

REPORT No. 159/18
CASE 12,993
MERITS
JORGE LUIS CUYA LAVY AND OTHERS
PERU¹
DECEMBER 7, 2018

I. SUMMARY

1. Between 2003 and 2008, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received four petitions submitted by Luis Cuya Lavy, Jean Aubert Díaz Alvarado, Marta Silvana Rodríguez Ricse, and Walter Antonio Valenzuela Cerna (hereinafter “the petitioners”), in which they allege the international responsibility of the Republic of Peru (hereinafter “the Peruvian State,” “the State,” or “Peru”), to their detriment.

2. The Commission approved the admissibility report No. 19/15 on March 24, 2015.² On April 13, 2015, the Commission informed the parties about the said report and was made available in order to attain a friendly settlement, even though the conditions for the commencement of the said proceeding were not met. The parties had the statutory terms to submit their additional observations about the merits. All of the received information was duly transferred between the parties.

3. The petitioners alleged that between 2001 and 2002, the State summoned them, in their capacity as judges and prosecutors, for an assessment and ratification proceeding, pursuant to the Political Constitution of 1993. In this document, unmotivated resolutions were passed, which were unchallengeable in legal and administrative courts, and they implied the prohibition to return to the Judicial Branch and the Public Ministry, which brought about violations of different rights protected by the American Convention.

4. The State indicated that the judges and prosecutors’ assessment proceeding has the aim of strengthening legal independence, through the assessment of judges and prosecutors by an autonomous body, such as the National Council of the Magistracy. The State acknowledged the absence of motivation in the decisions that brought about the alleged victims’ dismissal; however, it alleged that it did not violate the lawfulness principle, political rights, and the right to legal protection, or its duty to adopt domestic law provisions. It indicated that, even though the legal framework established the impossibility of challenging the National Council of the Magistracy’s resolutions under assessment and ratification, the appeal of relief was available.

5. Based on the findings of fact and law, the Inter-American Commission concluded that the State was responsible for violating Articles 8.1, 8.2 b), 8.2 c), 8.2 h) (right to a fair trial), 9 (lawfulness principle), 23.1 c) (political rights), and 25.1 (legal protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in relation to the obligations established in Articles 1.1 and 2 of the said document. The Commission issued the respective recommendations.

¹ Pursuant to Article 17.2 of the Commission’s Rules of Procedure, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the debate of the present case’s decision.

² IACHR. Report No. 19/15. Petition 320-03 and others. Jorge Luis Cuya Lavy and others Peru. March 24, 2015. In said report, the IACHR declared the admissibility of the claims related to Articles 8, 9, 23, and 25 and related to Articles 1.1 and 2 of the American, and declared the inadmissibility of the claims related to Articles 5, 11, 24, and 26 of the said document.

II. ARGUMENTS OF THE PARTIES

A. Petitioners

6. They indicated that they were judges or prosecutors in Peru and that from 2000, the National Council of the Magistracy (hereinafter “the NCM”) subjected them to the assessment and ratification proceeding for judges and prosecutors, included in Articles 154, subparagraph 2 of the Peruvian Political Constitution, and that it should be carried out every seven years, and it culminated in their non-ratification, as well as the prohibition for them to return to the Judicial Branch and the Public Ministry.

7. **Jorge Luis Cuya Lavy** made reference to the fact that he had been Specialized Civil Head Judge in the Judicial District of Lima since 1994. He indicated that he was summoned for judges’ assessment and ratification in 2001, in whose framework he attended a personal interview before the NCM and he was not asked about his work performance but about his private life, family, sexual preferences, and hobbies. He added that, due to the unmotivated resolution of November 20, 2002, his appointment was annulled and his judge capacity was canceled. Moreover, he was prohibited from returning to the Judicial Branch and the Public Ministry. He indicated that the whole assessment and ratification proceeding was secret. He expressed that the assessment and ratification proceeding was carried out in transition context during the dictatorial regime of Former President Alberto Fujimori, under the direct control of the NCM by the Judicial Branch.

8. Furthermore, **Jean Aubert Díaz Alvarado and Marta Silvana Rodríguez Ricse** said that they were prosecutors in Peru. Mr. Díaz Alvarado indicated that he entered the Judicial Branch as Adjunct Provincial Prosecutor in 1989, in his capacity as Head in the province of Huancayo, department of Junín. He indicated that he was summoned for an interview before the National Council of the Magistracy. During the said interview, he said that he was not charged; however, one councilor questioned him about the criminal complaint the petitioner filed against the former dean of the Bar Association of Junín. He indicated that his appointment was annulled and his prosecutor capacity was canceled through the resolution of July 13, 2001, when he was the Provincial prosecutor of Aggravated Offenses and Smuggling in Huancayo.

9. In addition, Ms. Rodríguez Ricse indicated that she entered the Public Ministry as Law Technician II on March 31, 1982, and she was later appointed as Provisional Adjunct Provincial Prosecutor of Yauli on March 7, 1984. She indicated that she was never summoned for an interview before the National Council of the Magistracy; however, her appointment was annulled and his prosecutor capacity was canceled through the resolution of July 13, 2001, when she was the Provisional Provincial Prosecutor of the Third Criminal Provincial Public Prosecutor's Office.

10. The three of them indicated that the appeal of relief was declared contrary to law.

11. Mr. **Walter Antonio Valenzuela Cerna** indicated that he started his judicial career as Judge of the Third Magistrate's Court in Surco y Surquillo, on January 10, 1985, under the Peruvian Political Constitution of 1979, which on its Article 242, paragraph 2, insures his length of service until the age of 70, as well as his tenure, while his conduct and aptitude incumbent on the role were assessed. He added that, even though his career was regulated by the Constitution of 1979, the NCM summoned him for an assessment and ratification proceeding, retrospectively enforcing the Constitution of 1993, which included the assessment and ratification proceeding for judges and magistrates. He indicated that, due to the said situation, he filed for an appeal of relief on June 20, 2002 against his summons, which was rejected. He explained that he did not consider the proceeding as applicable to him, so he did not show up. In spite of this, the NCM annulled his appointment.

12. As regards the law, the alleged victims claimed violations of the **freedom from ex post facto laws principle, right to a fair trial, legal protection, political rights, and the duty to adopt domestic law provisions.**

13. Regarding the **freedom from ex post facto laws principle**, petitioner Cuya Lavy indicated that the said right was violated, since Article 146, paragraphs 2 and 3 of the Constitution of 1993 insured the

permanence and tenure of the serving judges, while the good conduct and aptitude incumbent on the role were assessed. However, he was dismissed without presenting unfitting or improper conduct, or being charged for the latter. He said that no predetermined grounds were appealed to in the non-ratification resolution that motivated the adopted decision. Petitioner Valenzuela Cerna also referred to the retrospective application of the Constitution of 1993, since his employment was regulated by the Constitution of 1979.

14. Concerning the **right to a fair trial and legal protection**, they indicated that the said rights were violated, since the resolutions were unmotivated and no charges against them arose from these resolutions, so that they could defend themselves. They also mentioned the impossibility of challenging the NCM's non-ratification resolutions. Particularly, Mr. Cuya Lavy indicated that he was not allowed to submit evidence or arguments in his favor, and that he was refused the access to the court records, since the proceeding was secret. Mr. Valenzuela Cerna said that the NCM passed a resolution, declaring its non-ratification in his absence.

15. With respect to **political rights**, they indicated that their right to access to public service, since the NCM's resolutions imply a perpetual punishment because they entail the permanent impossibility of returning to the Judicial Branch or the Public Ministry, refusing them the access to public service. They indicated that the NCM made use of subjective, discretionary, and arbitrary criteria to decide the non-ratification, which affects the justice operators' independence. Regarding the duty to adopt domestic law provisions, they indicated that the legal code applied to them was not consistent with the Inter-American system's standards on the necessary safeguards for judges and government officials.

B. State

16. The State indicated that Article 154, subparagraph 2 of the Peruvian Constitution includes the assessment and ratification proceeding for judges and prosecutors of all categories once every seven years. It indicated that this proceeding is an assessment carried out by NCM's members, regarding the conduct and aptitude incumbent on the role, considering the judicial production, merits, and reports of Bar Associations and background on their conduct. Moreover, it said that within the said proceeding, those under assessment were interviewed. It indicated that, based on the said elements, the NCM adopted a decision on the ratification or non-ratification of those under assessment. It alleged that the dismissal did not constitute a penalty or deprive them of the rights acquired pursuant to law, and that there was the possibility of challenging the resolution by means of a special remedy and an appeal of relief, in the case of due process violations.

17. It indicated that the summons to ratification proceedings began in 2000, after seven years of the 1993 Constitution's effectiveness. In general terms, it stated that the said proceeding was incompatible with the American Convention and that its objective was to strengthen the Judicial Branch's independence by means of an assessment for judges and prosecutors, conducted by an autonomous body.

18. The State firstly acknowledged that during the assessment and ratification proceedings, unmotivated resolutions were passed and that only the people personally interviewed were the ones indicated by the Council plenary or at the express request of the magistrates, and no appeal was allowed. However, later on, through Law No. 28237, the motivation for assessment and ratification resolutions was added as a requirement, and the right to challenge these resolutions was acknowledged, if the resolutions were unmotivated and/or if the right to a hearing was not granted. It informed that the Regulations Governing the Assessment and Ratification of magistrates of the Judicial Branch and Prosecutors of the Public Ministry was approved in 2005, in which the obligatory nature of the motivation and personal interview with the magistrate is acknowledged.

19. Regarding the law, the State recognized violations of the **right to a fair trial** and indicated that it did not violate the **freedom from ex post facto laws principle**, the **rights to legal protection, political rights**, and the **duty to adopt domestic law provisions**.

20. With respect to the **right to a fair trial**, it said that the absence of motivation of the NCM's resolutions affected the due process; therefore, friendly settlement proceedings were initiated in other cases. As regards the **freedom from ex post facto laws principle**, the State indicated that it did not violate the said right,

since the Constitution of 1979 included a permanent assessment mechanism for magistrates, conducted by the Supreme Court, thus, the Constitution of 1993 only changed the controlling body to the NCM. Regarding **legal protection**, it indicated that the said right was not violated, since there was a remedy available against the NCM's decisions. It said that some appeal petitions were favorable.

21. During the admissibility stage, the State acknowledged legal protection violations, indicating that when Jorge Luis Cuya Lavy, Jean Aubert Díaz Alvarado, and Marta Silvana Rodríguez Ricse were dismissed, there was no judicial or administrative remedy to question the resolutions of the National Council of the Magistracy. At the merits stage, the State indicated that it did not violate the right to legal protection to the detriment of Jean Aubert Díaz Alvarado and Marta Silvana Rodríguez Ricse, considering that they did not exhaust domestic remedies. Moreover, they did not bring up the appeal petition, since, even though it was forbidden to submit remedies against the NCM's resolutions, the judges made an interpretation based on international treaties on human rights, ratified by Peru, which allowed the annulment of the resolutions and the reinstatement of the magistrates in other cases.

22. Regarding **political rights**, it said that the ratification was a confidence vote, and that even though the legislation established that those non-ratified could not re-enter their judicial careers, in 2003, the Constitutional Court indicated that non-ratification could not imply the impossibility of re-entering the judicial branch. The State also said that it complied with **its duty to adopt domestic law provisions**, since the assessment and ratification proceeding for judges and prosecutors is compatible with the American Convention.

III. FINDINGS OF FACT

A. Relevant legal framework

23. The alleged victims were dismissed as a consequence of the assessment and ratification proceeding for judges and prosecutors, which was regulated by the Political Constitution, in the NCM's Organizational Law and the Regulations Governing the Assessment and Ratification of Judges of the Judicial Branch and Prosecutors of the Public Ministry, whose most important regulations are cited below.

24. The Political Constitution establishes in the conducive articles that:

Article 154. Powers of the National Council of the Magistracy. The powers of the National Council of the Magistracy are as follows:

(...) 2. To ratify judges and prosecutors of all categories, once every seven years. Those non-ratified cannot re-enter the Judicial Branch or the Public Ministry. The ratification proceeding is separate from disciplinary measures.

Article 142. Resolutions that cannot be overturned by the Judicial Branch. The resolutions of the National Electoral Board in electoral matters and of the National Council of the Magistracy in assessment and ratification of judges matters cannot be overturned in legal court.³

25. Furthermore, the Organizational Law of the National Council of the Magistracy indicates as follows:

Article 2. It is the National Council of the Magistracy's duty to select, appoint, ratify, and dismiss judges and prosecutors of all categories, except when they are elected by the people. In this case, the NCM can only grant the capacity and apply the dismissal punishment when necessary, pursuant to law. The decisions on matters referred to in the previous paragraph cannot be overturned in legal court. Their decisions are unchallengeable.

³ Political Constitution of Peru enacted on December 29, 1993.

Article 30. For the purposes of the ratification of judges and prosecutors included in paragraph b) of Article 21 of this Law, the National Council of the Magistracy assesses the conduct and aptitude incumbent on the role, considering the judicial production, merits, and reports of Bar Associations and background on their conduct, with the obligation of do a personal interview in each case.⁴

26. Finally, the Regulations Governing the Assessment and Ratification of Judges of the Judicial Branch, issued on November 16, 2000, established that the NCM had to summon judges and prosecutors for the said proceeding, setting a ten-day deadline for them to submit their updated and documented *curricula vitae*, copies of their annual sworn declarations on assets and income, information about punishments or proceedings in which they were charged with criminal, civil, or disciplinary responsibility, their enter date to social and sport clubs, kinship with other public power's members, and the confirmation of their mental and physical aptitude.⁵ Furthermore, it was necessary to gather information about each judge, regarding their attendance to work and punctuality, leaves taken and absences to work, judicial production, criminal proceedings of their responsibility with missed deadlines and pending causes.⁶

27. The Regulations managed the proceeding during the interview and established the non-appealable nature of the Council's decisions, in the following terms:

Article 6. The judges and prosecutors subjected to ratification will do a personal interview, which will take place by decision of the Plenary or at the request of those assessed. In order to carry out the interviews, roles and deadlines are established. They are conducted before the Plenary or the Special Commission, which is composed of three councilors appointed by the Plenary.

Article 8. The person assessed will be heard during the personal interview and he or she will be able to submit the relevant evidence that verifies their academic, professional, and functional achievements. The cases needing clarification or any other aspect related to the provided information will be notified to them. The interview might be recorded through magnetic or optical media. The recordings will have a reserved character.

Article 17. From the results of the voting on ratification, re-consideration by the councilors turns inadmissible. A challenging remedy against it and its execution are inadmissible. Reviewing the proceeding at legal court or its results is inadmissible, pursuant to the Political Constitution.

General Provisions. II. Ratification is a constitutional power granted to the association body of the National Council of the Magistracy to decide, according to the criterion of each councilor participating in the session's plenary, if it is admissible to renew the confidence regarding the person assessed, so that the latter is allowed to keep his or her position or is definitely dismissed.⁷

28. The said Regulations were replaced in 2002. In the new regulations, it is no longer mentioned that the personal interview to judges or prosecutors shall be conducted by decision of the Plenary or at the request of those assessed.⁸

⁴ Law No. 26397, Organizational Law of the National Council of the Magistracy enacted on November 25, 1994.

⁵ Regulations Governing the Assessment and Ratification of Judges of the Judicial Branch and Prosecutors of the Public Ministry, approved through resolution 043-2000-CNM, November 16, 2000.

⁶ Regulations Governing the Assessment and Ratification of Judges of the Judicial Branch and Prosecutors of the Public Ministry, approved through resolution 043-2000-CNM, November 16, 2000.

⁷ Regulations Governing the Assessment and Ratification of Judges of the Judicial Branch and Prosecutors of the Public Ministry, approved through resolution 043-2000-CNM, November 16, 2000.

⁸ These regulations were applied to petitioners Cuya Lavy and Valenzuela Cerna. Petitioners Díaz Alvarado and Rodríguez Ricse were applied the previous regulations.

29. On July 16, 2003, the Constitutional Court established the inapplicability of the rule stating that non-ratified judges or prosecutors cannot return to the Judicial Branch or the Public Ministry, since “the said prohibition is inconsistent with the ratification, for (...) it does not constitute a punishment but a confidence vote regarding the function’s fulfillment (...) the prohibition to re-enter the legal career is equal to [as it is regulated] a punishment whose imposition (...) is not the consequence of a committed infraction. Due to the foregoing (...) the non-ratified magistrates are allowed to newly apply to the Judicial Branch or the Public Ministry.”⁹

30. On August 12, 2005, the Constitutional Court established the possibility of challenging NCM’s decisions at legal court, stating that “from December 1, 2004, the [Code of Constitutional Procedure] is in force, which determines that the constitutional proceedings regarding NCM’s resolutions are admissible whenever they are unmotivated and/or were passed without the interested party’s hearing (...)”¹⁰

31. Later on, a series of changes were made in the regulations of the assessment proceeding for judges and prosecutors.

B. On the alleged victims and their assessment and ratification proceedings

1. Jorge Luis Cuya Lavy

32. On November 4, 1994, Jorge Luis Cuya Lavy was appointed as Specialized Civil Judge of the Judicial District of Lima.¹¹ On November 21, 1994, the Supreme Court of Justice admitted his reinstatement as Head Judge of the Third Specialized Civil Court, Northern Cone of the Judicial District of Lima.¹²

33. On September 19, 2002, the NCM summoned Mr. Cuya Lavy for the assessment and ratification proceeding and indicated that the personal interview was on October 29, 2002 at 10:00 a.m.¹³ In the summons resolution, it was indicated as follows:

SCHEDULE OF ACTIVITIES: 1. September 23, 2002: Beginning of the proceeding. 2. From September 23, 2002 to October 4, 2002: Assessment of the received documentation. 3. From October 9, 2002 to October 16, 2002: Formulation of assessment reports by the Permanent Commission on Assessment and Ratification. 4. From October 17, 2002 to October 21, 2002: Assessment of the reports of the Permanent Commission on Assessment and Ratification by the Council’s Plenary. 5. From October 28, 2002 to November 2, 2002: Personal interviews to each one of the magistrates under assessment. 6. From November 11, 2002 to November 12, 2002: Special interviews scheduling, if applicable. 7. From November 13, 2002 to November 19, 2002: The reports of the Permanent Commission on Assessment and Ratification and the files of each of the people assessed will be made available to the councilors. 8. From November 20, 2002 to November 23, 2002: The NCM’s Plenary is constituted during permanent session in order to hold the vote and it decides the corresponding ratification or non-ratification. INTERVIEWS. JUDICIAL BRANCH (...) 24. Cuya Lavy, Jorge Luis, Specialized Judge Northern Cone, October 29, 10:00 a.m.¹⁴

34. The petitioner indicated, and the State did not dispute it, that during his own and other magistrates’ interviews, they were asked “about matters completely unrelated to the function, such as personal life: Reasons for single state, partners, reason for the number of children, sexual orientation, etc.” He also said

⁹ Judgment of the Constitutional Court, delivered within case file No. 1550-2003-AA/TC, July 16, 2003.

¹⁰ Judgment of the Constitutional Court, delivered within case file No. 3661-2004-AA/TC, August 12, 2005.

¹¹ Annex 1. Appointment as Specialized Civil Judge of the Judicial District of Lima given by the Jury of Honor of the Magistracy, on November 9, 1994. Annex to the initial petition by petitioner Cuya Lavy, April 30, 2003.

¹² Annex 2. Administrative resolution No. 115-94-CE-PJ, passed by the Supreme Court of Justice, November 21, 1994. Annex to the initial petition by petitioner Cuya Lavy, April 30, 2003.

¹³ Annex 3. Summons No. 004-2002-CNM, issued by the National Council of the Magistracy, September 19, 2002. Annex to the initial petition by petitioner Cuya Lavy, April 30, 2003.

¹⁴ Annex 3. Summons No. 004-2002-CNM, issued by the National Council of the Magistracy, September 19, 2002. Annex to the initial petition by petitioner Cuya Lavy, April 30, 2003.

that during the proceeding, no charges were presented for potential infractions committed, so that he could defend himself.¹⁵ According to public knowledge information, NCM's president indicated in an interview that during the assessment and ratification proceedings for judges and prosecutors, personal aspects, such as personal behavior and even family status, were taken into account.¹⁶

35. On November 20, 2002, the NCM passed a resolution establishing the petitioner's non-ratification as Judge of the Judicial District, Northern Cone, as well as the annulment of his appointment as such.¹⁷ In the said resolution, it is indicated as follows:

It is therefore ordered, adjudged, and decreed: "First.- To non-ratify the following magistrates and prosecutor in their positions in the Judicial Branch and the Public Ministry, respectively: (...) Judicial District, Northern Cone: 8 Cuya Lavy, Jorge Luis (...)" and "Second.- To cancel the appointments given in favor of the non-ratified judges and the prosecutor mentioned."¹⁸

36. On December 4, 2002, the alleged victim filed for a motion of appeal against that decision, claiming that he had been the magistrate of the Judicial Branch since 1994, having demonstrated full honesty and integrity in his position; in spite of which, the NCM did not ratify him without any motivation and without respecting due process.¹⁹

37. On December 5, 2002, the first instance appeal petition was declared inadmissible. The petitioner filed for a motion of appeal and on March 21, 2003, the Third Civil Room voided the judgment. Later on, the alleged victim filed for a special remedy before the Constitutional Court, which on July 15, 2003, declared the writ of amparo unfounded, since the NCM's ratification function "might exceptionally be reviewed in the case of irregular exercise" and in the petitioner's case, "there are no objective reasons allowing considering that the said situation took place."²⁰ It added that:

(...) the right to remain in active service is not chronologically infinite or until a certain age is reached but it is predetermined in time; this is, for seven years, and when this term culminates, the continuation in service is subjected to the ratified condition of the person assessed (...)

(...) the non-ratification constitutes a confidence vote on the tenure of office's way of fulfillment (...) it is based on a series of hints that, according to the NCM's Councilors, turns the renewal of confidence inconvenient for the tenure of office (...) it is constructed from a conviction of expressed conscience in secret ballot, though based on certain criteria (Cf. The NCM's Organizational Law and its Regulations) (...) it is not required that the decision taken be motivated.²¹

38. The Constitutional Court recognized that the prohibition to re-enter the Judicial Branch was incompatible with the ratification proceedings, since they did not imply a punishment, so it was established that the said prohibition was inapplicable.²²

¹⁵ Initial petition by petitioner Cuya Lavy, April 30, 2003.

¹⁶ Annex 4. News article "NCM reveals it considered personal behavior during the assessment," *Diario El Comercio*, December 2002. Annex to the initial petition by petitioner Cuya Lavy, April 30, 2003.

¹⁷ Annex 5. Summons No. 500-2002-CNM, issued by the National Council of the Magistracy, November 20, 2002. Annex to the initial petition by petitioner Cuya Lavy, April 30, 2003.

¹⁸ Annex 5. Summons No. 500-2002-CNM, issued by the National Council of the Magistracy, November 20, 2002. Annex to the initial petition by petitioner Cuya Lavy, April 30, 2003.

¹⁹ Annex 6. Judgment of the Second Room of the Constitutional Court, delivered within case file No. 1525-2003-AA/TC, July 15, 2003. Annex to the brief by petitioner Cuya Lavy, October 21, 2013.

²⁰ Annex 6. Judgment of the Second Room of the Constitutional Court, delivered within case file No. 1525-2003-AA/TC, July 15, 2003. Annex to the brief by petitioner Cuya Lavy, October 21, 2013.

²¹ Annex 6. Judgment of the Second Room of the Constitutional Court, delivered within case file No. 1525-2003-AA/TC, July 15, 2003. Annex to the brief by petitioner Cuya Lavy, October 21, 2013.

²² Annex 6. Judgment of the Second Room of the Constitutional Court, delivered within case file No. 1525-2003-AA/TC, July 15, 2003. Annex to the brief by petitioner Cuya Lavy, October 21, 2013.

2. **Walter Antonio Valenzuela Cerna**

39. On December 11, 1984, Walter Antonio Valenzuela Cerna was appointed as Judge of the Third Magistrate's Court of Surco and Surquillo districts.²³ On October 6, 1994, he was appointed as Specialized Civil Judge of the Judicial District of Lima.²⁴

40. On June 1, 2002, the National Council of the Magistracy summoned Mr. Valenzuela Cerna for the assessment and ratification proceeding.²⁵ In the summons resolution, it was indicated as follows²⁶:

On May 30, 2002, the National Council of the Magistracy's Plenary agreed on the commencement of individual assessment and ratification proceedings for the following magistrates: (...) 116 Valenzuela Cerna, Walter Antonio, Specialized Judge, Lima (...) 4) Start date of the proceedings: July 1, 2002 (...) 6) Information required from the people assessed: The judges summoned within ten working days, starting from the day after this publication, will submit their updated and documented curricula vitae, copies of their annual sworn declarations on assets and income, and other statements indicated [in the Regulations] to the National Council of the Magistracy (...) 7) Personal Interview: The judges summoned will be personally interviewed, pursuant to the schedule to be timely published in the Official Newspaper "El Peruano" and in another newspaper, which is more mainstream than the previous one."

41. On June 20, 2002, the alleged victim filed for a writ of amparo against the summons resolution, stating that the assessment and ratification proceeding carried out every seven years was not applicable to him, since he entered the judicial role when the Constitution of 1979 was in force, and the latter did not include the said proceeding and granted his permanence in the role until the age of 70.²⁷

42. The assessment and ratification proceeding continued in the absence of the petitioner, who did not show up in the proceeding. The NCM passed the resolution determining the alleged victim's non-ratification and the cancellation of his appointment as Specialized Civil Judge of Lima.²⁸ The alleged victim indicated that the resolution is unmotivated, which was not disputed by the State.

43. On September 12, 2002, the Fifth Civil Court of Lima declared the appeal petition unfounded, considering that the regulations of the Constitution of 1993 regarding assessment and ratification shall be immediately applied to those having the condition of magistrate, at the moment it became effective.²⁹ On September 24, 2002, the alleged victim filed for a motion of appeal.³⁰ On May 23, 2003, the Fifth Civil Room declared the remedy inadmissible, indicating the origin of the immediate application principle in the case of the alleged victim, considering that it applies "to the consequences of the present legal relations and situations."³¹ On July 16, 2003, the alleged victim filed for a special remedy before the Second Room of the

²³ Annex 7. Appointment as Judge of the Third Magistrate's Court of Surco and Surquillo districts, given by the President of the Republic, December 11, 1984. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

²⁴ Annex 8. Appointment as Specialized Civil Judge of the District of Lima given by the Jury of Honor of the Magistracy, on October 10, 1994. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

²⁵ Annex 9. Summons No. 002-2002-CNM, issued by the National Council of the Magistracy, June 1, 2002. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

²⁶ Annex 9. Summons No. 002-2002-CNM, issued by the National Council of the Magistracy, June 1, 2002. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

²⁷ Annex 10. Constitutional appeal petition presented by petitioner Valenzuela Cerna, June 20, 2002. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

²⁸ Annex 11. Damage statement brief within the motion of appeal filed for by petitioner Valenzuela Cerna, November 26, 2002. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

²⁹ Annex 12. Judgment of the Fifth Civil Court of Lima, delivered within case file 2002-26316-0-100-J-CI-50°, September 12, 2002. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

³⁰ Annex 13. Motion of appeal filed for by petitioner Valenzuela Cerna, September 24, 2002. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

³¹ Annex 14. Judgment of the Fifth Civil Room of the Superior Court of Justice of Lima, delivered within case file No. 2857-2002, May 23, 2003. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

Constitutional Court, mentioning the same pleadings on the incorrect retrospective application of the Constitution of 1993.³²

44. On January 9, 2004, the Second Room of the Constitutional Court declared the remedy unfounded, stating that from the moment the Constitution of 1993 became effective, i.e. since January 1, 1994, the latter regulated the legal situation of all the public authorities and their functions, including the Judicial Branch, so the petitioner's right to permanence in service was subjected to the restrictions stated in the Constitution of 1993, including the restriction regarding the temporary nature.³³ It indicated that "the right to remain in active service is not chronologically infinite or until a certain age is reached but it is predetermined in time; this is, for seven years, and when this term culminates, the continuation in service is subjected to the ratified condition of the person assessed."³⁴

45. On March 30, 2004, the alleged victim filed for an appeal for annulment before the president of the said court.³⁵ On May 14, 2004, the said court rejected the writ of annulment, since it considered that there were no defects and that "the case law established by the Court regarding the ratification of magistrates was followed."³⁶

3. Jean Aubert Díaz Alvarado

46. On May 24, 1989, Jean Aubert Díaz Alvarado was appointed as Provincial Adjunct Prosecutor of the Mixed Provincial Public Prosecutor's Office of Huancayo of the Judicial District of Junín.³⁷

47. On January 22, 2001, they published the resolution through which the NCM summoned Mr. Jean Aubert Díaz Alvarado for a personal interview, during the assessment and ratification proceeding.³⁸ The petitioner said, and the State did not dispute, that during the interview, none of the councilors were specifically charged and that one of them was asked about the reasons for filing a criminal complaint against the former dean of the Bar Association of Junín for the offense of misappropriation.³⁹

48. On July 13, 2001, the NCM passed a resolution determining the alleged victim's non-ratification and the cancellation of his appointment as Provincial Adjunct Prosecutor of the Judicial District of Junín: "It is therefore ordered, adjudged, and decreed: First.- To repeal the appointments, canceling the Capacities granted to the judges and prosecutors mentioned below, since they were not ratified in their roles: (...) Public Ministry, Judicial District of Junín, Provincial Adjunct Prosecutors: Díaz Alvarado, Jean Aubert(...)."⁴⁰ The decision has no further motivations.

49. On December 6, 2006, the alleged victim filed for a remedy against this decision before the Mixed Court of Puente Piedra, Santa Rosa, and Ancón.⁴¹

³² Annex 15. Special motion of appeal filed for by petitioner Valenzuela Cerna, July 16, 2003. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

³³ Annex 16. Judgment of the Second Room of the Constitutional Court, delivered within case file No. 1892-2003-AA/TC, January 9, 2004. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

³⁴ Annex 16. Judgment of the Second Room of the Constitutional Court, delivered within case file No. 1892-2003-AA/TC, January 9, 2004. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

³⁵ Annex 17. Appeal for annulment filed for by petitioner Valenzuela Cerna, March 30, 2004. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

³⁶ Annex 18. Resolution of the Constitutional Court, passed within case file No. 1892-2003-AA/TC, May 14, 2004. Annex to the brief by petitioner Valenzuela Cerna, January 14, 2008.

³⁷ Annex 19. Appointment as Provincial Adjunct Prosecutor of the Mixed Provincial Public Prosecutor's Office of Huancayo of the Judicial District of Junín, given by the President of the Republic, May 24, 1989. Annex to the initial petition by petitioner Díaz Alvarado, May 22, 2008.

³⁸ Annex 20. Resolution No. 095-2001-CNM, passed by the National Council of the Magistracy, July 13, 2001. Annex to the initial petition by petitioner Díaz Alvarado, May 22, 2008.

³⁹ Initial petition by petitioner Díaz Alvarado, May 22, 2008.

⁴⁰ Annex 20. Resolution No. 095-2001-CNM, passed by the National Council of the Magistracy, July 13, 2001. Annex to the initial petition by petitioner Díaz Alvarado, May 22, 2008.

⁴¹ Annex 21. Resolution of the Constitutional Court, passed within case file No. 5845-2007-PA/TC, December 19, 2007. Annex to the initial petition by petitioner Díaz Alvarado, May 22, 2008.

50. On December 12, 2006, the petition was declared inadmissible, since it was considered that “the constitutional petitions tending to question definitive resolutions of the National Council of the Magistracy, regarding the dismissal and ratification of judges and prosecutors, are inadmissible, as long as the said resolutions were motivated and had the previous hearing of the interested party.” It added that the alleged victim “admits having been interviewed during the proceeding previous to his non-ratification, without questioning, having been willingly subjected to the said administrative proceeding, which cannot be questioned through the amparo process. Consequently, he was granted the right to defense and due process, included in the Political Constitution.”⁴² The alleged victim appealed to this decision and on August 3, 2007, the Second Civil Room declared the remedy inadmissible, indicating that the petition was submitted after the deadline of 60 working days from the affectation, and before a non-competent body, due to territorial jurisdiction.⁴³

51. The alleged victim filed for a constitutional grievances remedy before the Constitutional Court, against the previous decision, but it was declared inadmissible on December 19, 2007, since it was submitted after the deadline, and it was not about a continuous affectation.⁴⁴

4. Marta Silvana Rodríguez Ricse

52. On May 6, 1987, Marta Silvana Rodríguez Ricse was appointed as Provincial Adjunct Prosecutor of the Mixed Provincial Public Prosecutor's Office of Huancayo of the Judicial District of Junín.⁴⁵

53. On January 22, 2001, they published the resolution through which the NCM summoned Ms. Marta Silvana Rodríguez Ricse for the assessment and ratification proceeding.⁴⁶ The petitioner said, and the State did not dispute, that she was not summoned for an interview and that she was never charged.⁴⁷

54. On July 13, 2001, the NCM passed a resolution determining the alleged victim's non-ratification and the cancellation of his appointment as Provincial Adjunct Prosecutor of the Judicial District of Junín.⁴⁸ The decision has no further motivation.

55. On December 11, the alleged victim filed for a writ of amparo against the non-ratification decision.⁴⁹

56. On December 18, 2006, the Mixed Court of Puente Piedra, Santa Rosa, and Ancón declared the appeal petition inadmissible, since: “the constitutional petitions tending to question definitive resolutions of the National Council of the Magistracy, regarding the dismissal and ratification of judges and prosecutors, are inadmissible, as long as the said resolutions were motivated and had the previous hearing of the interested party.”⁵⁰ The alleged victim filed for a motion of appeal, saying that “she was not summoned for an interview, she was not charged so as to defend herself” and also indicating that “in her professional career, she had always been upright and had respected legal and constitutional regulations when solving the proceedings of her knowledge.” Moreover, she said that the State acknowledged in a friendly settlement agreement enacted by the Ministry of Justice that “during the ratification proceedings, serious irregularities have taken place.”⁵¹

⁴² Annex 22. Judgment by the Mixed Court of Puente Piedra, Santa Rosa, and Ancón, delivered within the case file 1014-06, December 12, 2006. Annex to the initial petition by petitioner Díaz Alvarado, May 22, 2008.

⁴³ Annex 23. Judgment of the Second Civil Room of the Superior Court of Justice of Northern Lima, delivered within case file 00389-2007-0, August 3, 2007. Annex to the initial petition by petitioner Díaz Alvarado, May 22, 2008.

⁴⁴ Annex 21. Resolution of the Constitutional Court, passed within case file No. 5845-2007-PA/TC, December 19, 2007. Annex to the initial petition by petitioner Díaz Alvarado, May 22, 2008.

⁴⁵ Annex 24. Supreme Resolution No. 094-87-JUS, May 6, 1987. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁴⁶ Annex 25. Official letter No. 565-SG-CNM-2001 issued by the National Council of the Magistracy, September 11, 2001. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁴⁷ Initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁴⁸ Annex 25. Official letter No. 565-SG-CNM-2001 issued by the National Council of the Magistracy, September 11, 2001. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁴⁹ Annex 26. Judgment by the Mixed Court of Puente Piedra, Santa Rosa, and Ancón, delivered within the case file 1098-06, December 18, 2006. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁵⁰ Annex 26. Judgment by the Mixed Court of Puente Piedra, Santa Rosa, and Ancón, delivered within the case file 1098-06, December 18, 2006. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁵¹ Annex 27. Judgment of the First Civil Room of the Superior Court of Justice of Northern Lima, delivered within case file 0387-2007-0, June 22, 2007. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

57. On June 22, 2007, the First Specialized Civil Room declared the motion of appeal inadmissible, stating the appeal petition's failure to refer the case within the stipulated period.⁵²

58. The alleged victim filed for a constitutional grievances remedy before the Constitutional Court, against the previous decision.⁵³ On December 20, 2007, the Constitutional Court declared the constitutional grievances remedy inadmissible, indicating the action's failure to refer the case within the stipulated period, and that the continuous nature of the affectation was not confirmed.⁵⁴

IV. LEGAL ANALYSIS

A. General considerations on applicable safeguards in punitive and determination of rights proceedings

59. The Commission recalls that both bodies of the Inter-American system have indicated that the safeguards established in Article 8 of the American Convention are not restricted to criminal proceedings but they apply to proceedings of another nature.⁵⁵ Particularly, regarding punitive processes, both system bodies have indicated that the safeguards established in Article 8.2 of the American Convention similarly apply.⁵⁶ The proceedings including the said right or interests are applicable to the "fair trial," established in Article 8.1 of the American Convention, including the right to a sufficient motivation.⁵⁷ Likewise, the European Court has indicated that due process safeguards must be respected and granted in the framework of administrative procedures that conclude in the dismissal of a civil servant.⁵⁸

60. Pursuant to the foregoing, regarding the determination of the remedies the State had the obligation to grant in a concrete case, it is necessary to refer to the nature of the proceeding in question.

61. In the present case, the IACHR recalls that the alleged victims were dismissed from their roles as judges and prosecutors, as a consequence of the assessment and ratification proceeding, regulated in Article 154, paragraph 2 of the Political Constitution of Peru of 1993, which was carried out after the said magistrates had completed seven years in office.

62. The assessment and ratification proceeding in the Peruvian legislation had the aim of evaluating the conduct and aptitude incumbent on the role of judges and prosecutors. Considering the proceeding's nature and effects, and taking into account the disciplinary monitoring, which essentially has the aim of assessing justice operators' conduct, aptitude incumbent on the role, and performance, the Commission estimates that the proceedings were absolutely punitive, thus the applicable safeguards analogically include *mutatis mutandis* the safeguards relative to a criminal action. Particularly, the safeguards established in Articles 8.1, 8.2, and 9 of the American Convention are relevant to this case's analysis.

⁵² Annex 27. Judgment of the First Civil Room of the Superior Court of Justice of Northern Lima, delivered within case file 0387-2007-0, June 22, 2007. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁵³ Annex 28. Resolution of the Constitutional Court, passed within case file No. 5124-2007-PA/TC, December 20, 2007. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁵⁴ Annex 28. Resolution of the Constitutional Court, passed within case file No. 5124-2007-PA/TC, December 20, 2007. Annex to the initial petition by petitioner Rodríguez Ricse, August 23, 2008.

⁵⁵ IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello and other "Magistrates of the Supreme Court of Justice," Ecuador, March 31, 2011, para. 102; IAHR Court. Case Baena Ricardo and others vs. Panama. Merits, Reparations, and Indemnities. Judgment of February 2, 2001. Series C No. 72, para. 126-127; Case of the Constitutional Court vs. Peru. Merits, Reparations, and Indemnities. Judgment of February 31, 2001. Series C No. 71, para. 69-70; and Case López Mendoza vs. Venezuela. Merits, Reparations, and Indemnities. Judgment of September 1, 2011 Series C No. 233, para. 111.

⁵⁶ IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello and other "Magistrates of the Supreme Court of Justice," Ecuador, March 31, 2011, para. 102; IAHR Court. Case Baena Ricardo and others vs. Panama. Merits, Reparations, and Indemnities. Judgment of February 2, 2001. Series C No. 72, para. 126-127; Case of the Constitutional Court vs. Peru. Merits, Reparations, and Indemnities. Judgment of February 31, 2001. Series C No. 71, para. 69-70; and Case López Mendoza vs. Venezuela. Merits, Reparations, and Indemnities. Judgment of September 1, 2011 Series C No. 233, para. 111.

⁵⁷ IAHR Court. Case Barbani Duarte and others vs. Uruguay. Merits, Reparations, and Indemnities. Judgment of October 13, 2011. Series C No. 234, para. 118; and Case Claude Reyes and others vs. Chile. Merits, Reparations, and Indemnities. Judgment of September 19, 2006. Series C No. 151, para. 118.

⁵⁸ TEDH, Cudak v. Luthania. Application No. 15869/025. Judgment of March 23, 2010, para. 42.

63. Apart from the punitive nature, it is relevant to formulate some general considerations on the strengthened safeguards in dismissal proceedings of judges and prosecutors, as well as the safeguards applicable in ratification or re-election proceedings of justice operators.

1. General considerations on applicable safeguards to judicial operators, including prosecutors

1.1 Judicial independence principle and judicial operators' removal

64. The IACHR indicated that the judicial independence principle is a requirement inherent to a democratic system and an essential pre-requirement for human rights protection.⁵⁹ It is embodied as one of due process' safeguards and protected by Article 8.1 of the American Convention. Moreover, the said principle also includes "strengthened"⁶⁰ safeguards that the States have to provide for judges so as to insure their independence.⁶¹ The Inter-American system's bodies have interpreted the judicial independence principle so as to include the following safeguards: Adequate appointment procedure, tenure, and safeguard against external pressures.⁶²

65. Particularly, regarding the safeguards to insure tenure, the Court indicated that the proceedings that might culminate in the dismissal of a judicial operator shall be carried out in a way compatible with the judicial independence principle. This implies that the States shall insure that all the people exerting judicial function have the safeguards of strengthened stability, which means that the dismissal or cessation of a judge from their role might be admissible for two essential reasons: i. For presenting "clearly reprehensible" behavior, "truly serious reasons for bad behavior or lack of jurisdiction"⁶³ or ii. due to the termination of the deadline or the fulfillment of the condition established in the appointment. Provisionality does not equal free removal and it shall not imply any alteration in the safeguards' regime for the judge's good performance and in the safeguard of the parties themselves.⁶⁴

66. Regarding the appointment's established term or condition, the United Nations Basic Principles relative to the judgeship's independence establish that "the judges' tenure will be insured for those appointed by administrative decision and those elected, until they reach the age of forced retirement or the term for which they were elected expires, as long as there are regulations in this regard."⁶⁵

67. Justice operators' stability in their roles is closely linked to the safeguard against external and internal pressures because if they do not have permanence assurance during a determined period, they will be

⁵⁹ IACHR, Report on Merits 12,816, Report No. 103/13, November 5, 2013, para. 112. Citing the United Nations. Human Rights Committee. General Observation No. 32, CCPR/C/GC/32, August 23, 2007, para. 19. See Cf. Habeas Corpus under Suspension of Safeguards (Arts. 27.2, 25.1, and 7.6 of the American Convention on Human Rights.) Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 30. See also, IACHR, Democracy and Human Rights in Venezuela, III. Separation and independence of the public authorities, December 30, 2009, para. 80.

⁶⁰ IAHR Court. Case Reverón Trujillo vs. Venezuela. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of June 30, 2009. Series C No. 197, para. 67; IACHR, Democracy and Human Rights, December 30, 2009, para. 185; IACHR, Second report on the situation of human rights defenders, December 31, 2011, para. 359.

⁶¹ As an example of this, the Inter-American Court indicated that "the judges' rights" are included within the State's obligations regarding the parties subjected to proceedings before the court. Moreover, the Court has indicated that "the safeguard of not being subjected to free removal entails that the disciplinary and punitive proceedings of judges shall necessarily respect due process safeguards, and that an effective remedy shall be offered to those affected." IAHR Court. Case Apitz Barbera and others ("First Administrative Law Court") vs. Venezuela. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of August 5, 2008. Series C No. 182, para. 147.

⁶² IACHR, Report on Independence remedies for justice operators. The Road toward Strengthening the Access to Justice and the Rule of Law in the Americas, December 5, 2013, para. 56, 109, and 184, IAHR Court. Case López Lone and others vs. Honduras. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of October 5, 2015. Series C No. 302, para. 191.

⁶³ IAHR Court. Case López Lone and others vs. Honduras. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of October 5, 2015. Series C No. 302, para. 259.

⁶⁴ IAHR Court. Case Apitz Barbera and others ("First Administrative Law Court") vs. Venezuela. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of August 5, 2008 Series C No. 182, para. 43.

⁶⁵ See principle 12, United Nations Basic Principles relative to the judgeship's independence, Adopted by the Seventh Conference of the United Nation on Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and confirmed by the General Assembly on its resolutions 40/32 of November 29, 1985 and 40/146 of December 13, 1985.

vulnerable to pressures of different sectors, mainly from those who have the power to decide on their dismissals.

68. By virtue of the foregoing, the Commission reiterates that the States shall insure that all the people exerting judicial function have strengthened stability safeguards. Moreover, except for the commission on serious disciplinary offenses, the stability in the role shall be respected by the established term or condition in the appointment, without distinction between professional judges and those who are in the judicial function in a temporary or provisory way. The eventual temporariness or provisionality shall be established by a specific term or condition of the judgeship's exercise, so as to insure that these judges will not be dismissed due to the judgments they deliver or by virtue of the arbitrary decisions of administrative or judicial bodies.

1.2 General consideration on prosecutors' strengthened stability

69. The Commission estimates that the judges' strengthened stability principle is also applicable to prosecutors, since they have a supplementary role to the judge regarding justice administration, as they promote criminal proceedings, investigate crimes, and fulfill other public interest functions. In the absence of sufficient safeguards, this can favor their receiving internal and external pressures because of the decisions they take.⁶⁶

70. Regarding the United Nations Guidelines on the Role of Prosecutors, they establish that "the States will insure that prosecutors are able to fulfill their professional functions, without their being the victims of intimidation, restrictions, harassment, wrongful interference or unjustified risk of falling into civil, criminal, or another kind of responsibility."⁶⁷

71. Likewise, the Bordeaux Declaration on judges and prosecutors in a democratic society establishes that:

The Public Ministry's independence constitutes an essential corollary to the judicial branch's independence (...) The Public Ministry's independence is essential for the accomplishment of its mission (...) Along the lines of the judges' independence, the independence that has to be acknowledged to the public ministry does not constitute a prerogative or privilege granted in the interest of its members but a safeguard for a fair, impartial, and effective justice that protects public and private interests of the people affected.

(...) the proximity and complementarity of the judges and prosecutors' mission impose similar requests and safeguards in the statute area and the working conditions, particularly with regard to initial selection, education, career development, discipline, transferring, remuneration, termination of functions, and freedom to create professional associations.⁶⁸

72. Moreover, the Consultative Council of European Prosecutors of the Council of Europe indicated in its Opinion No. 9 that:

The independence and autonomy of the public prosecutor's office constitute an essential corollary to the judicial branch's independence. Therefore, it is important to promote the general tendency for improving independence and effective autonomy of the public prosecutor's office's services (...)

Prosecutors shall be autonomous regarding the adoption of decisions and shall carry out their functions without experiencing external pressures or interference, taking into account the principles of separation of powers and responsibility.⁶⁹

⁶⁶ See for example, IACHR, Integral protection policies for defenders, OEA/Ser.L/V/II.Doc.207/17, December 29, 2017, para. 47.

⁶⁷ United Nations. Guidelines on the Role of Prosecutors. Approved by the Eighth Conference of the United Nations on Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from August 27 to September 7, 1990.

⁶⁸ Consultative Council of European Judges and Consultative Council of European Prosecutors. Bordeaux Declaration on judges and prosecutors in a democratic society, Strasbourg, December 8, 2009, para. 10, 27, and 37.

⁶⁹ Consultative Council of European Prosecutors, Opinion No. 9 (2014), Rome Charter, paragraphs IV and V.

73. In view of the previous considerations, the IACHR estimates that the standards cited in the previous section are applicable to prosecutors, who due to the nature of their function, shall have strengthened stability in their role, as a safeguard for the independence of their work, and shall only be replaced if they commit serious offenses or the established deadline or term of their appointment is met, in an assimilated way to judges.

1.3 Ratification proceedings for judges and prosecutors

74. By means of its monitoring mechanisms, the IACHR made reference to re-election and ratification proceedings of justice operators. Particularly, the IACHR indicated that it is desirable one single appointment of justice operators for a determined period assuring the permanence in the role during the indicated time or condition. Moreover, the Commission considered that the legal possibility of being subjected to a subsequent confirmation to stay in the role or be elected is a vulnerability aspect of the independence of judges and magistrates. The Commission indicated that it is preferable that justice operators not be subjected to re-election or ratification proceedings, especially when the possibility of confirming the role, or not, to the justice operator might be discretionary.⁷⁰

75. Regarding the previous aspect, the Commission considered that, apart from the fact of how troublesome discretion might be in a re-election or ratification system, the justice operator pretending to be re-elected or ratified in his or her functions runs the risk of behaving in such a way that he or she gets the support of the authority in charge of the said decision, or that his or her behavior is seen in this way by the parties.⁷¹

76. The United Nations' Special Rapporteur on the independence of magistrates and attorneys indicated that in the United States, where magistrates' re-election is foreseen, automatic re-election could be favored, unless there was a serious offense duly established by a disciplinary proceeding that respects all the safeguards of a fair trial.⁷²

77. Taking into account the previous standards, the Commission estimates that the ratification proceedings of magistrate prosecutors and judicial operators shall be exclusively oriented toward ensuring accountability on the part of the said public workers and determining their aptitude with objective criteria and, due to the absolutely punitive nature and its impact on judicial independence, in accordance with due process safeguards acknowledged in the American Convention, through previously established causes, which are pursuant to the lawfulness principle. The absence of ratification of prosecutors and magistrates, based on vague criteria that provide a wide discretion margin of the authority in charge, affects the independence that shall be granted to them when carrying out their functions.

78. In the light of the parties' positions and the established rights, and taking into account the general considerations stated so far, the Commission will analyze the concrete cases in the following order: 1. The right to previously know the issued indictment in a detailed way and to have the appropriate time and means for defense; 2. The right to have duly motivated decisions and the lawfulness principle; and 3. The right to resort to the judgment and legal protection. Finally, the IACHR will refer to the right to access public function.

⁷⁰ IACHR, Independence remedies for justice operators. The Road toward Strengthening the Access to Justice and the Rule of Law in the Americas. OEA/Ser.L/V/II.Doc. 44, December 5, 2013, para. 87.

⁷¹ IACHR, Independence remedies for justice operators. The Road toward Strengthening the Access to Justice and the Rule of Law in the Americas. OEA/Ser.L/V/II.Doc. 44, December 5, 2013, para. 88.

⁷² United Nations. General Assembly, Promotion and protection of all human, civil, political, economic, social, and cultural rights, including the right to development. Report by the Special Rapporteur on the independence of magistrates and attorneys, Leandro Despouy, Addition. Mission in Guatemala, A/HRC/11/41/Add.3, October 1, 2009, para. 110.

B. Right to a fair trial, lawfulness principle, and legal protection

1. Right to previously know the issued indictment⁷³ in a detailed way and to have the appropriate time and means for defense⁷⁴

79. The Commission recalls that the right to defense implies that the person subjected to a proceeding, including an administrative one, has to be able to effectively defend his or her interests or rights and under “conditions of equality of arms (...) being fully informed about the accusations against him or her.”⁷⁵ The Court indicated that the right to defense has to necessarily be allowed to be enforced from the moment a person is pointed as potential author or accomplice of an illicit act, and it only finishes at the end of the proceeding.⁷⁶ Pursuant to the foregoing, this is equally applicable to proceedings entailing a punishment.

80. The IACHR observes that in this case, during the assessment and ratification proceeding, the NCM never brought charges or issued indictments against the alleged victims and neither were they notified of reports or claims against them that would allow them to submit evidence or arguments. The Commission recalls that the design of the assessment and ratification proceeding, as it was included in the legal framework in force from the non-ratification of the alleged victims of this case, did not foresee the bringing of charges or the issue of indictments that would allow magistrates get to know the reasons that could base the ratification or non-ratification decision by the National Council of the Magistracy, which absolutely prevents them from defending themselves or submitting evidence, since they were not aware of the charges considered to assess them. In this way, notwithstanding that if some of the alleged victims could access to the previous interview, the latter cannot be understood as an appropriate defense mechanism in the referred circumstances of not acknowledging the specific reasons for the potential decision to non-ratify them. As it will be later analyzed regarding the lawfulness principle, the IACHR observes that the legally established criteria for the assessment proceeding cannot make up, in abstract, for the absence of an individualized notification with a real possibility of defense, on the aspects analyzed and that will determine their potential non-ratification, in a concrete case.

81. By virtue of the foregoing, the IACHR concludes that the State violated Articles 8.2 b) and 8.2 c) of the American Convention, in relation to Articles 1.1 and 2 of this document, to the detriment of Jorge Luis Cuya Lavy, Jean Aubert Díaz Alvarado, Marta Silvana Rodríguez Ricse, and Walter Antonio Valenzuela Cerna.

2. Regarding the right to have duly motivated decisions⁷⁷ and the freedom from ex post facto laws principle⁷⁸

82. The IACHR indicated that, in the framework of disciplinary proceedings against justice operators, there shall be clear regulation on the dismissal causes and proceedings, and their absence, apart from promoting doubt on independence, can lead to arbitrary acts of abuse of power, with a direct impact on due process rights and lawfulness.⁷⁹ The Commission stated that the fulfillment of the lawfulness principle

⁷³ Article 8.2 b establishes that the right to previous and detailed communication for the person accused of the indictment issued.

⁷⁴ Article 8.2 c refers to the concession of time and the appropriate means to the person accused due to his or her defense's preparation.

⁷⁵ IAHR Court. Legal Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 117.

⁷⁶ IAHR Court, Case Barreto Leiva vs. Venezuela. Merits, Reparations, and Indemnities. Judgment of November 17, 2009. Series C No. 206. Para. 29. Citing *mutatis mutandis* IAHR Court, Case Suárez Rosero vs. Ecuador. Judgment of November 12, 1997. Series C No. 35, para. 71; and Case Heliodoro Portugal vs. Panama. Preliminary Exceptions, Merits, Reparations, and Indemnities. Judgment of August 12, 2008. Series C No. 186, para. 148.

⁷⁷ Article 8.1 of the American Convention establishes that every person has the right to be heard, with the proper safeguards and within a reasonable term of time, by the competent judge or court, independent and impartial, previously established by the law, in the determination of any criminal accusation made against them, or for the determination of their rights and obligations of civil, fiscal or other nature.

⁷⁸ Article 9 establishes that nobody can be convicted of actions or omissions that, at the moment of committing them, were not criminal, according to applicable law. The most serious penalty imposed shall be the one applicable at the moment of the crime. If after the crime is committed, the law orders to impose a lighter penalty, the criminal will benefit from it.

⁷⁹ IACHR, Independence remedies for justice operators. The Road toward Strengthening the Access to Justice and the Rule of Law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 206 and 207.

allows people to effectively determine their conduct pursuant to law.⁸⁰ According to the IACHR, “the lawfulness principle has a specific development in its typicality, which insures, in the one hand, the individual freedom and security, since it establishes in an advanced, clear, and unequivocal way which conduct is to be punished and, in the other hand, it protects legal security.”⁸¹

83. Furthermore, the duty of motivation is translated into “the reasoned justification” that allows the judge to come to a conclusion.⁸² Both the Court and the Commission have emphasized that the requirement of an appropriate level of motivation is highly relevant, since the disciplinary control—and in this case, the assessment and ratification proceeding with absolutely punitive consequences—has the aim of assessing the conduct, aptitude incumbent on the role, and performance of public workers, thus, it is in the motivation itself where it is necessary to analyze the conduct charged and the proportionality of the punitive consequence.⁸³

84. Moreover, the Commission recalls that the duty of motivation has an intrinsic relationship with the lawfulness principle, since the causes leading to a punishment—particularly to the consequence of not continuing in the role of judge or prosecutor—shall be established in the State’s legal framework pursuant to the standards aforementioned, the argumentation of a judgment shall allow knowing “the facts, motives, and regulations on which the authority was based to adopt a decision.”⁸⁴ In this sense, it is the motivation of a punitive decision the one that allows understanding the way in which the facts supported the proceeding, adjust to or fall into the field of the appealed causes. The motivation proves to the parties that they were heard and provides them of the possibility of criticizing the resolution and achieving a new examination of the matter before the higher courts.⁸⁵

85. Likewise, the IACHR established that the “utmost severity principle” of the dismissal punishment of a judge implies that only “clearly reprehensible,” “truly serious reasons for bad behavior or lack of jurisdiction” conducts are admissible.⁸⁶ The protection of the judicial independence demands that the dismissal of judges be considered as *ultima ratio* in legal disciplinary matters.⁸⁷ Justice operators’ tenure implies that the dismissal corresponds to quite serious conduct, while other punishments can be observed as malpractice or negligence before events.⁸⁸ The Commission considers that these assessments are equally applicable to the non-ratification decision of a judge or prosecutor, in the terms regulated in the Peruvian case, at the moment of the non-ratification of the alleged victims. This, as long as the said decision, in practice, has the same absolutely punitive effect of preventing them from continuing in their roles, for reasons of absence of aptitude incumbent on the role for that effect.

86. In this case, the Commission could verify that the resolutions passed by the NCM were unmotivated at the moment of ordering the non-ratification of the alleged victims. The State itself recognized

⁸⁰ 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.

⁸¹ IACHR, Petition and Pleadings before the Inter-American Court on Human Rights in case De la Cruz Flores vs. Peru; mentioned in: IAHR Court, Case De la Cruz Flores vs. Peru, Judgment of November 18, 2004 (Merits, Reparations, and Indemnities), Series C. No. 115, para. 74.

⁸² IAHR Court, Case Maldonado Ordoñez vs. Guatemala. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of May 3, 2016. Series C No. 311, para. 87.

⁸³ IAHR Court, Case Maldonado Ordoñez vs. Guatemala. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of May 3, 2016. Series C No. 311, para.

⁸⁴ IACHR, Report No. 103/13, Case 12,816, Merits Report, Adán Guillermo Lopez Lone and others, Honduras, para. 145.

⁸⁵ IAHR Court. Case Apitz Barbera and others (“First Administrative Law Court”) vs. Venezuela. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of August 5, 2008, Series C No. 182, para. 78.

⁸⁶ IAHR Court. Case López Lone and others vs. Honduras. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of October 5, 2015. Series C No. 302, para. 259.

⁸⁷ IAHR Court. Case López Lone and others vs. Honduras. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of October 5, 2015. Series C No. 302, para. 259; IACHR, Report No. 38/16, Case 12,768, Merits, Omar Francisco Canales Ciliezar, Honduras, August 31, 2016, para. 71 ff. See also IACHR, Independence remedies for justice operators. The Road toward Strengthening the Access to Justice and the Rule of Law in the Americas, OEA/Ser.L/V/II.Doc.44, December 5, 2013, para. 211. In the said report, the IACHR considered that “the legal provisions establish administrative punishments, such as dismissals, shall be subjected to the most strict lawfulness discernment. The said regulations include a punishment of extraordinary seriousness and restrict the enforcement of rights. Moreover, given that the regulations constitute an exception to judicial stability, they can affect the principles of independence and legal autonomy.”

⁸⁸ IAHR Court. Case López Lone and others vs. Honduras. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of October 5, 2015. Series C No. 302, para. 199. IACHR, Report No. 26/18, Case 12,839. Merits. Ricardo Vaca Andrade. Ecuador. March 2, 2018, para. 107.

that the absence of motivation might have affected the alleged victims' rights. The Commission considers that the complete absence of a motivation constitutes in itself a violation of fair trial, included in Article 8.1 of the Convention.

87. Furthermore, the Commission takes cognizance that in the legal framework of the assessment and ratification proceeding, they did not establish the duly delimited causes that would allow the alleged victims to understand the concrete conduct assessed by the NCM and which of them might be considered as serious offenses, justifying the non-ratification, and, thus, the non-permanence in the role. The regulations are limited to indicate the aspects to assess by the NCM, which were "the conduct and aptitude incumbent on the role in the role's fulfillment," considering as base, in generic terms, "judicial production, merits, and reports of Bar Associations and background on their conduct." Moreover, the assessment and ratification proceeding was qualified as a confidence vote in the applicable legal framework and the case law of the Constitutional Court of Peru, so the decision of ratifying a magistrate was adopted "according to the criterion of each councilor" voting at the NCM's respective session.

88. The Commission estimates that the discretion of councilors, in the interviews' framework, allowed them, as some petitioners alleged and the State did not dispute, to ask questions on matters unrelated to the judicial function, such as sexual preference, reasons for single state, or questions on their judicial activities as the reasons for the filing of certain complaints.

89. The Commission considers that, in the present case, the absence of clearly delimited causes, the absence of motivation of the resolutions determining the non-ratification of the alleged victims, and the discretion granted to each councilor, considering the assessment and ratification proceeding as a confidence vote, were incompatible with the justice operators' strengthened stability principle, since the petitioners were subjected to an absolutely punitive proceeding, during which they made use of a control based on the "convenience" of the magistrates' permanence in their roles, and there was no purely legal monitoring as there shall be in cases like these so as to insure true accountability and the judicial operators' aptitude incumbent on the role, based on objective criteria.

90. By virtue of the previous considerations, the IACHR estimates that the Peruvian State violated the right to have motivated decisions and the lawfulness principle established in Articles 8.1 and 9 of the American Convention, in relation to Articles 1.1 and 2 of this document, to the detriment of Jorge Luis Cuya Lavy, Jean Aubert Díaz Alvarado, Marta Silvana Rodríguez Ricse, and Walter Antonio Valenzuela Cerna.

3. The right to appeal the judgment⁸⁹ and legal protection⁹⁰

91. The ICHR recalls that the right to appeal against a judgment is part of the legal due process of a disciplinary punitive proceeding⁹¹ and it is a principal safeguard aiming at preventing the consolidation of an unfair situation.⁹² Regarding the scope of the right to appeal, both the IACHR and the Court have indicated that it implies an examination conducted by a different judge or court and of a higher rank, regarding findings of fact and law of the appealed to decision.⁹³ It shall be admissible before the judgment is considered *res judicata*, it shall be solved within a reasonable term, it shall be timely and effective, i.e. it shall provide a result or response to its original aim. Moreover, it must be accessible, without requiring further formalities that might turn this right into something illusory.⁹⁴

⁸⁹ Article 8.2 h establishes the "right to resort to the judgment before a judge or a superior court."

⁹⁰ Article 25.1 of the Convention establishes that: Every person has the right to a simple and fast remedy or to any other type of effective remedy before the competent judges or court, that protects them against acts violating their fundamental rights acknowledged by the Constitution, the law of the present Convention, even when said violation is committed by people acting exercising their official functions.

⁹¹ IACHR, Independence remedies for justice operators. The Road toward Strengthening the Access to Justice and the Rule of Law in the Americas, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 235; IACHR Court, Case Vélez Loo vs. Panama. Preliminary Exceptions, Merits, Reparations, and Indemnities. Judgment of November 23, 2010. Series C No. 218. Para. 179.

⁹² IACHR, Report No. 33/14, Case 12,820, Manfred Amrhein and others, Costa Rica. April 4, 2014, para. 186.

⁹³ IACHR, Report No. 33/14, Case 12,820, Manfred Amrhein and others, Costa Rica. April 4, 2014, para. 186.

⁹⁴ IACHR, Report No. 33/14, Case 12,820, Manfred Amrhein and others, Costa Rica. April 4, 2014, para. 186 ff.

92. Finally, the IACHR recalls that the State had the general obligation to provide effective judicial remedies to the people alleging they are the victims of human rights violations (Article 25), which shall be substantiated pursuant to legal due process regulations (Article 8.1). For an effective remedy to exist it is not sufficient for it to be legally foreseen but it must be really suitable for establishing if a human rights violation was committed and provide what is necessary to solve it.⁹⁵ Moreover, the Court indicated that the confusion and contradiction in domestic regulations might place the alleged victims in a vulnerability situation, as they cannot have a simple and effective remedy as a consequence of contradictory regulations.⁹⁶

93. In the present case, the IACHR recalls that the legal framework in force established that “at legal court, the NCM’s decisions could not be overturned” in matters of assessments and ratifications of judges and prosecutors, and it also indicated that the said decisions were “unchallengeable.” The foregoing implies that, at the time of the facts, there was no remedy in the Peruvian legislation that would allow an integral review of the NCM’s resolutions and there was no possibility of filing for a judicial remedy in view of a potential human rights violation included in the said resolutions.

94. In spite of the abovementioned, the Commission takes cognizance that the alleged victims Cuya Lavy, Díaz Alvarado, and Rodríguez Ricse filed for an appeal petition against the NCM’s resolution, through which their non-ratification was ordered.

95. In the case of Jorge Luis Cuya Lavy, the motion of appeal was rejected, since it was considered that the NCM’s resolutions could not be overturned, regarding the assessment and ratification of judges. Finally, the special remedy was declared inadmissible, since it was estimated that the ratification function could only be exceptionally overturned in the cases of irregular exercise.

96. In the case of Jean Aubert Díaz Alvarado and Marta Silvana Rodríguez Ricse, both of them were not ratified in 2001 and they filed for a motion of appeal in 2006, when this possibility was enabled due to the judicial change of December 2004; however, the Constitutional Court finally rejected them, since it estimated that the actions were prescribed as the 60-day deadline, which was foreseen in Article 44 of the Code of Constitutional Procedure, expired.

97. The Commission takes cognizance of what the State indicated regarding the fact that the writ of amparo was effective in other cases similar to the petitioners’; however, the State also acknowledged that during the time of the events, “the legislation and case law were completely divided,” which produced uncertainty on the amparo’s legal basis, or not, when the legal framework explicitly denied that possibility, but in practice, some judicial bodies did accept its legal basis against the assessment and ratification resolutions of the NCM.

98. Due to the foregoing, the Commission estimates that the alleged victims did not have a remedy to challenge the decision ordering their non-ratification in their roles as judges and prosecutors, and that produced their dismissals, denying them the possibility of an integral review of both the facts and the law of the decision. Furthermore, neither did they have the effective judicial remedy foreseen in the American Convention to achieve the protection of the allegedly violated human rights.

99. By virtue of the previous reasons, the Commission concludes that the Peruvian State violated the right to appeal against a judgment and the right to legal protection established in Articles 8.2 h) and 25.1 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 of this document, to the detriment of Jorge Luis Cuya Lavy, Jean Aubert Díaz Alvarado, Marta Silvana Rodríguez Ricse, and Walter Antonio Valenzuela Cerna.

⁹⁵ IAHR Court, Case Workers dismissed from Congress (Aguado Alfaro and others). Judgment on Preliminary Exceptions, Merits, Reparations, and Indemnities. Judgment of November 24, 2006. Series C No. 158. Para. 125; IAHR Court, Case Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125. Para. 61; IAHR Court, Case “Cinco Pensionistas”. Judgment of February 28, 2003. Series C No. 98. Para. 136.

⁹⁶ IAHR Court. Case Maldonado Ordóñez vs. Guatemala. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of May 3, 2016. Series C No. 311, para. 120.

C. Political rights⁹⁷

100. Article 23.1 c) establishes the right of judges to access public roles “under equality conditions.” The Court interpreted this article, indicating that when the judges’ permanence in their roles is arbitrarily affected, this constitutes a violation of the right to judicial independence, included in Article 8.1 of the American Convention, together with the right to access to and permanence in a public role under general equality conditions, established in Article 23.1 c).⁹⁸

101. The Commission estimates that the indicated standard is applicable to prosecutors, in the light of what was indicated in this report regarding the judges’ strengthened stability safeguards are also applicable to and shall protect prosecutors, in order to insure the independence in their roles’ fulfillment.

102. Just as it was established in previous paragraphs, in the present case, it is stated that the alleged victims were dismissed from their roles during an arbitrary proceeding, in which different violations of due process and the lawfulness principle were committed in the terms described throughout this report on merits, so in observance of the indicated criterion in the previous paragraph, the Commission considers that the State also violated Article 23.1 c) of the American Convention to the detriment of the petitioners.

103. By virtue of the foregoing, the Commission considers that the State violated Article 23.1 c) of the American Convention, in relation to Article 1.1 of this document, to the detriment of Jorge Luis Cuya Lavy, Jean Aubert Díaz Alvarado, Marta Silvana Rodríguez Ricse, and Walter Antonio Valenzuela Cerna.

V. CONCLUSIONS AND RECOMMENDATIONS

104. Based on the findings of fact and law, the Inter-American Commission concluded that the State was responsible for violating the rights to appeal against a judgment, the lawfulness principle, and the right to legal protection, established in Articles 8.1, 8.2 b), 8.2 c), 8.2 h) 9, 23.1 c), and 25.1 of the American Convention on Human Rights, in relation to the obligations established in Articles 1.1 and 2 of this document, to the detriment of Jorge Luis Cuya Lavy, Jean Aubert Díaz Alvarado, Marta Silvana Rodríguez Ricse, and Walter Antonio Valenzuela Cerna.

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

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

1. Reinstate the victims in a position similar to the one they had, with the same remuneration, social benefits, and a standing equivalent to the one they would have today if they had not been dismissed. If it is not the victims’ will or there are objective reasons to impede his reinstatement, the State shall pay a compensation for that reason, which is apart from the reparations relative to pecuniary and moral damages included in recommendation number two.

2. Integrally make up for the consequences of the violations established in this report, including both pecuniary and non-pecuniary damage.

3. Adopt the necessary non-recurrence measures to prevent similar facts from happening in the future. Particularly, insure the application of due process regulations, in the framework of assessment and ratification proceedings for judges and prosecutors, stipulating legislative measures, and of another kind, which are necessary to insure that the proceedings referred to comply with the standards described in this report. Particularly, the State shall carry out legislative and practice changes necessary to: i) Insure that the

⁹⁷ Article 23 of the American Convention establishes that: 1. All citizens shall have the following rights and opportunities: (...) c. To have access to, in general equality conditions, the public functions of their country. 2. The law can regulate the enforcement of rights and opportunities referred to in the previous paragraph, particularly for reasons regarding age, nationality, residence, language, education, civil or mental capacity, or conviction, by a competent judge in criminal action.

⁹⁸ IACHR, Report No. 72/17, Case 13,019. Merits. Eduardo Rico. Argentina. July 5, 2017, para. 124. IAHR Court. Case López Lone and others vs. Honduras. Preliminary Exception, Merits, Reparations, and Indemnities. Judgment of October 5, 2015. Series C No. 302, para. 192.

assessment and ratification proceedings for judges and prosecutors comply with legal monitoring and do not constitute a confidence vote; ii) Duly regulate the offenses committed that bring about the non-ratification of a judge or prosecutor, based on objective criteria and in a proportionate way; iii) Allow judges and prosecutors to defend themselves regarding the specific charges against them, in the light of the said objective criteria, as well as to have a hierarchical remedy in the framework of the proceeding against them, so as to be able to have a double confirmation of the punishment imposed, apart from the judicial remedy for potential due process violations; and iv) Insure that the judicial remedy for potential due process violations in these types of proceedings be accessible and simple, and lead to a ruling on merits.