizations themselves and that said right arises from Articles 3 and 10 of ILO Convention 87. Likewise, it has indicated that, if domestic legislation prohibits strikes when collective agreements are in force, this restriction must be compensated for by the right to resort to an impartial and rapid arbitration procedure to examine the individual or collective complaints on the interpretation or enforcement of the collective agreements.⁶⁰

81. Likewise, the European Court of Human Rights, in the case of *Ogvnevenko v. Russia*, reiterated that strike action is protected by Article 11 of the European Convention, which refers to the freedom of assembly and association, and indicated that the right to strike is not absolute and may be subject under national law to regulation. It stated that said article does not exclude any occupational group from its scope and that only convincing reasons can justify restrictions on this right.⁶¹

82. Likewise, the European Committee of Social Rights has recognized workers’ right to strike and has indicated that subjecting the exercise of the right to strike to prior approval by a certain percentage of workers is in conformity with Article 6.4 of the European Social Charter, provided that the ballot method, the quorum, and the majority required are not such that the exercise of the right to strike is excessively limited.⁶²

83. In sum, it is clear to the IACHR that the protection of the right to strike, together with freedom of association and collective bargaining, are fundamental pillars to guarantee the right to work and its fair and equitable conditions as it is a right to which workers and their organizations may appeal in defense of their economic, social and professional interests⁶³. Taking into account that the exercise of the right to strike consists in the collective suspension of labor activity in a voluntary and peaceful manner, usually in order to obtain some kind

⁵⁶ IACHR. Report No. 25/18, Case 12.428. Admissibility and Merits. Employees at the Fireworks Factory in Santo Antonio de Jesus and their Family Members. Brazil. March 2, 2018, para. 134.

⁵⁷ United Nations Committee on Economic, Social and Cultural Rights. General Comment 3: The Nature of States Parties Obligations (paragraph 1 of Article 2 of the Covenant), 1990. In that regard, see: IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147 (September 7, de 2017), paras. 236 and 237.

⁵⁸ I/A Court H.R. Case of *Muelle Flores v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 6, 2019. Series C No. 375, para. 174.

⁵⁹ ILO Committee on Freedom of Association, Case 1581 (Thailand), Report No. 327, March 2002, para. 111.

⁶⁰ Committee of Experts on the Application of Conventions and Recommendations, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair, 2008, pp. 48 and 60.

⁶¹ European Court of Human Rights (ECHR), *Ogvnevenko v. Russia*, November 20, 2018, paras. 57-59.

⁶² Digest of the Case Law of the European Committee of Social Rights, p. 106.

⁶³ Comité de Libertad Sindical. Recopilación de decisiones y principios del Comité de Libertad Sindical del Consejo de Administración de la OIT (2006). párr. 521-522.

of improvement related to certain socio-economic or labor conditions, the IACHR underlines the instrumental component of such a right for the achievement of other fundamental rights within the labor sphere, the balance in relations between employers and workers, the resolution of collective labor disputes and the materialization of respect for human dignity and labor rights; it becomes the channel of the participatory democratic principle within the sphere of work.

84. While the right to strike is not absolute, and can be limited by law, the restrictions must take into account the purpose of that right; so that workers do not face unduly restrictions to its right or that it becomes inoperative in practice. The IACHR understands that the right to strike, as well as the freedom of association and the right to collective bargaining, can be described as a freedom as long as it is necessary for the State to refrain from unduly interfering with the exercise of said right and to ensure that the conditions and guarantees necessary for its effective realization exist. The IACHR observes that the enjoyment of the right to strike is a prerequisite, and at the same time, the result of the enjoyment of other human rights; for example, it may allow to make visible irregular or unsatisfactory work practices that then can lead to changes for the realization of the right to work and its fair and equitable conditions. At the same time, it can be a corollary of the exercise of the rights of freedom of expression and assembly, as it is a collective transitory manifestation in defense of the interests of workers, and therefore be directly related, according to the facts of each case, to said rights.

85. On that basis, and as the rights of freedom of association and collective bargaining, the IACHR also considers that it is important to specify that the element of progressivity presented within Article 26 of the ACHR, which can usually affect the evaluation of certain components of economic and social rights, does not generate substantive consequences on the analysis of the right to strike due to the way in which such a right is materialized in practice. Hence, the threshold to allow limitations related to the obligation of progressivity of the States in relation to the right to strike must be much stricter and higher, and by no means should imply the lack of protection of workers against acts of discrimination, interference or retaliation in the exercise of their rights in the workplace.

86. The Commission recalls that the instant case refers to 93 employees of the Judiciary who were dismissed from their jobs for having participated in a strike between March 19 and April 2, 1996, when the lawfulness of the strike had not yet been ruled on. The IACHR takes note that, for declaring the lawfulness of a strike, it was necessary, pursuant to the Labor Code, for the striking employees to account for at least two thirds of the total number of employees of the Judiciary.

87. The ILO Committee of Experts had already ruled, on various occasions, that Article 241 (c) of the Labor Code of Guatemala in force at the time of the incidents, which established that, to undertake a lawful strike, the employees had to account for at least two thirds of the company or production center, was incompatible with the ILO Freedom of Association and Protection of the Right to Organize Convention 87 because of the high number required for holding a lawful strike.⁶⁴

88. Said Committee has indicated that, if a state deems it relevant to establish, by law, that, in order to decide on a strike, the voting of the workers is necessary,⁶⁵ the required number must consist of a simple majority of the workers attending the vote and that the quorum for this must be set reasonably.⁶⁶

89. The IACHR shall assess whether or not said legal constraint on the right to strike turned out to be acceptable in terms of the treaty concerned. The IACHR recalls that, in order to determine whether or not the restriction of a right is acceptable in terms of the treaty concerned, both the Commission and the Court have resorted to a scaled judgment of proportionality, which includes the following elements: (i) the existence of a legitimate goal; (ii) suitability, that is, the determination of whether or not there is a logical means-to-end relationship between the goal sought and the distinction; (iii) necessity, that is, to determine if there are less restrictive but equally suitable alternatives; and (iv) proportionality in the strict sense of the word, that is,

⁶⁴ Observation (CEACR) adopted 1989, published 76th ILC session (1989).

⁶⁵ Observation (CEACR) adopted 2006, published 96th ILC session (2007).

⁶⁶ Observation (CEACR) adopted 2006, published 96th ILC session (2007); Observation (CEACR) adopted 2001, published 90th ILC session (2002).

striking a balance between the interests at stake and the level of sacrifice required from one party compared to the level of benefit of the other.⁶⁷

90. As for the legitimate goal, the IACHR believes that, in principle, the requirements for prior voting by the workers to undertake strikes is aimed at ensuring that they benefit from the collective endorsement of the workers in their call for labor rights, which is a legitimate goal. Furthermore, in terms of suitability, the IACHR considers that the measure contributes, to a certain extent, to securing the goal indicated because the meaning of the voting highlights the will to go on strike.

91. Regarding the requirement of necessity, the IACHR underscores that there are less restrictive measures to achieve the goal proposed, such as establishing simple or relative majorities of the workers present in the vote, as set forth by the ILO Committee of Experts. Taking into account that the requirement of necessity has not been met, it would not be necessary to review the requirement of proportionality in the strict sense; however, the Commission notes that the requirement that workers account for at least two thirds of the total employees of the Judiciary constituted a severe restriction on the right to strike which could be construed, in practice, as rendering it meaningless.

92. Considering that the majority requirement referred to in the preceding paragraphs does not comply with the principle of proportionality, and that the consideration of said requirement was inherent and fundamental to the pronouncement of the legality of the strike by a competent body, for the IACHR it becomes unnecessary to assess whether the workers did not wait for said pronouncement to carry out the strike since in any case, the decision on the legality or not of the strike would have been based on a requirement that does not comply with international standards.

93. Likewise, for the IACHR it does not go unnoticed that the direct consequence of declaring the strike illegal was the collective dismissal of the workers identified in this petition. In that sense, considering that for the IACHR the State violated the right to strike, and that the corresponding authorities based the dismissals on the execution of the strike, there are also sufficient elements to declare the violation of the right to work⁶⁸ of the dismissed workers identified in this report.

94. Notwithstanding the above, the Commission notes that the state remedied this violation against 28 persons, who were rehired and whose names appear on the list that is attached to the present report.

95. Based on the foregoing considerations, the Commission concludes that the State violated the rights to strike and work contained in Article 26 of the American Convention in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of the 65 workers who were dismissed for participating in it.

D. The right to judicial protection⁶⁹

96. The IACHR recall that the state has the general obligation of providing effective judicial remedies to persons who allege they are victims of human rights violations (Article 25), which must be substantiated according to the rules of due process of law (Article 8.1). So that remedy can be effective, it is not enough that it is established in the law, but it must be truly appropriate to establish whether there has been a violation of human rights

⁶⁷ IACHR, Application before the Inter-American Court of Human Rights, Karen Atala and daughters, September 17, 2010, para. 86; I/A Court H.R. Case of Atala Rifo and daughters v. Chile. Merits, Reparations, and Costs. Judgment of February 24, 2012. Series C No. 239, para. 164.

⁶⁸ Both the IACtHR and the IACHR have recognized the protection of the right to work through Art. 26 of the American Convention. See, for example: IACHR. Report 25/18, Case 12.428. Admissibility and Merits. Employees of the Fireworks industry in Santo Antonio de Jesus and their families. Brazil. 2 March, 2018; IACtHR. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340.

⁶⁹ Article 25.1 of the 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.

and to provide everything necessary to remedy it.⁷⁰ When assessing the remedies, there must be an examination of whether or not the decisions in the judicial proceedings effectively contributed to putting an end to a human rights violation situation, to ensuring non-repetition of the damaging actions, and to guaranteeing the free and full exercise of the rights protected by the Convention.⁷¹

97. In the instant case, the IACHR observes that the alleged victims filed a series of appeals against the decision of May 13, 1996 that declared that the strike was unlawful, arguing violations of their right to a defense, among which an appeal for *amparo* with the Chamber of Amparo Appeals and Preliminary Trials of the Supreme Court of Justice, an appeal for *amparo* with the Constitutional Court, and enlargement of the appeal with this same body.

98. Likewise, the petitioners filed a series of motions against the order of dismissals issued by the Supreme Court of Justice on September 1, 1999, among which an appeal with the Constitutional Court, arguing that the right of the dismissed employees to due process of law and their right of defense were violated because they did not benefit from any hearing prior to their dismissal.

99. Finally, the Commission noted that, after filing motions for reconsideration and other motions, 28 persons were rehired.

100. The Commission deems that, in view of the above, 65 of the alleged victims did not benefit from any effective remedy to redress the violations of their human rights, specifically the right to due process of law, right of defense, and right to strike according to the terms examined in the present report. By virtue of the above, the IACHR concludes that the state violated the right to judicial protection as set forth in Article 25.1 of the American Convention in connection with Article 1.1 of the same instrument, to the detriment of the 65 employees whose names are identified in the annex to the present report.

V. CONCLUSIONS AND RECOMMENDATIONS

101. By virtue of what was indicated above, the Commission concludes that the Guatemalan state is responsible for violating the rights established in Articles 8.1, 8.2 b), 8.2 c), 25.1, and 26 of the American Convention in connection with Articles 1.1 and 2 of the same instrument, to the detriment of the sixty-five employees who are identified in the annex to the present report.

102. On the basis of the review and conclusions of the present report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF GUATEMALA:

1. To provide comprehensive reparations to the human rights violation stated in the present report, including both pecuniary and non-pecuniary aspects.

2. To adopt measures of non-repetition, which are necessary to prevent, in the future, similar incidents. In particular, to ensure enforcement of the rules of due process in the framework of the dismissal of public servants, in line with the standards indicated in the present report. Likewise, the state must adjust its domestic law and practices so that restrictions on the right of workers to strike requiring a prior vote from the latter will abide by international standards.

⁷⁰I/A Court H.R. Case of 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 H.R. Case of the Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125, para. 61; I/A Court H.R. Case of the "Five Pensioners." Judgment of February 28, 2003. Series C No. 98, para. 136.

⁷¹I/A Court H.R. Case of Ramírez Escobar et al. v. Guatemala. Merits, Reparations, and Costs. Judgment of March 9, 2018. Series C No. 351, paras. 251-252.