INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF URRUTIA LAUBREAUX *V.* CHILE

JUDGMENT OF AUGUST 27, 2020

(*Preliminary objections, merits, reparations and costs*)

In the case of *Urrutia Laubreaux v. Chile*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:[*]

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Romina I. Sijniensky, Deputy Secretary,[*]

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this judgment structured as follows:

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[*] Judge Eduardo Vio Grossi, a Chilean national, did not take part in the processing of this case, or in the deliberation and signature of this judgment, based on the provisions of Article 19(1) and 19(2) of the Court's Rules of Procedure.

[*] The Secretary of the Court, Pablo Saavedra Alessandri, did not participate in the deliberation and signature of this judgment.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On February 1, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of *Daniel Urrutia Laubreaux with regard to the Republic of Chile* (hereinafter "the State" or "Chile"). The Commission indicated that the case related "to a series of human rights violations in the context of a disciplinary procedure that culminated with a sanction of censure, later reduced to a private reprimand of Judge Daniel Urrutia Laubreaux for forwarding an academic paper to the Supreme Court of Justice that criticized its actions during the Chilean military regime." The Commission determined that, during that procedure: (i) the [presumed] victim was not notified that he was subject to a disciplinary procedure, the reasons for this, or the rules that his conduct could have infringed"; (ii) the presumed victim was not subject to an impartial disciplinary authority; (iii) the disciplinary ground applied to the presumed victim was excessively broad, and (iv) he received "an arbitrary sanction that violated the exercise of freedom of expression, by the imposition of subsequent liability that failed to comply with the requirements established in Article 13(2) of the American Convention." On this basis, the Commission determined the "international responsibility of the Chilean State for the violation of the rights to judicial guarantees, the principle of legality, freedom of thought and expression, and judicial protection established in Articles 8(1), 8(2)(b), 8(2)(c), 9, 13(2) and 25(1) of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) and 2 of this instrument," to the detriment of Daniel Urrutia Laubreaux.

2. *Procedure before the Commission*. The procedure before the Commission was as follows:

   a) *Petition.* On December 5, 2005, Daniel Urrutia Laubreaux and the Center for Justice and International Law lodged the initial petition.

   b) *Admissibility Report.* On July 21, 2014, the Commission adopted the Admissibility Report in which it concluded that the petition was admissible.

   c) *Merits Report*. On February 24, 2018, the Commission adopted Merits Report No. 21/18, in which it reached a series of conclusions[1] and made several recommendations to the State.

3. *Notification to the State.* The Merits Report was notified to the State on April 5, 2018, granting it two months to report on compliance with the recommendations. The Commission awarded a total of four extensions to the State, which "presented briefs indicating its willingness to comply with the recommendations," and advised that, on May 28, 2018, the Supreme Court had annulled the sanction imposed on the presumed victim. Nevertheless, the Commission considered that Chile had "not demonstrated any significant progress to comply with all the recommendations, particularly with regard to reparations in favor of the [presumed] victim."

4. *Submission to the Court*. On February 1, 2019, the Commission submitted this case to the Court owing to "the need to obtain justice and reparation."[2] This Court notes with concern

[1] The Commission concluded that the State was responsible for the violation of the rights to judicial guarantees, the principle of legality, freedom of thought and expression, and judicial protection established in Articles 8(1), 8(2)(b) and (c), 9, 13(2) and 25(1) of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) and 2 of this instrument to the detriment of Daniel Urrutia Laubreaux.

[2] The Commission appointed then Commissioner Luis Ernesto Vargas Silva, then Executive Secretary Paulo Abrão, and the Special Rapporteur for Freedom of Expression, Edison Lanza as its delegates. It also appointed Silvia Serrano Guzmán, Executive Secretariat lawyer at the time, and Christian González Chacón, Executive Secretariat lawyer as legal advisers.

that 13 years passed between the presentation of the initial petition to the Commission and the submission of the case to the Court.

5. *The Commission's requests.* Based on the above, the Inter-American Commission asked the Court to find and declare the international responsibility of the State for the violations contained in its Merits Report and to order the State to adopt, as measures of reparation, those included in that report.

II
PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and to the representatives.* The submission of the case was notified to the State and to the representatives on March 4, 2019.

7. *Brief with motions, pleadings and evidence.* On May 6, 2019, Fabián Sánchez Matus, Javier Cruz Angulo Nobara and José Antonio Caballero Juárez (hereinafter "the representatives") presented their brief with motions, pleadings and evidence (hereinafter "motions and pleadings brief") pursuant to Articles 25 and 40 of the Court's Rules of Procedure.[3] The representatives agreed with the Commission's arguments, adding that the State was also responsible for the violation of the obligation to provide the reasoning for the judgments, and the rights to the presumption of innocence and to be assisted by legal counsel of one's own choosing (Articles 8(1) and 25, 8(2) and 8(2)(d) of the Convention, respectively). They also alleged violations that had occurred in "other disciplinary proceedings instituted against Judge Urrutia Laubreaux in the context of his judicial activities after the presentation of the initial petition."

8. *Evidence obtained ex officio.* On May 8, 2019, the Secretariat of the Court, at the request of an interested party and on the instructions of the President, asked the State to provide certain documentary evidence. The State forwarded this evidence on July 8, 2019.

9. *Answering brief.* On July 8, 2019, the State submitted to the Court its brief with preliminary objections and answering the submission of the case by the Commission, as well as with its observations on the motions and pleadings brief (hereinafter "the answering brief"). In this brief the State filed six preliminary objections, contested the violations that had been alleged and the requests for measures of reparations made by the Commission and the representatives, and asked the Court to hold a conciliation hearing in this case.

10. *Observations on the preliminary objections*. On August 7 and 9, 2019, the Commission and the representatives, respectively, presented their observations on the preliminary objections.

11. *Request for a "conciliation hearing."* On September 17, 2019, the State again asked the Court to require "the personal appearance of the petitioner in a public hearing before this Court, for the sole purpose of allowing the State and the petitioner to discuss an agreement pursuant to the provisions of Article 63 of the Rules of Procedure that would put an end to this litigation." The representatives indicated that "neither the victim nor his representatives have any interest" in reaching a friendly settlement, and therefore asked the Court to reject the State's request and proceed to call the public hearing in the case.

12. *Call to a public hearing.* On December 20, 2019, the President issued an order calling the parties and the Commission to a public hearing on the preliminary objections and eventual merits, reparations and costs, to receive their respective final oral arguments and observations

[3] On August 13, 2012, the Center for Justice and International Law ceased to represent Judge Urrutia Laubreaux. Messrs. Angulo Nobara and Caballero Juárez assumed the representation of Mr. Urrutia Laubreaux on September 1, 2015. Fabián Sánchez Matus assumed his representation on August 29, 2016.

on those issues.[4] Regarding the request to call a "conciliation hearing made by the State," the President indicated that "it is not for this Court to call a conciliation hearing, especially considering that the representatives have indicated that they have no interest in reaching a friendly settlement."[5] Therefore, the President rejected the State's request. Also, in this order, the presumed victim was called to testify in the public hearing and one witness and two expert witnesses were required to present their statements by affidavit. The order also rejected the representatives' request to ask the State to provide certain documentary evidence.

13. *Request to suspend and reschedule the hearing.* On January 14, 2020, the State requested the suspension and rescheduling of the public hearing, alleging circumstances that prevented its agents from attending it.[6] On January 17, 2020, the Commission advised that it had no observations to make in that regard. On January 20, 2020, the representatives asked the Court to reject the State's request and to hold the hearing on the scheduled date. On January 21, 2020, the Court's Secretariat, on the instructions of the President, advised that the State's request was denied because it had not provided any reasons of *force majeure* that would require the suspension of the hearing, especially considering the proximity of the date originally scheduled.

14. *Request for provisional measures.* On January 20, 2020, the representatives submitted a request for provisional measures to the Court pursuant to Articles 63(2) of the Convention and 27 of the Court's Rules of Procedure for the Court to order the State to adopt the necessary measures to ensure the rights to life, personal integrity and freedom of expression of Judge Daniel David Urrutia Laubreaux. The Court rejected this request by an order of March 12, 2020.[7]

15. *Alleged supervening facts.* On January 28, 2020, the representatives informed the Court of two disciplinary proceedings opened against the presumed victim, on January 8 and 13, 2020, and requested their incorporation into the case file.

16. *Public hearing.* The public hearing was held on January 30, 2020, during the Court's 133rd regular session which took place in San José, Costa Rica.[8] During the hearing, the presumed victim testified and the Court's judges requested the parties and the Commission to provide certain explanations.

17. *Amici Curiae.* The Court received three *amicus curiae* briefs presented by: (1) the Chilean National Association of Judges (ANM);[9] (2) members of the Universidad de Guadalajara,[10] and

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[4] *Cf. Case of Urrutia Laubreaux v. Chile. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of December 20, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/urrutia_laubreaux_20_12_19.pdf

[5] *Case of Urrutia Laubreaux v. Chile. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of December 20, 2019, *considerandum* 7.

[6] The State requested the suspension and rescheduling of the hearing "owing to activities relating to the human rights situation in the country in the context of the social incidents that began on October 18, 2019".

[7] *Cf. Case of Urrutia Laubreaux v. Chile. Request for provisional measures.* Order of the Inter-American Court of Human Rights of March 12, 2020. Available at: http://www.corteidh.or.cr/docs/medidas/urrutia_se_01.pdf

[8] There appeared at this hearing: (a) for the Inter-American Commission: Jorge H. Meza Flores and Christian Gonzáles, advisers to the Commission; (b) for the representatives of the presumed victim: Fabián Sánchez Matus, Javier Cruz Angulo Nobara and José Antonio Caballero Juárez, and (c) for the State of Chile: Oscar Alcamán Riffo, Ambassador of Chile to Costa Rica and Agent, and Oliver Román López Serrano, lawyer of the Human Rights Directorate of the Ministry of Foreign Affairs and Deputy Agent.

[9] The brief was signed by María Soledad Piñeiro Fuenzalida, President of ANM, Chile. The brief refers to the organizational structure of the Chilean Judiciary and the practices that violate human rights which have been deployed by the Appellate Courts and the Supreme Court, as disciplinary organs. It also suggests the adoption of specific guarantees of non-repetition in this case.

[10] The brief was signed by Sergio Armando Villa Ramos, Paulette Montserrat Bermúdez Jordana, Diana Martínez Torres, Giovanni Daniel López Ramírez and Adolfo Aldrete. The brief refers to judicial autonomy and independence within the Judiciary, the fact that article 323 of the Organic Code of the Chilean Courts is contrary to the Convention,

(3) the Human Rights Clinic of the Human Rights Research and Education Centre and Scholars at Risk at the University of Ottawa.[11]

18. *Final written arguments and observations*. On March 2, 2020, the State and the representatives forwarded their final written arguments and the Commission its final written observations.

19. *Deliberation of the case.* The Court deliberated this judgment, in a virtual session, on August 25, 26 and 27, 2020.[12]

III
JURISDICTION

20. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, because Chile has been a State Party to the American Convention since August 21, 1990, and accepted the contentious jurisdiction of the Court on the same date.

IV
PRELIMINARY OBJECTIONS

21. The ***State*** filed six preliminary objections. Two of them related to the admissibility of the whole case, while the other objections related to the inclusion of new facts by the representatives. The Court will decide whether it is appropriate to analyze certain facts of the factual framework in the chapter on Preliminary Considerations (*infra* Chapter V). In this section, the Court will examine: (1) the request concerning control of legality in relation to the submission of the case to the Court, and (2) the "fourth instance" principle and the complementarity of the inter-American system.

A. Request to review the legality of the submission of the case to the Inter-American Court

A.1 Arguments of the parties and of the Commission

22. The ***State*** indicated that the submission of a case to the Court should indicate "the facts, grounds and legal provisions" on which the Commission based itself to take that decision. It argued that, in this case, "the reasons indicated by the Commission to submit the case to the Court [were] not sufficiently substantiated according to the standards that the Court itself had established to evaluate the reasonableness of the acts of organs of the State." In particular, it argued that the analysis made by the Commission did not indicate why the measures taken by the State had not constituted significant progress in compliance with its recommendations. The State argued that "the Commission's omissive conduct create[d] a situation of inequality because the Court [was] unable to make the necessary assessment of the steps taken by the State prior to deciding to examine the case submitted to its consideration by the Commission." It also underlined that, without any reason, the Commission had rejected a request for an extension during compliance with the recommendations, the purpose of which was to provide

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and the presumed victim's personal dignity, and the dignity of his function. It also refers to the alleged violations in this case.

[11] The brief was signed by Catalina Arango Patiño, Robert Quinn, Jesse Levine and Salvador Herencia Carrasco. The brief relates to international human rights law standards for the right to academic freedom and its application to this case.

[12] Owing to the exceptional circumstances arising from the COVID-19 pandemic, this judgment was deliberated and adopted during the 136th regular session, held virtually, as established in the Court's Rules of Procedure. See Press Release No. 39/2020, of May 25, 2020, available at: http://www.corteidh.or.cr/docs/comunicados/cp_39_2020.pdf

information on the reasons that prevented reaching an agreement in the negotiation between the Judiciary and the petitioner. Furthermore, the State alleged that the other "argument used by the [Commission] to submit the case to the Court [was] based on an erroneous premise: that the Court's case law on freedom of expression and due process [was] not sufficiently developed in inter-American case law." Therefore, the State asked to Court to review the legality of the Commission's actions and to declare "the inadmissibility of the respective proceedings."

23. The ***Commission*** stressed that this argument did "not constitute a preliminary objection, but rather an expression of disagreement with the decision to forward the case to the Court." It also asserted that the submission of the case to the Court had "not affected the State's right to due process because, under the adversarial system allowed by the proceedings before the Court, it [was] able to provide information on the actions undertaken following the events that gave rise to the violations declared in the Merits Report and argue why, in its opinion, this prevent[ed] declaring the international responsibility of the State."

24. The ***representatives*** indicated that the Commission had complied with the provisions of Article 35(1) of the Court's Rules of Procedure. They also indicated that "the State's questioning of the need to examine the enhanced guarantees of legality and due process in disciplinary procedures against judges should not be considered a preliminary objection, because it [was] evident that this also related to the analysis of the merits."

A.2 Considerations of the Court

25. The arguments of the State constitute a request to review the legality of the actions of the Commission. In this regard, the Court recalls that, in matters that it is hearing, it has the authority to review the legality of the actions of the Commission, but this does not necessarily imply reviewing, *ex officio*, the procedure held before that organ. In addition, the Court must maintain an appropriate balance between the protection of human rights, the ultimate goal of the inter-American system, and legal certainty and procedural fairness that ensures the stability and reliability of the international protection. Accordingly, the said review may be appropriate in cases in which either of the parties alleges that a serious error exists that has violated its right of defense, in which case the party concerned must realistically prove that harm. It is not enough to express a complaint or difference of opinion with regard to the actions of the Inter-American Commission.[13]

26. In this case, the State has not proved that the presumed omission of the Commission when submitting the case to the Court has resulted in a serious error that has violated its right of defense. The State had the opportunity to present information after it was notified of the Merits Report, and this was assessed by the Commission. The Court observes that, when submitting this case, the Commission referred to the State's response concerning compliance with the recommendations made in the Merits Report and indicated that "the Commission has decided to send the case to the Inter-American Court owing to the need to obtain justice and reparation for the [presumed] victim." The President of the Court considered that, when submitting the case, the Commission had complied with the requirements of Article 35 of the Court's Rules of Procedure and, consequently, required the Secretariat to notify the submission of the case. The Court agrees with this assessment and considers that the Commission has complied with the provisions of Article 35(1)(c) of the Rules of Procedure. Thus, it does not observe a serious error that would affect the State's right of defense.

27. Based on the preceding considerations, the Court rejects this preliminary objection.

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[13] *Cf. Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2007. Series C No. 172, para. 32, and *Case of Carranza Alarcón v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of February 3, 2020. Series C No. 399, para. 25.

B. Preliminary objection of the "fourth instance" and complementarity of the inter-American system

B.1 Arguments of the parties and of the Commission

28. The ***State*** argued that it was not appropriate for the Court to reassess the domestic court's decision imposing a sanction on Mr. Urrutia on May 6, 2005. It also stressed that, on March 29, 2018, the plenum of the Supreme Court, in compliance with the recommendations of the Merits Report, had decided to annul the decision issuing disciplinary sanction against Daniel Urrutia which had given rise to this litigation. In addition, the State indicated that, since 2005, no judge of the Republic had again been sanctioned based on article 323.4 of the Organic Code of the Courts (hereinafter also "the OCC"). In this regard, it indicated that the normative consequence of the complementary nature of the inter-American system was that, "if the State itself has rectified a situation of supposed violation of rights, it is not for this [Court] to exercise its jurisdiction to 'approve' or 'confirm' the decision that has been adopted at the domestic level."

29. The ***Commission*** noted that "the purpose of the case […] relates to violations of due process, freedom of expression, judicial protection and legality; therefore, the Court is unable to respond to the State's arguments without analyzing the merits of the matter. This means that the State's assertion does not constitute a preliminary objection and should be declared inadmissible." It also indicated that the "fourth instance" objection was not admissible in this case.

30. The ***representatives*** argued that "the State's contention before the Court was absurd: failing to accept responsibility for a human rights violation because 'supposedly' it had ceased to commit it." They indicated that "it is implausible that the annulment of the disciplinary sanction against Judge Urrutia also terminates the other human rights violations committed over all these years during which Chile failed to provide an effective response."

B.2 Considerations of the Court

31. In this case, it is alleged that the American Convention has been violated owing to the actions of the Judiciary. Determining whether the actions of the judicial organs have constituted a violation of the State's international obligations may result in the Court having to examine the respective domestic proceedings to establish their compatibility with the American Convention.[14] However, this Court is not a fourth instance to conduct a judicial review or to examine the assessment of the evidence made by the domestic judges. It is only competent to decide on the content of judicial decisions that contravene the American Convention in a way that is manifestly arbitrary.[15]

32. Consequently, the Court considers that the determination of whether the alleged facts can be classified as a violation of freedom of expression, judicial guarantees, judicial protection and the principle of legality falls within its jurisdiction to establish whether a violation of the American Convention has occurred.

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[14] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 33.

[15] *Cf. Case of Rico v. Argentina. Preliminary objection and merits.* Judgment of September 2, 2019. Series C No 383, para. 82, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 12, 2020. Series C No. 402, para. 31.

33. Lastly, the arguments of the State concerning the consequences of the annulment of the judgment of May 6, 2005, refer to matters relating to the merits that will be analyzed in the corresponding chapter of this judgment.

34. Therefore, the Court declares the preliminary objection filed by the State inadmissible.

V
PRELIMINARY CONSIDERATIONS

A. The factual framework of the case

A.1 Arguments of the parties and of the Commission

35. The ***State*** argued that "the sole purpose of this international litigation is the one indicated by the [Commission] in its brief submitting the case." Namely, to determine whether "the disciplinary proceedings that culminated with a sanction of censure – later reduced to a private reprimand – against Judge Daniel Urrutia Laubreaux because he sent an academic paper to the Supreme Court of Justice criticizing its actions during the Chilean military regime" constituted a violation of the American Convention. Therefore, it "categorically reject[ed[that the new facts indicated by the representatives in their [motions and pleadings brief] form[ed] part of the factual framework of this case." The State argued that some of the new facts had been "alleged during the merits stage before the [Commission, and] expressly excluded by that inter-American organ from the legal analysis and factual framework in its Merits Report, considering that they had not been admitted in its previous report, and were not sufficiently linked to the facts declared admissible; also, that it did not have sufficient information about them." Moreover, other facts had been alleged for the first time following notification of the Merits Report. The State argued that those facts "owing to their nature and to the grounds that gave rise to them [were] absolutely unconnected to the alleged violation of the rights included in the petition and in the [Commission's] Merits Report. Furthermore, they were neither supplementary nor explanatory. Consequently, such facts were not related to the purpose of the litigation and, therefore, could not be considered part of the factual framework of the case." Regarding the supervening facts, the State indicated that, "because this specific case differs from other disciplinary proceedings, the representatives' argument is erroneous when affirming an abstract situation of a supposed climate of persecution and harassment against Judge Urrutia while, at the same time, deviating from the purpose of the dispute based on which Judge Urrutia filed his petition before the inter-American system."

36. The ***Commission,*** in its Merits Report, noted that the initial petition only included the facts relating to the sanction procedure brought against the presumed victim in 2004. It clarified that those were the facts admitted in the Admissibility Report. In the Merits Report, it indicated that the subsequent disciplinary procedures that "were not admitted in the Admissibility Report […] are not sufficiently connected to the facts declared admissible and, as the [Commission] does not have sufficient evidence on them," it did not refer to those facts in its analysis of law in the Merits Report.

37. In its final observations, the Commission indicated that "although, in its Merits Report, it had only made legal determinations regarding one disciplinary sanction imposed on the victim […], there were other facts that form[ed] part of the factual framework of the Merits Report"; in particular those included in the chapter entitled "Other disciplinary proceedings." The Commission stressed that "a relationship of connectivity exist[ed] with the facts and proceedings described in the Merits Report, and that the State ha[d] had the opportunity to exercise the right of defense in this regard," so that it considered that they should be analyzed by the Court.

38. The ***representatives*** asked the Court to review of the legality of the Commission's decision not to include in its analysis the disciplinary proceedings filed against Mr. Urrutia following the presentation of the initial petition. They indicated that, in their first observations after the case was opened, they duly provided information on the disciplinary procedures that had been filed against the presumed victim up until that date. They argued that "[i]f the Commission considered that the new facts were 'not sufficiently connected to the facts declared admissible,' following our observations on the merits, it should have informed us so that we could consider whether, perhaps, to lodge a new petition based on them. Instead, the Commission forwarded our observations to the State, which noted them and did not argue that they this connection was absent; rather, in general terms, it denied that the State was responsible." The representatives indicated that the Commission's decision to exclude the facts they had reported to it three years and two months previously "constitute[d] an irregular action and an error that, now, seriously affected the right of defense of Judge Urrutia Laubreaux by preventing the Court from learning about the persecution to which he has been subjected for 14 years, adversely affecting his judicial activities."

A.2 Considerations of the Court

39. This Court has established that the factual framework of the proceedings before it is constituted by the facts contained in the Merits Report submitted to the Court's consideration. Accordingly, it is not admissible to argue new facts that differ from those included in the said report, without prejudice to describing those that explain, clarify or reject the facts that were mentioned in the complaint or that correspond to the claims of the petitioner (also called "complementary facts"). The exception to this principle are the facts that are classified as supervening, and these can be forwarded to the Court at any stage of the proceedings prior to the delivery of the judgment.[16]

40. In the instant case, the inclusion of several facts that may be classified in three groups is in dispute: (a) facts included in the section "Other disciplinary proceedings" of the Merits Report; (b) facts not included in the section "Other disciplinary proceedings" of the Merits Report and included in the motions and pleadings brief, and (c) facts reported to the Court by the representatives in briefs subsequent to their motions and pleadings brief. The Court will rule on whether each of these groups of facts forms part of the factual framework of this case.

A.2.a Facts included in the section "Other disciplinary proceedings" of the Merits Report

41. In a section entitled "Other disciplinary proceedings" of the chapter on "Established facts" of the Merits Report, the Commission included limited information on several proceedings that had been filed against the presumed victim and supposed acts of harassment in June 2006, May 2008, June 2008 and August 2013.[17] However, in the Merits Report, the Commission noted that:

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[16] *Cf. Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 226, para. 32, and *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 45.

[17] According to the Commission, in June 2006, a disciplinary procedure was instituted owing to a special visit made to a detention center. In May 2008, the Ministry of Internal Affairs filed a complaint against him when Mr. Urrutia rejected lawsuits brought against students who had taken part in student protests. In June 2008, the Ministry of Justice filed a complaint indicating that Mr. Urrutia had "tried to visit the Santiago prison with a video camara." In August 2013, the State Defense Council asked the Supreme Court to nullify a decision of the presumed victim regarding the right to vote of individuals deprived of their liberty. The decision was annulled by the Santiago Appellate Court finding that the presumed victim's decision exceeded the scope of his competence and that he lacked the necessary legal authority to issue it.

> [I]n his initial petition, the presumed victim only referred to the disciplinary sanction applied to him for the academic paper he sent to the Supreme Court after completing the diploma course in Human Rights and Democratization Processes at the Universidad of Chile. Based on those facts, on July 21, 2014, the [Commission] declared the petition admissible to examine the alleged violation of the rights of Daniel Urrutia recognized in Articles 8, 9, 13, and 25, in relation to Articles 1(1) and 2 of that treaty. Following the adoption of the Admissibility Report, the presumed victim referred to other disciplinary procedures brought against him in the context of his judicial activities. As these were not admitted in the Admissibility Report and are not sufficiently connected to the facts declared admissible, and as the [Commission] does not have sufficient evidence about them, in this section the Commission will only address the facts contained in the initial petition that were admitted by this Commission in its report of July 21, 2014.[18]

42. Thus, the Commission included the facts mentioned in the section entitled "Other disciplinary proceedings" among the facts described in the Merits Report. However, the Court notes that the Commission did not examine whether these facts constituted a violation of the American Convention because it considered, among other matters, that they were "not sufficiently connected to the facts declared admissible." Consequently, they were not submitted to the consideration of this Court.[19] Therefore, the Court will not examine them and will not describe the arguments related to them.

A.2.b facts not included in the section "Other disciplinary proceedings" of the Merits Report and included in the motions and pleadings brief

43. In their motions and pleadings brief, the representatives included as facts of this case summary proceedings filed against the presumed victim in September 2007, September 2015, December 2015, August 2016 and September 2016. They argued that "[t]his permanent situation of persecution against Judge Urrutia Laubreaux, over the course of 14 years, has resulted, today, in the disruption of his professional career within the Judiciary." They argued, as an example of this, that "in November 2018, Judge Urrutia Laubreaux presented his candidature for the Judicial Academy's course; passing this course allows successful candidates to apply for vacant positions as an Appellate Court justice." He was not selected "owing to his final qualifying note of 6.2 out of 7.0, obtained in 2016, in the evaluation that the Court of Santiago conducts each year – the same Court that has been persecuting Judge Urrutia Laubreaux since 2006."

44. This Court notes that these facts were not included in the Merits Report, and their purpose is not to explain or clarify the facts contained in that document, but rather to present a context of persecution against the presumed victim, which does not form part of the purpose of this case. Consequently, the Court will not incorporate them into the analysis of the context of this case.

A.2.c Facts reported to the Court by the representatives in briefs subsequent to their motions and pleadings brief

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[18] In its Admissibility Report, the Commission indicated that "[a]ccording to the information provided by the petitioner, the Commission considers that the complaint regarding the imposition of a disciplinary measure against Judge Daniel Urrutia as a result of having sent the Supreme Court of Justice his ideas in an academic paper […] could constitute, following an examination of the merits, a violation of [the] American Convention," and concluded that it was "competent to examine the claims submitted by the petitioner regarding the alleged violation of Articles 8, 9, 13 and 25 in relation to Articles 1(1) and 2 of the Convention and that they are admissible." Admissibility Report No. 51/14 of July 21, 2014 (evidence file, folio 283).

[19] *Cf. Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations and costs.* Judgment of February 5, 2019. Series C No. 374, para. 16.

45. On January 28, 2020, the representatives advised that, in January 2020, two new disciplinary proceedings had been filed against the presumed victim and asked that these be considered as supervening facts.

46. The Court considers that these facts are unrelated to the purpose of this case, so that they cannot be considered as supervening facts.

B. Review of the legality of the Commission's actions

47. The ***representatives*** asked the Court to review the legality of the actions of the Inter-American Commission. They argued that the Commission: (i) in the absence of a response from the State, failed to consider that the facts had been proved; to the contrary, on four occasions it asked the State to provide information with the result that the admissibility procedure continued for seven years and two months; (ii) failed to comply with its own Rules of Procedure by, on August 30, 2016, granting the State an extension – requested belatedly – to present its observations on the merits; (iii) failed to comply with the provisions of Article 51 of the Convention by granting the State extensions before submitting the case to the Court, and (iv) failed to include in its legal analysis the disciplinary proceedings reported by the representatives in their brief with observations on the merits.

48. The Court recalls that, in order to review the legality of the procedure before the Commission, the party that argues that an action of the Commission during the procedure before it has been conducted irregularly affecting its right of defense must prove this prejudice. It is not sufficient to submit a complaint or difference of opinion in relation to the Inter-American Commission's actions.[20]

49. The Court reiterates that the Inter-American Commission has autonomy and independence in the exercise of its mandate as established by the American Convention.[21] It is outside this Court's competence to review the legality of the procedure in a case before the Commission in abstract merely for declaratory purposes.[22]

50. The Court has already determined the purpose of this litigation and, therefore, finds it unnecessary to rule on the alleged irregular action of the Commission by excluding the disciplinary proceedings filed after the analysis made in the Merits Report. Regarding the other arguments set forth by the representatives, the Court notes that these do not explain the purpose of the review of legality requested. Therefore, the Court considers that the representatives' request is inadmissible.

VI
EVIDENCE

A. Admission of the documentary evidence

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[20] *Cf. Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*, *supra*, para. 32, and *Case of the Dismissed Workers of PetroPeru et al. v. Peru. Interpretation of the judgment on preliminary objections, merits, reparations and costs*. Judgment of August 22, 2018. Series C No. 358, para. 51.

[21] *Cf. Control of due process in the exercise of the powers of the Inter-American Commission on Human Rights (Articles 41 and 44 to 51 of the American Convention on Human Rights).* Advisory Opinion OC-19/05 of November 28, 2005. Series A No.19, first operative paragraph, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 54.

[22] *Cf. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 54.

51. In this case, as in others, the Court admits those documents presented at the appropriate time by the parties and the Commission that were not contested or challenged, and the authenticity of which was not questioned.

52. The ***State*** contested the admissibility of the evidence requested by the Court, indicating that this referred to facts that did not fall within the factual framework of the case. The State also contested the admissibility of all the documentary evidence provided by the representatives. First, it argued that the videos provided by the representatives with their motions and pleadings brief of two thematic hearings held by the Commission on the situation of agents of justice in Chile "do not mention the specific facts that gave rise to this case, but rather a generic situation of agents of justice in Chile." On the same basis, it contested the admissibility of the report of the National Association of Judges, presented in the last thematic hearing on the situation of agents of justice in Chile.

53. The Court considers that the State's observations refer to the probative value of the documentary evidence obtained *ex officio* as well as that provided by the representatives with their motions and pleadings brief, but do not affect their admissibility. Consequently, the Court finds it desirable to admit the documentary evidence requested by the President and provided by the State with its answering brief in the terms of Article 58 of its Rules of Procedure, and also that provided by the representatives with their motions and pleadings brief. The Court will take the State's observations into consideration, as pertinent, when assessing the evidence.

B. Admissibility of the testimonial and expert evidence

54. The Court finds it pertinent to admit the statements made during the public hearing[23] and by affidavit,[24] insofar as they in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.

55. The State asked the Court not to admit the statement offered by the representatives of witness Álvaro Flores Monarde, former President of the National Association of Judges of Chile, because the purpose of his statement exceeded the factual framework of the case. The Court considers that the State's observations refer to the content and eventual probative assessment of the statement, but do not question its admissibility. Consequently, the Court admits the statement of Álvaro Flores Monarde insofar as it is in keeping with the purpose outlined in the order of December 20, 2019. The Court will take the observations of the parties into consideration, as pertinent, when assessing the evidence.

56. In their final written arguments, the representatives indicated that the expert opinion of Álvaro Paúl Díaz, offered by the State, exceeded the purpose outlined in the order of the President because it referred to the specific case. Consequently, they asked the Court not to take those views of the expert into consideration. The Court notes that, indeed, the views expressed by the expert witness in relation to the specific case go beyond the purpose duly defined by the President in the order.[25] Therefore, the Court admits the said expert opinion only to the extent that it is in keeping with the purpose duly defined by the President.

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[23] During the public hearing, the Court received the statement of the presumed victim, Daniel David Urrutia Laubreaux.

[24] The Court received an affidavit with the expert opinion of Hernán Victor Gullco. *Cf.* Affidavit with expert opinion of Hernán Víctor Gullco dated January 20, 2020 (evidence file, folios 3751 to 3608).

[25] Expert witness Álvaro Paúl Díaz was called on by the President of the Court to present his opinion by affidavit; this referred to "the rules of procedure and the case law of the Inter-American Court in relation to the determination of the factual framework of a contentious case." *Cf. Case of Urrutia Laubreaux v. Chile. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of December 20, 2019, second operative paragraph.

VII
FACTS

A. Judge Urrutia Laubreaux and the academic paper sent to the Supreme Court of Justice of Chile

57. Daniel David Urrutia Laubreaux began his judicial career as a supervisory judge in the city of Freirina on June 15, 2001. On January 17, 2003, he was promoted to supervisory judge in the city of Ovalle and on December 20, 2004, he occupied the same position in the city of Coquimbo.[26] On May 21, 2006, he was appointed judge of the Seventh Supervisory Court in the city of Santiago, a position that he occupies currently.[27]

58. On April 8, 2004, the Supreme Court of Justice authorized the presumed victim to attend the diploma course in "Human rights and democratization processes"[28] organized by the Human Rights Center of the Law Faculty at the Universidad of Chile and the International Center for Transitional Justice.[29] On November 30, 2004, the presumed victim advised the Supreme Court that he had completed the course successfully and forwarded his final report for the course entitled "Proposed public policy to introduce a human rights approach into the work of the Chilean Judiciary," so that it could be "made available to the plenum for the purposes deemed pertinent."[30] The report proposed that the Judiciary should adopt a human rights approach, and included a series of criticisms about its functioning, especially with regard to its role during the Chilean military regime. The academic paper proposed that the Judiciary adopt certain measures of reparation owing to the responsibility that this institution had had in the human rights violations that occurred during the Chilean military regime, including public recognition of its responsibility based on the conclusions reached by the Truth and Reconciliation Commission.[31]

B. The disciplinary proceedings brought against Judge Urrutia Laubreaux

59. On December 22, 2004, the Secretary of the Supreme Court of Justice forwarded the academic paper written by Mr. Urrutia Laubreaux to the Appellate Court of La Serena.[32]

60. On December 27, 2004, the Secretary of the Supreme Court of Justice of Chile informed Judge Urrutia Laubreaux that "as ordered by the Plenum of this Court, he returned, attached, the so-called 'final report' that had been sent […], because it was considered that the said report contained views that this Court finds inadequate and unacceptable."[33]

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[26] *Cf.* Administrative Division of the Judiciary, Human Resources Department. Personnel record of Daniel David Urrutia Laubreaux (evidence file, folio 890).

[27] *Cf.* Administrative Division of the Judiciary, Human Resources Department. Personnel record of Daniel David Urrutia Laubreaux (evidence file, folio 890).

[28] *Cf.* Decision of the Supreme Court of Justice of Chile of April 8, 2004 (evidence file, folios 338 to 340).

[29] *Cf.* Letter to the President of the Supreme Court of Justice of Chile signed by Daniel David Urrutia Laubreaux dated November 30, 2004 (evidence file, folio 6).

[30] *Cf.* Letter to the President of the Supreme Court of Justice of Chile signed by Daniel David Urrutia Laubreaux dated November 30, 2004 (evidence file, folio 6).

[31] *Cf.* Academic paper written by Mr. Urrutia, entitled "*Propuesta de Política Pública de Introducción del Enfoque de Derechos Humanos en el trabajo del Poder Judicial of Chile*" [Proposed public policy to introduce a human rights approach into the work of the Chilean Judiciary], of September 2004" (evidence file, folios 8 to 22).

[32] Letter signed by the Secretary of the Supreme Court of Justice of Chile of December 22, 2004 (evidence file, folio 24).

[33] Letter signed by the Secretary of the Supreme Court of Justice of Chile of December 27, 2004 (evidence file, folio 26).

61. On January 13, 2005, the Appellate Court of La Serena officially notified the presumed victim to provide a "report on the reasons why he had sent the Supreme Court a copy of his final paper."[34] On January 18, 2005, Judge Urrutia Laubreaux sent the requested report, indicating that "the undersigned judge's reasons were to demonstrate to the Supreme Court that he had completed the course successfully, and also the excellent note he had obtained, and to provide the final outcome of his studies: namely, the said report. It is hereby noted that the said report was prepared for strictly academic purposes."[35]

62. On March 31, 2005, the Appellate Court of La Serena decided to sanction the presumed victim with a disciplinary measure of "written censure" in application of paragraphs 1 and 4 of article 323 of the Organic Code of the Courts.[36] Regarding the academic paper written by Mr. Urrutia Laubreaux, the Appellate Court stated the following:

> […] from reading the paper, it appears that its author – a judge of the Republic – has taken advantage of this medium, in certain sections on the actions of the Judiciary, to make value judgments reproaching or censuring specific conducts, acts or possible omissions of his hierarchical superiors, even going as far as to affirm that, to ensure an effective moral and ethical repositioning of the Judiciary as guarantor of the rights of the citizenry, its highest governing authority – the Supreme Court – had the moral obligation to recognize clearly and without excuses its responsibility for human rights violations, and also proposing measures that, in his opinion, the highest court of justice should take. […]
>
> The fact that Judge Urrutia Laubreaux has expressed his personal opinion concerning certain acts and omissions of his hierarchical superior, even proposing specific actions to rectify the conduct he criticizes and, to express these criticisms, has used a report that he justifies by affirming that it was prepared for academic purposes, but which he specifically forwarded to the Supreme Court "to be made available to the plenum for the purposes deemed pertinent," undoubtedly signifies an excessive assertion from a judge of the Republic when referring to actions of his hierarchical superiors, thereby violating the principle of respect for a higher authority that permeates the Judiciary's structural regulations and is also, strictly speaking, a violation of the prohibitions established in paragraphs 1 and 4 of article 323 of the Organic Code of the Courts, which prohibits judicial officials from criticizing the authorities for their actions or publishing, or in any way attacking, the official conduct of judges or justices."[37]

63. On April 5, 2005, Judge Urrutia Laubreaux filed an appeal with the Supreme Court contesting the decision that sanctioned him and requesting the annulment of the disciplinary sanction.[38] In his appeal, Mr. Urrutia Laubreaux expressed his disagreement with the sanction imposed, indicating that he had "never had the intention to address public criticisms or attacks against [his] hierarchical superiors and, particularly, to violate article 323 of the Organic Code of the Courts because, the analysis made in the paper in question – which had not been published – did not refer to any authority in particular, especially to current authorities; rather it gave an opinion on the role of the Supreme Court, as an institution, at a specific historical moment." He also explained that he had sent a copy of the paper in order to validate the results of the course.[39]

64. On May 6, 2005, the Supreme Court confirmed the contested decision, but reduced the sentence to a "private reprimand" and ordered that the sanction imposed be entered on the

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[34] *Cf.* Letter signed by the President of the Appellate Court of La Serena of January 12, 2005 (evidence file, folio 28).

[35] *Cf.* Report signed by Daniel David Urrutia Laubreaux of January 18, 2005 (evidence file, folio 30).

[36] *Cf.* Appellate Court of La Serena. Decision of March 31, 2005 (evidence file, folios 32 to 36).

[37] Appellate Court of La Serena. Decision of March 31, 2005 (evidence file, folios 33 and 34).

[38] Appeal filed by Daniel David Urrutia Laubreaux with the Supreme Court of Justice of Chile on April 5, 2005 (evidence file, folios 38 and 39).

[39] Appeal filed by Daniel David Urrutia Laubreaux with the Supreme Court of Justice of Chile on April 5, 2005 (evidence file, folios 38 and 39).

personnel record of Judge Urrutia Laubreaux.[40] The Supreme Court considered that it was appropriate to reduce the sanction that had been imposed "owing to the evident inexperience of the official concerned (four years of service), as regards the conduct expected of him in relation to his hierarchical superiors."[41] In its ruling, the Supreme Court argued as follows:

> […] the relevant fact in this case is not the academic nature that can be attributed to the paper written by the judicial official concerned or the fact that, by sending it to this court, the intention may have been to demonstrate completion of the service-related commission authorized by this court. Far from it, rather the sanction responds to the lack of judgment, prudence, moderation and elemental respect and consideration revealed by both the attempt to give instructions to the "highest governing authority of the Judiciary" – in the words of the author – and the fact that the paper contains a veiled criticism of this Supreme Court. […] Regarding the first point, a review of the monograph or paper forwarded by the said judge, "to be made available to the plenum for the purposes deemed pertinent," reveals that, in this paper, the judicial official allows himself to affirm that this Supreme Court has "the moral duty" to assume a particular attitude, even describing the specific measures that it should take in order to achieve – in his opinion – an "effective moral and ethical repositioning" of this branch of the State as a guarantor of the rights of the citizens. Regarding the second point, it is evident that the foregoing entails a criticism – at the very least an implicit one – of the highest judicial authority. On this basis – and also the declared purpose that these views should be passed on to the plenum of the Court – it must be concluded that the intention was to portray non-compliance with a supposed "moral duty" by the omission or absence of the specific measures proposed.[42]

65. The Supreme Court concluded that the presumed victim's conduct violated "the prohibition that article 323.4 of the Organic Code of the Courts imposes on all judicial officials from attacking, 'in any way,' the official conduct of other judges or justices. Consequently, based on the provisions of article 544.8 of this Code, the corresponding disciplinary powers must be exercised in this case."[43] Six members of the Supreme Court dissented from this ruling.[44]

66. According to article 537 of the Organic Code of the Courts, the private reprimand is the lightest sanction that can be applied to judges.[45] Regarding the consequences of this sanction, article 278 of the Organic Code of the Courts indicates, in relation to the rating system for

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[40] *Cf.* Supreme Court of Justice of Chile. Decision of May 6, 2005 (evidence file, folios 41 to 47).

[41] Supreme Court of Justice of Chile. Decision of May 6, 2005 (evidence file, folio 43).

[42] Supreme Court of Justice of Chile. Decision of May 6, 2005 (evidence file, folios 41 and 43).

[43] Supreme Court of Justice of Chile. Decision of May 6, 2005 (evidence file, folio 43).

[44] In particular, three justices of the Supreme Court indicated that "although the paper contains criticisms of the Judiciary and, especially, the former Supreme Court, owing to its actions during the period commencing on September 11, 1973, criticisms that have been repeated over time by distinguished personalities, such as the members of the 'Rettig Commission' and, recently, the 'Valech Commission' whose conclusions were rejected by this Court in a decision of December 9, 2004, it is nonetheless true that, due to the nature of the paper, the fact that its author forwarded it to his hierarchical superior who did not publicize it in any way, and the respect that should be accorded to a document of an academic nature written to pass a course on the matters studied and that was authorized by his hierarchical superior, and the guarantee of freedom of opinion established in the Constitution of the Republic, this should lead to the conviction that, even though one may not agree with his conclusions, it is not appropriate to apply any type of disciplinary sanction on the said judge owing to the paper he wrote because, to the contrary, the Court would be penalizing ideas." In addition, another three justices issued similar opinions, finding that the facts that were the purpose of the proceedings did not constitute disciplinary offenses and that imposing a sanction violated the presumed victim's right to freedom of expression. *Cf*. Supreme Court of Justice of Chile. Decision of May 6, 2005 (evidence file, folios 1030 to 1033).

[45] Article 537 of the Organic Code of the Courts establishes: "The offenses or abuses referred to in the preceding article may be corrected by the Appellate Courts by one or more of these measures: (1) a private reprimand; (2) a written censure; (3) the payment of costs; (4) a fine of 1 to 15 days salary or a fine of no less than one or more than five monthly taxation units, and (5) the suspension from functions for up to four months; during this time, the official shall be paid half salary." *Cf.* Organic Code of the Courts. Law 7421 published on July 9, 1943, article 537 (evidence file, folio 3984).

judges, that "the person rated who, during the year under consideration, has been subject to a disciplinary measure, whatsoever the score he or she has obtained, may not appear on the list of outstanding performances."[46] The officials "included on the Outstanding performance list shall have a preferential right to appear on shortlists of three or five candidates in relation to those on the Very Good performance list."[47]

67. On May 29, 2018, and in compliance with the recommendations of the Merits Report, the Supreme Court of Justice of Chile annulled the sanction imposed on Judge Urrutia Laubreaux.[48] The Supreme Court indicated the following:

> The 2005 Supreme Court examined a manifestation of the freedom of expression of Judge Urrutia, as a student of a diploma course in human rights that resulted in an academic paper on a matter of public interest in relation to the actions of a branch of the State during a sad period in the country's history. […] [The] disciplinary measure was not coherent with the conduct on which it was based, because rather that serving as a measure to correct the breach of a functional duty or a matter relating to judicial ethics, its effect was to weaken his rights to freedom of thought and of expression recognized in articles 1 and 19(6) of the Chilean Constitution, as well as at the international level in the American Convention on Human Rights. Accordingly, this Supreme Court observes the pertinence of reconsidering the disciplinary measure applied to Judge Urrutia in 2005, finding that this did not constitute an institutional response in keeping with the basic tenets of the democratic rule of law and, therefore, annuls it. […] Regarding the recommendation that compensation should be provided, pursuant to the functions and authority established for this Supreme Court in the Constitution, the examination of this matter will be postponed until a later date, when it has received the corresponding proposal from its President.[49]

68. According to information provided by the parties, Mr. Urrutia Laubreaux met with the President of the Supreme Court on at least three occasions.[50] However, they were unable to reach an agreement on compensation.

VIII
MERITS

69. This case relates to the disciplinary proceedings held against Judge Urrutia Laubreaux because he sent the Supreme Court of Justice an academic paper in which he criticized the actions of the Judiciary during the military dictatorship in Chile. The Commission and the representatives argued that: (i) the sanction imposed on Mr. Urrutia Laubreaux constituted an arbitrary restriction of his exercise of freedom of expression; (ii) the proceedings violated the rights to judicial guarantees and judicial protection, and (iii) the wording of the disciplinary grounds applied to the presumed victim was excessively broad, so that the sanction was not predictable. The State, for its part, argued that, pursuant to the principle of complementarity, it was not possible for the Court to hear this case.

70. Taking into account the arguments of the parties and the Commission, the Court will proceed to examine: (i) the alleged violation of the right to freedom of thought and expression and the possible application of the principle of complementarity in this case; (ii) the alleged violation of judicial guarantees and judicial protection, and (iii) the alleged violation of the principle of legality and the obligation to adopt domestic legal provisions.

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[46] *Cf.* Organic Code of the Courts. Law 7421 published on July 9, 1943, article 278 (evidence file, folios 3920 and 3921).

[47] *Cf.* Organic Code of the Courts. Law 7421 published on July 9, 1943, article 281 (evidence file, folio 3922).

[48] Supreme Court of Justice of Chile. Decision of May 29, 2018 (evidence file, folios 776 to 782).

[49] Supreme Court of Justice of Chile. Decision of May 29, 2018 (evidence file, folio 778).

[50] *Cf.* Brief sent by the representatives to the Commission on August 16, 2018 (evidence file, folio 389).

VIII-1
RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION

A. Arguments of the parties and the Commission

71. The ***Commission*** determined that the State had "placed an arbitrary restriction on the exercise of freedom of expression by imposing subsequent liability that failed to comply with the requirements established in the Convention." In this regard, the Commission indicated that: (i) the disciplinary grounds applied to the presumed victim did not comply with the principle of legality, and this was sufficient to declare that they violated the right to freedom of expression of Mr. Urrutia Laubreaux; (ii) the objective sought of "hierarchical respect" cannot be understood as one of the legitimate purposes established in Article 13(2) of the American Convention to justify the imposition of subsequent liability, and (iii) there is no relationship of means to an end between the restriction applied to the production of an academic paper and the end sought; thus, the requirement that the measure must be necessary in a democratic society was not met, Moreover, "the opinions and statements contained in the academic paper are of public interest and, therefore, must be rigorously protected to the extent that they contribute to the debate on the way in which the Judiciary should respond to allegations of serious human rights violations."

72. The ***representatives*** argued that "the opinion of Judge Urrutia Laubreaux on the role of his country's Judiciary during the time of the dictatorship was not a private matter and did not relate to a specific person; rather, it concerned a matter of general interest, relating to the construction of a democratic state and society, that should not have been penalized." They also argued that "the sanction imposed by the Chilean Judiciary was inappropriate because the views of Judge Urrutia Laubreaux were not expressed in relation to a case that he was hearing." They indicated that "the restriction imposed by the Chilean State, without any legal grounds, does not reveal that it was in any way necessary in the context of a democratic society."

73. The ***State*** argued that the Supreme Court had annulled the decision that gave rise to this litigation and, since 2005, "no judge of the Republic […] has been sanctioned by the application of article 323.4 of the OCC." Therefore, it indicated that "there was no need for the Inter-American Court to exercise its jurisdiction in this case." The State also indicated that it had not been possible to reach an agreement with the presumed victim concerning pecuniary reparation.

74. In addition, the State argued that "freedom of expression is not absolute in the case of judges"; therefore, "every Chilean judge must abide by one of the limits to freedom of expression that is established in article 323.4 of the OCC." Chile indicated that, "under the laws of Chile [the Organic Code of the Courts] is equivalent to a constitutional law" and, thus, meets the requirement of legality inherent in any legitimate restriction of freedom of expression. The State also argued that the law applied in this case was justified by the legitimate purpose of "preventing conflicts within the Judiciary that could affect the credibility of the judicial function in the eyes of the citizenry, prejudicing the legitimacy of the judicature and thereby threatening its independence." Consequently, "the publication by judges of texts whose purpose is to attack other judges evidently gives rise to a situation of internal tension that ends up by affecting the whole Judiciary." The Chilean State stressed that "the restriction imposed by article 323.4 of the OCC on the freedom of expression of judges is necessary in the context of a democratic society such as that of Chile" because: "(i) it is in keeping with the legitimate purpose that it seeks to fulfill, and (ii) it is strictly proportionate to the end sought." Chile clarified that "any judge who seeks to make intemperate criticisms of his peers – 'attacks' in the words of article 323.4 of the OCC – must previously request the authorization of the Supreme Court." Lastly, the State argued that its international responsibility in this

specific case "should be assessed in light of the standards for freedom of expression that existed in 2005, and not those that exist in 2019."

B. Considerations of the Court

75. The right to freedom of thought and expression is recognized in Article 13 of the Convention. In addition, Article 4 of the Inter-American Democratic Charter, an interpretive instrument of the OAS Charter and of the Convention itself, considers this as a fundamental component of democracy.[51]

76. The Court has previously indicated in relation to the content of freedom of thought and expression that those who are protected by the Convention have the right to seek, receive and impart information and ideas of all kinds, as well as to receive and know the information and ideas disseminated by others.[52] Consequently, freedom of expression has both an individual and a social dimension:

> It requires, on the one hand, that no one be arbitrarily limited or prevented from expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.[53]

77. Furthermore, the Court reiterates that:

> [T]he different regional systems for the protection of human rights and the universal system agree on the essential role played by freedom of expression in the consolidation and dynamics of a democratic society. Without effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society.[54]

78. In this regard, the Court has indicated that the first dimension of freedom of expression "is not exhausted by the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate means to disseminate thought and to allow it to reach the greatest number of persons."[55] In this respect, the expression and dissemination of thought and ideas are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to freedom of expression.[56]

79. Regarding the second dimension of freedom of expression – namely, the social element – it should be pointed out that freedom of expression is a means of exchanging ideas and information between persons. It includes the right to try and communicate one's point of view

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[51] Article 4 of the Inter-American Democratic Charter: "Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy."

[52] *Cf. Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008, Series C, No. 177, para. 53, and *Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2019. Series C No. 380, para. 94.

[53] *Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights),* Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5, para. 30, *and Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 94.

[54] *Cf. Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C, No. 107, para. 116, and *Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, 95.

[55] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs*. Judgment of February 5, 2001. Series C No. 73, para. 65, and *Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 95.

[56] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs*, *supra,* para. 65, and *Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 96.

to others, but it also involves the right of everyone to know opinions, reports and news provided by others. For the ordinary citizen, the knowledge of other people's opinions and information is as important as the right to impart their own.[57]

80. The Court has also understood that both dimensions are of equal importance and should be ensured simultaneously in order to give total effect to the right to freedom of thought and expression in the terms of Article 13 of the Convention.[58]

81. According to the Convention itself, freedom of expression is not an absolute right. Article 13(2) of the Convention, which prohibits prior censorship, establishes the possibility of the subsequent imposition of liability for the abusive exercise of this right. Restrictions must be exceptional and should not limit, beyond what it strictly necessary, the full exercise of freedom of expression and become direct or indirect methods of prior censorship.[59]

82. The American Convention ensures the right to freedom of expression to everyone, irrespective of any other consideration.[60] In the case of those who exercise jurisdictional functions, the Court has indicated that, owing to their functions in the administration of justice, the freedom of expression of judges may be subject to different restrictions and in a way that does not affect other persons, including other public officials.[61]

83. The United Nations Basic Principles on the Independence of the Judiciary (hereinafter "the United Nations Basic Principles") recognize that "members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary."[62] In addition, the Bangalore Principles of Judicial Conduct establish that "[a] judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary."[63] Similarly, the European Court has indicated that certain restrictions to the freedom of expression of judges are necessary in all cases in which the authority and impartiality of the judiciary could be called into question.[64]

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[57] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs*, *supra,* para. 66, and *Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 97.

[58] *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs*, *supra,* para. 67, and *Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 100.

[59] *Cf. Case of Herrera Ulloa v. Costa Rica*, *supra*, para. 120, and *Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs*. Judgment of January 27, 2009. Series C No. 193, para. 110.

[60] *Cf. Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs*, *supra*, para. 114, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, para. 169.

[61] *Cf. Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*, *supra*, para. 169.

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

[63] Bangalore Principles of Judicial Conduct adopted by the Judicial Group on Strengthening Judicial Integrity, composed of a group of chief justices, at the invitation of the United Nations Centre for International Crime Prevention and in the context of the Global Programme against Corruption, attached to resolution 2006/23 of July 27, 2006, of the United Nations Economic and Social Council, para. 4.6.

[64] *Cf.* ECHR, *Case of Wille v. Liechtenstein [GS], No. 28396/95.* Judgment of October 28, 1999, para. 64, and *Case of Kudeshkina v. Russia*, No. 29492/05. Judgment of February 26, 2009, para. 86.

84. The general purpose of guaranteeing independence and impartiality is, in principle, a legitimate reasons for restricting certain rights of judges. Article 8(1) of the American Convention establishes that "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal." In this regard, the State has the obligation to establish rules to ensure that its judges and courts comply with these precepts. Therefore, the restriction of some specific conducts by judges in order to protect independence and impartiality in the exercise of justice is in keeping with the American Convention as a "right or freedom of others."[65] The compatibility of such restrictions with the American Convention must be examined in each specific case, taking into account the content of the views and the circumstances. Thus, for example, opinions expressed in an academic context could be more permissible that those expressed in the media.

85. In its case law, this Court has reiterated that Article 13(2) of the American Convention establishes that subsequent imposition of liability for the exercise of freedom of expression must comply with the following requirements concurrently: (i) be previously established by law, both formally and substantially;[66] (ii) respond to a purpose permitted by the American Convention ("respect for the rights or reputations of others" or "the protection of national security, public order, or public health or morals"), and (iii) be necessary in a democratic society (and therefore comply with the requirements of appropriateness, necessity and proportionality).[67]

86. In this case, on March 31, 2005, Judge Urrutia Laubreaux was sanctioned with a disciplinary measures of "written censure" based on article 323 of the Organic Code of the Courts, after he had sent the Supreme Court of Justice a copy of an academic paper in which he criticized the actions of that court during the Chilean military regime. This sanction was amended in the decision on the appeal to a sanction of "private reprimand" (*supra* paras. 62 to 64).

87. On May 29, 2018, in compliance with the recommendations made in the Merits Report in this case, the Supreme Court of Justice decided to annul the sanction imposed on Mr. Urrutia Laubreaux.[68] The Supreme Court indicated the following:

> [O]bjetively, the conduct of Judge Urrutia Laubreaux that was sanctioned in 2005 consisted in sending to the Supreme Court the principal paper of the postgraduate diploma course he undertook in compliance with a service-related commission that this court granted him precisely for this purpose. Therefore, the relevant conduct of the Judge was addressed at demonstrating that he had successfully completely the activity undertaken and, to this end, he forwarded precisely the final paper of the course he had taken. This meant that the tone of the opinions and views expressed in the paper was inserted in a strictly academic context, without evident relationship to the misconducts established in [the] Organic Code of the Courts. […]
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> The 2005 Supreme Court examined a manifestation of the freedom of expression of Judge Urrutia, as a student of a diploma course in human rights that resulted in an academic paper on a matter of public interest in relation to the actions of a branch of the State during a sad period in the country's history. […]
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> [Therefore, it considers that the] disciplinary measure was not coherent with the conduct on which it was based, because rather that serving as a measure to correct the breach of a functional duty or a matter relating to judicial ethics, its effect was to weaken his rights to

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65 *Cf. Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs, supra*, para. 171.

66 *Cf. The Word "Laws " in Article 30 of the American Convention on Human Rights,* Advisory Opinion OC-6/86, May 9, 1986. Series A, No. 6, paras. 35 and 37.

67 *Cf. Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs, supra*, para. 56, and *Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 104.

68 *Cf.* Supreme Court of Justice of Chile. Decision of May 29, 2018 (evidence file, folios 776 to 782).

> freedom of thought and of expression recognized in […] the Chilean Constitution, as well as at the international level in the American Convention on Human Rights.
>
> Accordingly, this Supreme Court observes the pertinence of reconsidering the disciplinary measure applied to Judge Urrutia in 2005, finding that this did not constitute an institutional response in keeping with the basic tenets of the democratic rule of law and, therefore, annuls it.
>
> Regarding the recommendation that compensation should be provided, pursuant to the functions and authority established for this Supreme Court in the Constitution, the examination of this matter will be postponed until a later date, when it has received the corresponding proposal from its President."[69]

88. In accordance with this decision, on March 12, 2019, any reference to the said sanction was removed from the personnel record of Judge Urrutia Laubreaux.[70]

89. In this case, as indicated by the Supreme Court of Chile, the academic paper written by Mr. Urrutia Laubreaux constituted an exercise of his freedom of expression. This Court considers that, although the freedom of expression of those who exercise jurisdictional functions may be subject to greater restrictions than that of other individuals, this does not mean that any expression by a judge can be restricted. Thus, it is not in keeping with the American Convention to sanction the views included in an academic paper on a general topic and not on a specific case, such as those set out by the presumed victim in this case.

90. The Court also recalls that, under the Convention, state responsibility can only be required at the international level after the State has had the opportunity to recognize, as appropriate, a violation of a right and to redress the harm caused by its own means.[71] This is based on the principle of complementarity that permeates the inter-American system of human rights; a system that, as stated in the preamble to the American Convention, is complementary and intended to contribute to the protection offered by the domestic law of the States of the Americas. Thus, the State is the principal guarantor of the human rights of the individual, so that, if an act occurs that violates those rights, it is the State itself that has the obligation to resolve the matter at the domestic level and, as appropriate, make reparation, before having to respond before international instances such as the inter-American system for the protection of human rights, and this derives from the subsidiary nature of the international proceedings in relation to the national systems that guarantee human rights.[72]

91. The said complementary nature of the international jurisdiction means that the protection system established by the American Convention on Human Rights does not substitute for the national jurisdictions; rather, it complements them.[73] This means that, under the inter-American system, there is a dynamic and complementary control of the Convention-based obligation of the States to respect and to ensure human rights, together with the domestic authorities (the primary persons obligated) and the international instances (in a complementary manner), so that national and international decision-making criteria and protection mechanisms can be molded and adapted to each other. Thus, the Court's case law

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69 Supreme Court of Justice of Chile. Decision of May 29, 2018 (evidence file, folios 777 and 778).

70 *Cf.* Statement made by Daniel David Urrutia Laubreaux during the public hearing held in this case, and final oral arguments of the representatives.

71 *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 143, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 8, 2020. Series C No. 406, para. 104.

72 *Cf. Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of February 7, 2006. Series C No. 144, para. 66, *and Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, paras. 102 and 103.

73 *Cf. Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 66, *and Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 103.

reveals cases in which it has referred to decisions of domestic courts to substantiate and conceptualize the violation of the Convention in specific cases;[74] while, in other cases, it has recognized that, consistent with international obligations, the domestic organs, instances and courts have adopted adequate measures to remedy the situation that gave rise to the case,[75] have already resolved the alleged violation,[76] have established reasonable reparations,[77] or have exercised a satisfactory control of conventionality.[78] In this regard, the Court has indicated that the State's responsibility under the Convention can only be required at the international level after the State has had the opportunity to recognize, as appropriate, the violation of a right and to redress the harm caused by its own means.[79] Consequently, the Court has established that States are not internationally responsible when they have recognized that an internationally wrongful act has been committed, caused the violation to cease, and redressed the consequences of the measure or situation that constituted that act.[80]

92. In the instant case, the Court notes that the decision of the Supreme Court of Chile of May 29, 2018, recognized the violation of freedom of expression and ordered that the sanction imposed on Mr. Urrutia Laubreaux be annulled. This sanction was subsequently eliminated from the personnel record of Judge Urrutia Laubreaux.

93. In this regard, the Court recalls that the control of conventionality has been conceived as a mechanism to apply international law, in this case international human rights law, and specifically the American Convention and its sources, including the case law of this Court.[81] The control of conventionality is an obligation for every power, organ or authority of the State Party to the Convention[82] and, within their respective terms of reference and the corresponding procedural regulations, they must control that the human rights of the persons

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74 *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, *supra*, paras. 143, 196, 200, 203, 206, 209, 220, 221, 225**,** and *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of October 14, 2019. Series C No. 388, para. 167.

75 *Cf. Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 17, 2015. Series C No. 306, para. 103, and *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 167.

76 *See, for example, Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C No. 354, paras. 97 to 115, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs.* Judgment of February 4, 2019. Series C No. 373, para. 80

77 See, for example, *Case of the Santo Domingo Massacre v. Colombia*, *supra,* paras. 334 to 336, and *Case of Colindres Schonenberg v. El Salvador, supra*, para. 80.

78 See, for example*, Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 239, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C No. 330, para. 100.

79 *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, *supra*, para. 143, and *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 167.

80 *Cf. Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*, *supra,* para. 96, and *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 167.

81 When a State is a party to an international treaty such as the American Convention, all its organs, including its judges, are subject to that instrument, and this obliges them to ensure that the effects of the provisions of the Convention are not undermined by the application of laws that are contrary to its object and purpose; therefore, judges and organs involved in the administration of justice at every level are obliged to exercise *ex officio* a "control of conventionality" between domestic law and the American Convention – evidently, within the framework of their respective competences and the corresponding procedural regulations – and, in this task, they must take into account not only the treaty, but also the interpretation of it made by the Inter-American Court, the ultimate interpreter of the American Convention. *Cf. Case of Almonacid Arellano* et al. *v. Chile*. *Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, 107.

82 *Cf. Case of Cabrera García and Montiel Flores v. México. Preliminary objection, merits, reparations and costs.* Judgment of November 26, 2010. Series C No. 220, para. 225, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 107.

subject to their jurisdiction are respected and guaranteed.[83] Judges and judicial organs must prevent potential violations of the human rights recognized in the American Convention, or resolve them at the national level when they have occurred, taking into account the interpretations made by the Inter-American Court.[84] It is only if this does not happen that the Court may consider them and, in this situation, it will exercise a complementary control of conventionality. Thus, an adequate control of conventionality at the domestic level reinforces the complementarity of the inter-American system and the effectiveness of the American Convention by ensuring that the national authorities act as guarantors of the human rights derived from an international source.[85]

94. This Court considers that the decision of the Supreme Court of Chile constituted an adequate and opportune control of conventionality in relation to the sanction of a private reprimand imposed on Mr. Urrutia Laubreaux in 2005, because it recognized, ended and partially redressed the violation of the right to freedom of expression of Mr. Urrutia Laubreaux. The Supreme Court of Chile duly took into consideration the standards developed by the Inter-American Court in relation to the limits to the restrictions permitted by Article 13 of the Convention in order to, thus, guarantee appropriately the freedom of expression of Judge Urrutia Laubreaux by: (a) annulling the sanction that had been imposed, and (b) ordering its elimination from the presumed victim's personnel record.

95. Nevertheless, this Court notes that the sanction remained on the personnel record of Mr. Urrutia Laubreaux for more than 13 years and, realistically, this affected his judicial career. In this regard, the Court notes that, according to the laws of Chile in force at the time of the facts, the result of the imposition of a "private reprimand" was that the judge sanctioned could not be included on the list of "Outstanding performances." Rating judges based on the accumulation of points has a bearing on the priority accorded to them for permanent appointments, on their promotion to higher positions, and on their appointment to different posts.[86] In addition, if more than three sanctions are received over a three-year period, this can lead to the removal from the function of judge.[87] In this regard, Judge Urrutia Laubreaux

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[83] *Cf. Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2006. Series C No. 158, para. 128, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 107.

[84] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*, *supra*, para. 143, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 107.

[85] *Cf. Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 107.

[86] Article 278 of the Organic Code of the Courts indicates, with regard to the system for rating judges that "the judge rated who, during the year under consideration, has been subject to a disciplinary measures, whatsoever the score that he or she has obtained may not appear on the Outstanding performance list and, if they have been the subject of a disciplinary measure greater than a private reprimand, they may not appear on the Very Good performance list. Similarly, the judge who has been the subject of two or more disciplinary measures, provided that none of them was greater than a written censure, may not appear on the Satisfactory performance list; the judge who has been the subject of three or more disciplinary measures, or of two or more if one of them has been suspension of functions, shall be rated on the Deficient performance list. The preceding rules shall also be observed for the organs responsible for hearing appeals. For all legal effects, all those officials who, based on their annual rating, have been included on the Outstanding or Very Good list shall be considered on a merits list." Also, according to article 281 of the OCC, "the officials included on the Outstanding performance list shall have a preferential right to appear on shortlists of three or five candidates in relation to those on the Very Good performance list; the latter shall have preference to those included on the Satisfactory list, and these to those included on the Regular list. Those included on the other lists may not appear on the shortlists of three or five candidates. If there is equality of points, preference shall be given to candidates by order of their category and, if this is equal, the points earned in the latest rating shall be considered and seniority in the post, among other elements of their professional record." *Cf.* Organic Code of the Courts. Law 7421 published on July 9, 1943, articles 278 and 281 (evidence file, folios 3921, 3922 and 3923).

[87] Article 80 of the Chilean Constitution establishes: "In all cases, the Supreme Court, as required by the President of the Republic, at the request of the interested party, or *ex officio*, may declare that judges have not conducted themselves appropriately and, after informing the offender and the respective Appellate Court, as appropriate, decide to remove them by the majority vote of all the members." Meanwhile, article 337 of the Organic Code of the Courts

stated that he had "had to live with an unjust sanction within the Judiciary; this has meant that [he] ha[s] been labelled a problematic judge, a maverick judge […], and has also restricted the furtherance of [his] judicial career in Chile."[88] This harm has not been redressed by the State of Chile. Consequently, the Court notes that the violation of the right to freedom of expression of Mr. Urrutia Laubreaux has not been remedied fully. The violation of judicial independence will be analyzed below.

96. Therefore, this Court finds that the State violated 13, in relation to Article 1(1) of the Convention, to the detriment of Mr. Urrutia Laubreaux.

VIII-2
RIGHT TO JUDICIAL GUARANTEES AND ALLEGED VIOLATION OF JUDICIAL PROTECTION

A. Arguments of the parties and of the Commission

97. The ***Commission*** considered that Chile had violated the right to prior notification in detail of the charges and adequate time and means for defense because: (i) the presumed victim was not notified that he was subject to a disciplinary procedure, the reasons for it or the disciplinary rules that he might have breached with his conduct, and (ii) he was not summoned to a preliminary hearing to present his defense as required by article 536 of the Organic Code of the Courts. Regarding the right to an impartial disciplinary authority, the Commission indicated that the Supreme Court "had already taken a position on whether the fact that the presumed victim had sent his paper to the Supreme Court merited some kind of rebuke" because the Supreme Court had made a value judgment on the content of the academic paper, which it considered "contain[ed] views that this court finds inadequate and unacceptable." This also meant that the presumed victim did not have an effective remedy to review the decision that sanctioned him. The Commission also stressed that, when hearing the appeal, the Supreme Court of Justice "failed to protect Daniel Urrutia Laubreaux from the violation of the right of defense, as already established, or duly weigh the supposed harm caused by his academic paper in relation to the right to freedom of expression enshrined in the Constitution and the Convention." The Commission also indicated that "the fact that the Supreme Court of Justice amended the sanction and imposed a lighter penalty does not corroborate the effectiveness of the remedy or its impartiality."

98. The ***representatives*** agreed with the Commission that the presumed victim had not been called to a preliminary hearing and that the disciplinary authority was not impartial, which meant that Mr. Urrutia Laubreaux did not have an effective remedy. They also argued that the presumed victim was not subject to the summary procedure established in article 536 of the Organic Code of the Courts; rather, he was sanctioned without a procedure or proceedings of any kind. They indicated that Mr. Urrutia Laubreaux had not been called to a preliminary hearing to present his defense as prescribed by domestic law. They added that "he was merely required to report on specific situations, within five days," which could not be compared to a procedural opportunity to defend himself pursuant to Article 8(2)(d) of the Convention. They argued that "[a]rticle 536 [of the Organic Code of the Courts] expressly denied the right to due process of those subject to a disciplinary procedure." Regarding the

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establishes: "[i]t will be assumed *ipso jure*, for all legal effects, that a judge has not conducted himself appropriately in any of the following cases: (i) if he has been suspended twice within a three-year period or three times over any period of time; (2) if he has been subject to disciplinary measures more than three times over a three-year period; (3) if has received a disciplinary correction more than twice within any period of time for improper conduct, for dishonorable conduct, or for habitual negligence in the performance of his functions, and (4) if he has received an adverse rating from the Supreme Court based on the provisions of paragraph 3 of this article." *Cf.* Constitution of the Republic of Chile, published on September 22, 2005, article 80, and Organic Code of the Courts. Law 7421 published on July 9, 1943, article 337 (evidence file, folio 3939).

[88] *Cf.* Statement made by Daniel David Urrutia Laubreaux during the public hearing held in this case..

obligation of impartiality, they argued that "the Organic Code established that judges may lose their jurisdiction to hear specific cases due to declared legal impediment or recusal. One of the grounds for legal impediment is the prior expression of their opinion or decision on the pending matter, with sufficient knowledge of the case to pronounce judgment." Consequently, "the Plenum of the Supreme Court should have made this declaration, *ex officio*, and called on substitute judges who were not disqualified to decide the appeal." In addition, they argued that the State had violated the defendant's right to the presumption of innocence, the right of the accused to be assisted by legal counsel of his own choosing, the right to adequate time and means for the preparation of his defense, and had failed to comply with the obligation to provide the reasons for the decision. Lastly, they indicated that the State had violated Article 2 of the Convention because the disciplinary proceedings were not held before a competent, independent and impartial court, did not respect the presumption of innocence, and did not provide the defendant with legal counsel or grant him sufficient time to prepare his defense.

99. The ***State*** argued, with regard to the obligation to provide the reasons for the decision that "both the Appellate Court of La Serena and the Supreme Court, as its hierarchical superior, provided sufficient grounds for the decisions they adopted in the disciplinary proceedings held in the case of Judge Daniel Urrutia." Regarding the alleged lack of impartiality of the Supreme Court, the State indicated that "the mere fact that the Supreme Court sent the paper in question to the Appellate Court of La Serena 'for its consideration and pertinent purposes,' did not constitute *per se* evidence that allowed the presumption of impartially of the domestic courts involved in this case to be negated." With regard to the lack of an appropriate and effective remedy, Chile argued that "considering the pyramidal structure of the Judiciary, it is not possible to argue that, in this case, [Mr.] Daniel Urrutia did not have a remedy, because the petitioner himself filed an appeal contesting the judgment of the Appellate Court of La Serena" and "[t]he effectiveness of the appeal in question is determined by its result. Thus, the Supreme Court, having taken note of this, decided to reduce the sanction that had been imposed to that of a private reprimand, which is the lightest sanction of those established by article 537." Lastly, the State argued that the representatives had not provided the reasons why they considered that the disciplinary proceedings established in the Organic Code of the Courts violated the presumption of innocence, which "is a meta-principle that, recognized by the Chilean 'constitutional bloc,' has an impact on all domestic legislation. Evidently, this includes the rules of the OCC for the Judiciary's disciplinary proceedings."

B. Considerations of the Court

100. Article 8 of the Convention establishes the guidelines for due process of law, which is composed of a series of requirements that must be met by the procedural instances to ensure that the individual is able to defend his rights adequately *vis-à-vis* any type of act of the State that could affect them.[89]

101. According to Article 8(1) of the Convention, when determining rights and obligations of a civil, labor, fiscal, or any other nature, it is necessary to observe "due guarantees" that ensure the right to due process during the corresponding proceedings. Failure to comply with one of these guarantees entails a violation of this provision of the Convention.[90]

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[89] *Cf. Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights),* Advisory Opinion OC-9/87, October 6, 1987. Series A No. 9, para. 27, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs*, *supra,* para. 63.

[90] *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs.* Judgment of September 19, 2006. Series C No. 151, para. 119, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 119.

102. In addition, Article 8(2) of the Convention establishes the minimum guarantees that must be guaranteed by the State to ensure due process of law.[91] This Court has established that the guarantees indicated in Article 8(2) of the Convention are not exclusive to criminal proceedings, and may also be applicable in proceedings involving sanctions.[92] That said, in each case it is necessary to determine the minimum guarantees applicable to a specific proceeding involving non-criminal sanctions according to its nature and scope.[93]

103. Based on the sanctioning nature of the disciplinary proceedings held against Mr. Urrutia Laubreaux, in which a decision was taken that affected the presumed victim's rights, the Court considers that the procedural guarantees established in Article 8 of the American Convention form part of the list of minimum guarantees that should be respected to take a decision that is not arbitrary and that is adapted to due process.

104. Additionally, in cases involving disciplinary proceedings against judges, the Court's case law has indicated that the scope of the judicial guarantees and of real judicial protection for judges must be examined in relation to the standards for judicial independence. In the case of *Reverón Trujillo v. Venezuela*, the Court indicated that judges, contrary to other public officials, have specific guarantees owing to the necessary independence of the Judiciary, which the Court has understood as "essential for the exercise of the judicial function."[94]

105. The State must ensure the autonomous exercise of the judicial function as regards both its institutional aspect – that is, in relation to the Judiciary as a system – and its individual aspect – that is, in relation to the person of the specific judge.[95] The following guarantees are derived from judicial independence: an adequate selection process,[96] guaranteed tenure,[97] and the guarantee against external pressures.[98]

106. Regarding the guarantee against external pressures, the Court has indicated that the State must refrain from undue interference in the Judiciary or with its members, and take measures to avoid such interference being committed by persons or organs outside the

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[91] *Cf. Case of Baena Ricardo v. Panama*. *Merits, reparations and costs*. Judgment of February 2, 2001. Series C No. 72, para. 137, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 120.

[92] *Cf. Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of May 3, 2016. Series C No. 311, para. 75.

[93] *Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs*, *supra*, para. 75, and *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 125.

[94] *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2009. Series C No. 197, para. 67, and *Case of Rico v. Argentina. Preliminary objection and merits*, *supra*, para. 52.

[95] *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008, para. 55, and *Case of Rico v. Argentina. Preliminary objection and merits, supra*, para. 53.

[96] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs.* Judgment of January 31, 2001, para. 75, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs*, *supra*, para. 68. See also: ECHR, *Case of Campbell and Fell v. The United Kingdom,* Judgment of June 28, 1984, para. 78; *Case of Langborger v. Sweden,* Judgment of January 22, 1989, para. 32, and Principle 10 of the United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

[97] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs, supra*, para. 75, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs*, *supra*, para. 68. See also Principle 12 of the United Nations Basic Principles.

[98] *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs, supra*, para. 75, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs*, *supra*, para. 68. See also, Principles 2 and 4 of the United Nations Basic Principles.

judiciary.[99] In this regard, the Court has noted that "the United Nations Basic Principles [on the Independence of the Judiciary] establish that "[t]he judiciary shall decide matters before them impartially, […] without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."[100] In addition, "these Principles establish that '[t]here shall not be any inappropriate or unwarranted interference in the judicial process.'"[101]

107. This independence is not only external and inherent to the Judiciary of a democratic State, but also refers to the internal independence of the judge. In this regard, the Statute of the Iberoamerican Judge indicates:

> Article 4. *Internal Independence*: In the exercise of jurisdiction, judges are not subject to superior judicial authorities, notwithstanding the power of the said authorities to review jurisdictional decisions using legally established remedies, or the weight that each national legal system accords to the jurisprudence and precedents emanating from the Supreme Courts and Tribunals.[102]

108. Consequently, States must adopt the appropriate measures to ensure that disciplinary proceedings are not used in an abusive or arbitrary manner, which would infringe their independence.[103] On this point, General Comment No. 32 of the Human Rights Committee indicates that:

> States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them.[104]

109. In this regard, the Basic Principles establish that:

> 17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.
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> 18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.
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> 19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.[105]

110. Similarly, the Statute of the Iberoamerican Judge indicates that "[t]he disciplinary responsibility of judges shall be the jurisdiction of the legally established organs of the Judiciary,

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99 *Cf. Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations and costs*, *supra*, para. 84, and *Case of Rico v. Argentina. Preliminary objection and merits*, *supra*, para. 67.

100 *Cf. Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs*, *supra*, para. 197, and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations and costs*, *supra*, para. 84 (the reference is to Principle 2 of the United Nations Basic Principles on the Independence of the Judiciary).

101 *Cf. Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 80, and *Case of Villaseñor Velarde et al. v. Guatemala. Merits, reparations and costs*, *supra*, para. 84.

102 Iberoamerican Summit of Presidents of Supreme Courts and Tribunals of Justice. Statute of the Iberoamerican Judge. Adopted at the VI Summit held in Santa Cruz de Tenerife, Canarias, Spain, on May 23, 24 and 25 2001, article 4.

103 *Mutatis mutandi,* ECHR, *Oleksander Volkov v. Ukraine*, No. 21722/11 [Fifth Section]. Judgment of January 9, 2013, para. 199.

104 *Cf.* Human Rights Committee. General Comment No. 32, Article 14: The right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 19.

105 Principles 17, 18 and 19 of the United Nations Basic Principles.

using procedures that guarantee respect for due process and, in particular, the rights to a hearing, defense, rebuttal and legal remedies, as appropriate."[106]

111. Bearing in mind the foregoing considerations, the Court will now examine: (1) the right to prior notification in detail of the charges and adequate time and means for defense, and (2) the right to an impartial disciplinary authority and the right to judicial protection.

112. Regarding the alleged violation of the right to presumption of innocence and to be assisted by legal counsel, and the alleged failure to provide the reasons for the decision, the Court notes that the representatives did not submit specific arguments or provide information that would allow this Court to determine a violation of those rights in this case. Consequently, the Court considers that it does not have sufficient evidence to rule on the violation of those rights.[107]

B.1. Right to prior notification in detail of the charges and adequate time and means for defense

113. The right to prior notification in detail of the charges in criminal matters means that it is necessary to have a specific description of the conduct attributed to the defendant that includes the factual information regarding the charges, and this constitutes an essential reference document for the defendant to be able to defend himself and for the judge to consider in his decision. Therefore, the defendant has the right to know, described in a clear, detailed and precise manner, the facts of which he is accused.[108] As part of the minimum guarantees established in Article 8(2) of the Convention, the right to prior and detailed notification of the charges applies in both criminal matters and in the other matters indicated in Article 8(1) of the Convention, even though the information required in the other matters may be less and of another type.[109] That said, in the case of disciplinary proceedings that may result in a sanction, the scope of this guarantee can be understood in different ways but, in any case, means that the person to be disciplined must be informed of the conducts of which he is accused that have violated the disciplinary regime.[110]

114. The Court notes that in a letter of January 13, 2005, the Appellate Court of La Serena asked Judge Urrutia Laubreaux to provide, within five days, a "report on the reasons he had to send the Supreme Court a copy of his final paper."[111] On January 18, 2005, the presumed victim sent the requested report indicating that "the reasons that the undersigned judge had were to demonstrate to the Supreme Court that he had completed the course and the high

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[106] Iberoamerican Summit of Presidents of Supreme Courts and Tribunals of Justice. Statute of the Iberoamerican Judge*, supra*, article 20.

[107] *Cf. inter alia, Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*, *supra,* para. 325; *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, reparations and costs.* Judgment of August 22, 2018. Series C No. 356, para. 86; *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2018. Series C No. 364, para. 169; *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs.* Judgment of November 21, 2018. Series C No. 368, para. 280; *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019. Series C No. 392, paras. 96 and 97, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2019. Series C No. 394, para. 203.

[108] *Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs*. Judgment of June 20, 2005. Series C No. 126, para. 67, and *Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs*, *supra*, para. 80.

[109] *Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs*, *supra*, para. 80.

[110] *Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs*, *supra*, para. 80.

[111] Letter of the President of the Appellate Court of La Serena of January 13, 2005 (evidence file, folio 28).

note he had obtained, and to deliver the final product of his studies: namely, the said paper. It is noted that this paper was written strictly for academic purposes."[112] After receiving this report, on March 31, 2005, the Appellate Court of La Serena sanctioned Judge Urrutia Laubreaux with a disciplinary measure of "written censure" considering that the content of the academic paper of Mr. Urrutia Laubreaux constituted "a violation of the prohibitions contained in paragraphs 1 and 4 of article 323 of the Organic Code of the Courts."[113]

115. The Court notes that at no time prior to the imposition of the sanction was Mr. Urrutia Laubreaux informed that a disciplinary procedure had been opened against him, or of the rules he had presumably violation, and he was not offered a clear and specific analysis with regard to the application of such rules. A reading of the official letter sent to the presumed victim fails to clarify the specific reason why the Appellate Court asked Mr. Urrutia Laubreaux to provide information on the reasons for forwarding his academic paper to the Supreme Court. Consequently, the presumed victim was not aware that he was undergoing a disciplinary procedure, or of the facts of which he was accused. This lack of information constituted a violation of the guarantee of receiving prior detailed information on the proceedings brought against him contained in Article 8(2)(b) of the American Convention.

116. In addition, article 536 of the Organic Code of the Courts requires that, in disciplinary procedures, the accused judge is given a hearing. This article indicates that "Appellate Courts shall hear and settle, in a summary manner, rather than in the form of a trial, the complaints brought by injured parties against judges for any errors or abuses they may have committed in exercise of their functions and, following a hearing with the judge in question, will hand down the appropriate measures to promptly address the wrongdoing that led to the complaint."[114] The State clarified that "in 2005, disciplinary proceedings were governed by the principle of the written procedure, so that the terms used in the OCC, such as 'shall hear,' allude to the bilateral nature of the hearing, which under the procedure in force at that time was only in writing."

117. In this regard, there is no record in the case file that the Appellate Court of La Serena gave Mr. Urrutia Laubreaux an opportunity to exercise his right to defend himself either orally or in writing. Indeed, the only participation allowed to Mr. Urrutia Laubreaux was to present a report on the reasons why he had forwarded the academic paper to the Supreme Court of Justice. However, as a result of the lack of clarity regarding why he had been asked to present this report, it did not constitute an opportunity to exercise his right of defense. In fact, in the report he submitted, Judge Urrutia Laubreaux made no mention of the disciplinary proceedings and did not present any type of defense; rather, he merely explained that he had forwarded this paper to the Supreme Court of Justice to demonstrate that he "had completed the course, the high note obtained, and to deliver the final product of his studies." Therefore, the inexistence of an opportunity to defend himself constituted a violation of the right of Mr. Urrutia Laubreaux to defend himself contained in Article 8(2)(c) of the American Convention.

B.2. Right to an impartial disciplinary authority

118. Article 8(1) of the American Convention establishes that "[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal." The guarantee of impartiality requires that the judge who intervenes in a particular dispute must approach the facts of the case free of any subjective prejudice and also offer sufficient objective guarantees to exclude any doubt that the justiciable or the community

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112 *Cf.* Report signed by Daniel David Urrutia Laubreaux of January 18, 2005 (evidence file, folio 30).

113 Appellate Court of La Serena. Decision of March 31, 2005 (evidence file, folios 33 and 34).

114 Organic Code of the Courts. Law 7421 published on July 9, 1943, article 536 (evidence file, folio 3983).

may entertain as to his or her lack of impartiality.[115] Thus, this guarantee means that the members of the court should not have a direct interest, preconceived position, or preference for any of the parties, that they are not involved in the dispute and that they inspire the necessary confidence in the parties to the case, as well as in the citizens in a democratic society. Personal or subjective impartiality is to be presumed unless there is evidence to the contrary consisting, for example, in the demonstration that any member of a court or a judge has personal prejudices or biases against the litigants. In turn, the so-called objective impartiality consists in determining whether the judicial authority in question has offered sufficient elements of conviction to exclude any legitimate misgivings or well-grounded suspicions of bias.[116] The guarantee of impartiality is applicable to disciplinary proceedings held against judges.[117]

119. Regarding the obligation of impartiality, article 194 of the Organic Code of the Courts indicates that "[j]udges may lose their jurisdiction to hear certain cases owing to declared legal impediment or by recusal, if necessary, based on legal grounds."[118] As grounds for "legal impediment," article 195 establishes, if "[t]he judge has expressed his decision on the pending matter, with sufficient knowledge of the case to pronounce judgment."[119] Also, article 199 of the OCC establishes that "[j]udges who consider themselves encompassed by any of the legal grounds for legal impediment or recusal must, as soon as they become aware of this, record this in the proceedings, declaring themselves disqualified to continue functioning, or requesting that this declaration be made by the court of which they are a member. However, a prior request shall be required to declare the disqualification of justices of the Supreme Court and of the Appellate Courts, based on any of the grounds for recusal."[120] Lastly, article 200 of the Code stipulates that "[t]he legal impediment of judges can and must be declared, *ex officio*, or at the request of a party."[121]

120. In this case, the presumed victim sent his academic paper to the Supreme Court on November 30, 2004, and the latter forwarded it to the Appellate Court of La Serena on December 22, 2004, "for your information and for all relevant purposes."[122] Subsequently, on December 27, 2004, the Secretary of the Supreme Court of Justice informed Judge Urrutia Laubreaux that it was returning his academic paper "as ordered by the Plenum of this Court […] because it was considered that the said paper contained views that this Court finds inadequate and unacceptable."[123]

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115 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 56, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 124.

116 *Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary objection, merits, reparations and costs*, *supra*, para. 56, and *Case of Rico v. Argentina. Preliminary objection and merits*, *supra*, para. 70.

117 *Cf. Case of the Constitutional Court v. Peru. Merits, reparations and costs*, *supra*, para. 78, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2013. Series C No. 268, para. 168.

118 Organic Code of the Courts. Law 7421 published on July 9, 1943, article 194 (evidence file, folio 836).

119 Organic Code of the Courts. Law 7421 published on July 9, 1943, article 195.8 (evidence file, folio 3897).

120 Organic Code of the Courts. Law 7421 published on July 9, 1943, article 199 (evidence file, folios 3899 and 3900).

121 Organic Code of the Courts. Law 7421 published on July 9, 1943, article 200 (evidence file, folio 3900).

122 Letter to the President of the Supreme Court of Justice of Chile signed by Daniel David Urrutia Laubreaux dated November 30, 2004 (evidence file, folio 6), and Letter signed by the Secretary of the Supreme Court of Justice of Chile dated December 22, 2004 (evidence file, folio 24).

123 Letter signed by the Secretary of the Supreme Court of Justice of Chile of December 27, 2004 (evidence file, folio 26).

121. On January 31, 2005. the Appellate Court of La Serena sanctioned the presumed victim and he appealed this decision before the Supreme Court.[124] The appeal was decided by the Supreme Court of Justice, which confirmed the ruling of the Appellate Court of La Serena, reducing the sanction imposed on Mr. Urrutia Laubreaux.

122. First, the Court observes that there is no evidence in the case file that the justices of the Supreme Court who requested that the academic paper be forwarded to the Appellate Court of La Serena and indicated that it contained "views that this Court finds inadequate and unacceptable" were the same justices that heard the appeal. Nevertheless, this fact was not contested by the State. To the contrary, in its arguments, the State implicitly accepted that this occurred. Therefore, the Court will consider it a fact that at least some of the justices that heard the appeal had previously considered that the academic paper contained views that were "inadequate and unacceptable."

123. Based on the foregoing, it is not possible to assert that the Supreme Court of Justice approached the facts without having previously issued an opinion about the matter. To the contrary, when it heard the appeal and had to rule on the disciplinary responsibility of Mr. Urrutia Laubreaux, it had already considered that the paper in question contained views that were "inadequate and unacceptable" and had forwarded it to the Appellate Court of La Serena "for all relevant purposes." Although the Supreme Court had not expressly asked the Appellate Court to open a disciplinary procedure against the author of the academic paper, it had forwarded it to the organ with jurisdiction to exercise disciplinary authority with regard to Judge Urrutia Laubreaux,[125] and this resulted in the opening of the disciplinary procedure against him. Furthermore, the case file does not include any other possible reasons to explain why the Supreme Court forwarded the academic paper to the Appellate Court. The Court considers that these actions were sufficiently significant to compromise the impartiality of the Supreme Court of Justice when deciding the appeal filed by the presumed victim.

124. Based on the foregoing, this Court considers that the justices of the Supreme Court who heard the appeal did not meet the objective standards of impartiality to decide it. Therefore, the State violated the guarantee of impartiality recognized in Article 8(1) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Mr. Urrutia Laubreaux.

125. Regarding the alleged violation of Article 2, in relation to Article 8(1) of the Convention, the Court notes that it has not been proved that the violations of the judicial guarantees that occurred in this case were related to the lack of appropriate laws. In addition, the Court considers that it is unnecessary to rule on the alleged violation of judicial protection.

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[124] *Cf.* Appellate Court of La Serena. Decision of March 31, 2005 (evidence file, folios 32 to 36), and Appeal filed by Daniel David Urrutia Laubreaux with the Supreme Court of Justice of Chile on April 5, 2005 (evidence file, folios 38 and 39).

[125] Articles 535 and 540 of the Organic Code of the Courts establish the following: "Article 535. Appellate Courts are responsible for maintaining judicial discipline throughout the territory of their corresponding jurisdiction, immediately supervising the judicial conduct of their members and that of the junior judges, and ensuring compliance with all the duties required of them by law. […] Article 540. The Supreme Court, pursuant to Article 86 of the Constitution of the State, is responsible for exercising corrective, disciplinary and economic jurisdiction over all the courts of the Nation. Based on this authority, whenever it notes that a judge or judicial official has committed an offense that has not received the appropriate correction or punishment required by law, the Supreme Court may reconvene the court or authority that has left the offense unpunished so that it may apply the due punishment or correction. It may also reprimand the Appellate Courts or censure their conduct if any of these courts should exercise the discretional authority conferred on them by law abusively, or neglect any of their duties; without prejudice to opening the corresponding proceedings against the offending court or judges if the nature of the case should require this." Organic Code of the Courts. Law 7421 published on July 9, 1943, articles 535 and 540 (evidence file, folios 3983 and 3984).

VIII-3
THE PRINCIPLE OF LEGALITY AND THE OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS

A. Arguments of the parties and of the Commission

126. The ***Commissio***n considered that the wording of the disciplinary grounds applied to the presumed victim was excessively broad, so that it affected the predictability of the conducts that, pursuant to the law, could be censured and gave the disciplinary authorities "an extremely broad margin of discretion" for applying the law. Specifically, the Commission argued that the prohibition of "attacking, in any way," the conduct of judges and justices stipulated in article 323.4 of the Organic Code of the Courts was, in itself, incompatible with the principle of legality, because it was excessively broad. This latitude "prevent[ed] the presumed victim from having certainty about what was required by the law, because it was not reasonable to infer that a critical analysis of the position of the Chilean Judiciary during the military regime could be classified as an attack on one's superiors." This "exceeded the predictability of the law so that, reasonably, Judge Urrutia could know that the notion of 'attack' included writing an academic paper for a course, which was neither published nor criticized specific justices or judges."

127. The ***representatives*** argued that "for the Chilean courts, the grounds to sanction Judge Urrutia Laubreaux were […] so broad and ambiguous […] that, by a discretional interpretation, they culminated in engaging the consequent international responsibility of the Chilean State. Thus, these grounds not only gave rise to uncertainty, […] but also involved the lack of predictability of sanctioned conducts, contrary to the principle of legality." They also argued that, the principle of legality had also been violated because the Supreme Court had heard the appeal filed by Judge Urrutia when "it was this court itself, that, in first instance, had forwarded the academic paper to the court of La Serena so that it would sanction him."

128. The ***State*** argued that "the reasoning of the decisions of both the Appellate Court of La Serena and the Supreme Court is clear in indicating that the disciplinary measure was applied as a reprimand for the criticism contained in the [presumed victim's] paper regarding the actions of the highest courts of justice, specifically the Supreme Court, and of that court's moral failure in relation to human rights violations, and this corresponds to the offense defined in article 323 of the OCC." Regarding the precision of the norm applied, the State argued that "the principle of legality is not incompatible with the existence of a certain degree of indetermination." It indicated that the "rule contained in article 323.4 of the OCC is clear: judicial officials are prohibited from attacking, in any way, the official conduct of other judges or justices. Even though this prohibition may be considered broad, it can never be considered imprecise or vague." Regarding the predictability of the sanction, Chile argued that "article 323.4 of the OCC […] establishes a duty of conduct that is sufficiently predictable to allow those concerned to understand the consequences of non-compliance with it." It argued that "the application of a sanction to Judge Urrutia in 2005 for failure to comply with the judicial obligations indicated in article 323.4 of the OCC represents an exception in Chilean disciplinary case law. Since then, no higher court of justice has used this article to issue a disciplinary sanction against a judge."

B. Considerations of the Court

129. With regard to the principle of legality, the Court has indicated that it is also in force in relation to disciplinary matters; however, its scope depends to a considerable extent on the matter regulated. The precision of a sanctioning rule of a disciplinary nature may be different

from that required by the principle of legality in criminal matters owing to the nature of the disputes that each one is intended to settle.[126]

130. Similarly, in the case of *López Mendoza v. Venezuela,* this Court asserted that problems regarding uncertainty of the sanctioning regulation do not, *per se*, give rise to a violation of the Convention; in other words, the fact that a regulation grants some type of discretion is not incompatible with the degree of predictability that the regulation should reveal, provided that the scope of the discretion and the way in which it should be exercised are indicated with sufficient clarity to provide adequate protection from arbitrary interference.[127]

131. In this case, the disciplinary proceedings were of a sanctioning nature; therefore, according to the Court's case law, the guarantees of Article 9 of the Convention are applicable. In addition, in the case of disciplinary sanctions imposed on judges, compliance with the principle of legality is even more important because it constitutes a guarantee against external pressures on judges and, consequently, of their independence (*supra* paras. 105 and 106).[128] On this point, the Statute of the Iberoamerican Judge establishes that:

> Art. 19. *Principle of legality in the judge's responsibility*. Judges shall be held criminally, civilly and disciplinarily responsible pursuant to the provisions of the law. The requirement of responsibility shall not protect attacks on judicial independence that it is attempted to conceal by their official nature.[129]

132. Based on the arguments of the parties and of the Commission, the Court will examine whether paragraph 4 of Article 323 of the Organic Code of the Courts, applied to sanction the presumed victim in this case, complied with the principle of legality. The representatives also argued that the Supreme Court had violated the principle of legality by hearing the appeal filed by Judge Urrutia, when "it was this very court that, in first instance, had forwarded the academic paper to the court of La Serena so that it would sanction him." The Court has already examined this argument in relation to the guarantee of impartiality and therefore finds it unnecessary to rule on it again.

133. Article 323 of the Organic Code of the Courts prohibits judicial officials from:

> 4. Publishing, without authorization from the President of the Supreme Court, documents defending their official conduct or attacking, in any way, that of other judges or justices.
>
> […]

134. This Court notes that paragraph 4 of Article 323 of the Organic Code of the Courts prohibits "attacking, in any way," the conduct of other judges or justices. It does not establish the type of act that can be considered an attack, and the phrase "in any way" contains a high degree of uncertainty, so that it can be interpreted that this attack does not have to have been published. Thus, the regulation gives the authority responsible for exercising disciplinary powers broad discretion and therefore does not provide protection against the possibility that it may be used in an arbitrary manner.

135. This Court considers that, by sanctioning Mr. Urrutia Laubreaux under paragraph 4 of Article 323 of the Organic Code of the Courts, the Supreme Court of Chile used a regulation that permitted a discretion that was incompatible with the degree of predictability that the

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126 *Cf. Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs*, *supra*, para. 89, and *Case of Rico v. Argentina. Preliminary objection and merits*, *supra*, para. 102.

127 *Cf. Case of López Mendoza v. Venezuela. Merits, reparations and costs.* Judgment of September 1, 2011. Series C No. 233, para. 202, and *Case of Rico v. Argentina. Preliminary objection and merits*, *supra*, para. 102.

128 Bangalore Principles of Judicial Conduct adopted by the Judicial Group on Strengthening Judicial Integrity, *supra*, para. 1.1 to 1.6.

129 Iberoamerican Summit of Presidents of Supreme Courts and Tribunals of Justice. Statute of the Iberoamerican Judge, *supra*, article 19.

regulation should reveal in violation of the principle of legality contained in Article 9 of the Convention. The State itself implicitly recognized this argument when it indicated that these disciplinary grounds were used for the last time against Mr. Urrutia, which "was an exception in Chilean disciplinary case law," and that they had not been applied in the course of the last 14 years, thus admitting that they violated the Convention.

136. Furthermore, the Court notes that regulations such as this violate not only the principle of legality but also judicial independence. Indeed, irrespective of the lack of precision in the legal formulation of the said regulation, this Court finds it necessary to note that the guarantee for everyone that they will be tried by an "independent" judge in Article 8(1) of the Convention, presupposes the existence of "independent" judges; in other words, that every State must respect judicial independence.

137. Although it is evident that there are limitations inherent in the judicial function in relation to public statements, especially with regard to the cases submitted to the jurisdictional decisions of judges, these should not be confused with statements that criticize other judges and, especially, statements made in public defense of their own functional performance.

138. Prohibiting judges from criticizing the functioning of the power of the State of which they form part, which necessarily involves the criticism of the conduct of other judges, or requiring that they request authorization from the President of the highest court to do this and, moreover, that they must act in the same way when they wish to defend their own judicial actions, signifies opting for a hierarchized model of the Judiciary in the form of a corporation in which judges lack internal independence, with a propensity towards unconditional subordination to the authority of their own collegiate organs and although, formally, the intention may be to limit this to the disciplinary sphere, in practice, owing to inherent fear of this power, it results in subjugation to so-called "superior" jurisprudence and paralyzes the interpretive dynamic in the application of the law.

139. Furthermore, the Court recalls that Article 2 of the Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to the rights and freedoms protected by the Convention.[130] This obligation involves the adoption of two types of measures: on the one hand, the elimination of norms and practices of any nature that entail a violation of the guarantees established in the Convention,[131] either because they reject those rights and freedoms or because they prevent their exercise;[132] and, on the other, the issue of norms and the development of practices conducive to the effective observance of those guarantees.[133]

140. The violations of the Convention determined in this chapter resulted from the application of article 323.4 of the Organic Code of the Courts. The Court notes that based on Article 2 of the Convention, the State was obliged to eliminate norms that entailed a violation of the guarantees established in the Convention. Therefore, the State incurred in an omission by keeping this norm in force. This omission resulted in a violation of Article 2 of the Convention

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[130] *Cf. Case of Gangaram Panday v. Surinam. Preliminary objections*. Judgment of December 4, 1991. Series C No. 12, para. 50, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs*, *supra*, para. 96.

[131] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs, supra,* para. 96.

[132] *Cf. Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 113, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs, supra,* para. 96.

[133] *Cf. Case of Castillo Petruzzi et al. v. Peru, Merits, reparations and costs*, *supra,* para. 207, and *Case of Colindres Schonenberg v. El Salvador. Merits, reparations and costs*, *supra,* para. 96.

and affected legal certainty and the rights of the presumed victim when the sanction was decided.

141. Based on the above, the Court finds that the State is responsible for the violation of Article 9 of the American Convention, in relation to Articles 1(1) and 2 of this instrument, to the detriment of Mr. Urrutia Laubreaux.

IX
REPARATIONS

142. Pursuant to the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to repair it adequately, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[134] In addition, this Court has established that the reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm that has been proved, and the measures requested to redress the respective harm. Therefore, the Court must examine the concurrence of these factors in order to rule appropriately and in accordance with law.[135]

143. Consequently, and on the basis of the considerations made on the merits, and on the violations of the Convention declared in this judgment, the Court will proceed to examine the claims presented by the Commission and the victim's representatives, together with the corresponding observations of the State in light of the criteria established in its case law concerning the nature and scope of the obligation to make reparation, in order to establish measures to redress the harm caused.[136]

A. Injured party

144. The Court considers that, pursuant to Article 63(1) of the Convention, the injured party is anyone who has been declared a victim of the violation of any right recognized in this instrument. Therefore, the Court considers that Daniel David Urrutia is the "injured party" and, as a victim of the violations declared in Chapter VIII of this judgment, he will be considered the beneficiary of the reparations that are ordered by the Court.

B. Measure of satisfaction

145. The ***representatives*** requested the dissemination of the Court's judgment "by all possible means of communication."

146. The ***State*** contested this measure, considering that it "had complied satisfactorily with the only possible appropriate, sufficient and adequate measures of reparation to redress the supposed harm alleged by the petitioner," by annulling the sanction applied to Judge Urrutia in 2005. Therefore, there was "no need to order any measure of satisfaction."

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[134] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Valle Ambrosio et al. v. Argentina. Merits and reparations.* Judgment of July 20, 2020. Series C No. 408, para. 55.

[135] *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Valle Ambrosio et al. v. Argentina. Merits and reparations, supra*, para. 57.

[136] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra,* paras. 25 and 26, and *Case of Valle Ambrosio et al. v. Argentina. Merits and reparations*, *supra*, para. 56.

147. The Court orders, as it has in other cases,[137] that the State publish, within six months of notification of this judgment: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread coverage in an adequate and legible font, and (c) this judgment in its entirety, which should be available for one year on an official website of the Judiciary, in a way that is accessible to the public.[138] The State must inform this Court immediately when it has made each of the publications ordered, irrespective of the one-year time frame for presenting its first report established in the tenth operative paragraph of this judgment.

C. Guarantees of non-repetition

C.1. Adaptation of domestic law

148. The ***Commission*** asked the Court to order the State, as a guarantee of non-repetition, to "adapt domestic law to eliminate the grounds on which this case was based." The ***representatives*** did not present arguments in this regard.

149. The ***State*** argued that it was not appropriate to order this measure because "the domestic courts ha[d] never sanctioned any judge of the Republic again for the conduct described in article 323.4 of the OCC." In fact, the disciplinary grounds were used for the last time against Mr. Urrutia Laubreaux and had not been applied in the course of the last 14 years. However, the State also argued that "the restrictions in question are in keeping with the duty of discretion of judges in all cases in which the authority and impartiality of the judiciary is questioned."

150. The Court appreciates the efforts made by the Chilean Judiciary to limit the application of the said article 323. Indeed, according to the information provided by the State, there is no record that paragraph 4 of Article 323 of the Organic Code of the Courts has been applied against since it was used as grounds for the disciplinary sanction of Mr. Urrutia Laubreaux.[139] Nevertheless, it remains in force[140] and, in the instant case, the Court has concluded that the State failed to comply with the obligation to adopt domestic legal provisions by retaining paragraph 4 of Article 323 of the Organic Code of the Courts within its laws, pursuant to the obligation established in Article 2 of the American Convention, in relation to Articles 8(1), 9 and 1(1) of the Convention (*supra* paras. 129 to 141). Consequently, the State must eliminate paragraph 4 of Article 323 of the Organic Code of the Courts.

D. Other measures requested

151. The ***Commission*** asked the Court to order the adoption of "the administrative or any other measures necessary to fully reverse the sanction imposed on Daniel Urrutia Laubreaux, including by eliminating it from his personnel record or judicial file," and to order the State "to ensure that the disciplinary grounds related to the right to freedom of expression of judges are compatible with the principle of legality and the right to freedom of expression as analyzed in the report."

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137 *Cf. Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69., para. 79, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 147.

138 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 231.

139 *Cf.* President of the Supreme Court of Justice of Chile. Table with the disciplinary measures imposed on judges from 2004 to 2018 (evidence file, folios 672 to 692).

140 Supreme Court, Directorate of Studies. Report on measures of non-repetition, IACHR case 12,955, Daniel Urrutia Laubreaux, April 18, 2019 (evidence file, folio 716).

152. The ***representatives*** asked the Court to order the State to: (i) hold an act to acknowledge international responsibility; (ii) conduct the "investigation, determination of responsibility and appropriate sanction of those who had violated the human rights of Judge Urrutia Laubreaux"; (iii) disseminate the academic paper written by Mr. Urrutia Laubreaux and the internal judicial decisions by all possible media; (iv) comply with the proposals made by Judge Urrutia Laubreaux in his academic paper; (v) create a public policy within the Chilean Judiciary in order to implement a system of continuous training for judge by workshops and courses on the application of human rights standards in the domestic sphere, and prepare guidelines on the matter, especially on: freedom of thought and expression, control of conventionality, and transitional justice; (vi) create a human rights and gender directorate within the Judiciary responsible for heading the internal human rights policy; (vii) incorporate into Chilean law the obligation of judges to apply international human rights law in all cases under their jurisdiction; (viii) create a "working group on the transformation of the disciplinary regime of the Judiciary in Chile, that respects the principle of legality and due process of law," and (ix) create a "constitutional autonomous organ, other than those that carry out jurisdictional functions, to be responsible for disciplinary procedures against judges."

153. The ***State*** indicated, with regard to the first four measures, that since the Supreme Court had returned "the legal situation of Judge Urrutia to the situation immediately prior to the delivery of the judgment that issued a disciplinary sanction against him," they were inappropriate. In the case of the other measures, it indicated that they were inappropriate for the following reasons: the Judicial Academy "has a policy of continuous training addressed exclusively at judicial officials […] under a professional development program and a training program, the contents of which include international human rights standards"; the Supreme Court had created three administrative units that manage human rights matters related to the Judiciary integrally and they include the Gender and Human Rights Secretariat, and "Chilean legislation includes constitutional laws that ensure that the domestic courts apply the international human rights treaties signed by, and in force in, Chile to decide specific cases that are submitted to their consideration."

154. First, the Court recalls that the sanction imposed on Mr. Urrutia Laubreaux has been eliminated from his personnel record. Second, some of the reparations requested have no causal nexus to this case. Lastly, regarding the other reparations requested by the representatives, the Court considers that the delivery of this judgment, the reparations ordered in this chapter, and those already accorded internally are sufficient and adequate to redress the violations suffered by the victim. Therefore, the Court does not find it necessary to order those additional measures, without prejudice to the State deciding to adopt them and grant them at the domestic level.

E. Compensation

155. The ***Commission*** asked the Court to order Chile "to provide comprehensive reparation for the violations declared in the report, including for both pecuniary and non-pecuniary damage."

156. In general, the State indicated that "the request for payment of compensation was not appropriate […] because it b[ore] no relationship to the purpose of the proceedings and ha[d] not been proved."

E.1 Pecuniary damage

157. In its case law, this Court has developed the concept that pecuniary damage supposes the loss of, or detriment to, the victims' income, the expenses incurred as a result of the facts,

and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[141]

158. The ***representatives*** requested "payment of the salary earned by Judge Urrutia Laubreaux during the three years that he remained abroad, which corresponds to 110,210,031 Chilean pesos, and the expenses he incurred to visit his son and daughter every three months during his time outside Chile (12 trips), and the two visits that his children made to Mexico."

159. The ***State*** indicated that "any additional measures to the *restitutio in integrum*, such as the payment of compensation, would not contribute to make reparation, but rather enrich the presumed victim" and that "the salaries that the presumed victim did not earn during his time in Mexico and the expenses supposedly caused by his trips abroad are new facts that […] are not part of the factual framework".

160. The Court considers that the representatives' arguments concerning pecuniary damage do not have a causal nexus to the violations determined in this case. Consequently, it is not appropriate to order the payment of compensation for pecuniary damage.

E.2 Non-pecuniary damage

161. In its case law, this Court has developed the concept of non-pecuniary damage, and has established that this may include both the suffering and affliction caused to the direct victim and his close family, and the impairment of values of great significance for the individual, as well as the alterations of a non-pecuniary character in the living conditions of the victim or his family.[142].

162. The ***representatives*** asked the Court to establish an amount, in equity, for non-pecuniary damage, in light of "the circumstances of the case, the nature of the violations committed by the State and the case law of the Court".

163. During the public hearing, Mr. Urrutia Laubreaux stated that, as a result of the disciplinary proceedings held against him, "for 14 years [he had] had to live with an unjust sanction within the Judiciary; this has meant that [he] ha[d] been labelled a problematic judge, a maverick judge […], and ha[d] also restricted the furtherance of [his] judicial career in Chile."[143]

164. The Court finds that the sanction imposed on Mr. Urrutia Laubreaux for exercising his freedom of expression and that remained on his personnel record for 13 years, as well as the disciplinary proceedings, caused non-pecuniary damage that has not been redressed. Based on the circumstances of this case and the violations declared, the Court finds it pertinent to establish, in equity, the sum of US$20.000,00 (twenty thousand United States dollars) as non-pecuniary damage in favor of Daniel David Urrutia Laubreaux.

F. Costs and expenses

165. Initially, the ***representatives*** asked the Court "to establish an amount, in equity, without prejudice to updating this based on the proceedings before the Court." In their final written arguments, the representatives reiterated this request and asked that the State be

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[141] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs*, *supra*, para. 160.

[142] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs.* Judgment of June 24, 2020. Series C No. 405, para. 262.

[143] *Cf.* Statement made by Daniel David Urrutia Laubreaux during the public hearing held in this case..

required to provide the sum of US$6,121.09, due to expenses incurred for air fares, transportation, board and lodging during the public hearing.

166. This Court notes that the representatives have not duly authenticated all the expenses incurred prior to the public hearing in this case. The Court also notes that the victim and his representatives have provided vouchers for US$5,519.00.[144] Nevertheless, it is reasonable to presume that the victim and his representatives also incurred in expenditure following the lodging of the case before the Commission. Therefore, the Court finds it pertinent to order the reimbursement of reasonable litigation expenses,[145] which it establishes, in equity, at US$7,000.00 (seven thousand United States dollars) for costs and expenses. This sum shall be delivered to the victim's representatives. The amount established for the representatives includes the expenses of the transportation, board and lodging for Mr. Urrutia Laubreaux owing to his participation in the public hearing. At the stage of monitoring compliance with this judgment, the Court may establish that the State reimburse the victim or his representatives any reasonable expenses incurred at that procedural stage.[146]

G. Method of compliance with the payments ordered

167. The State shall make the payments of the compensation for non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein, within one year of notification of this judgment, without prejudice to making the complete payments in advance, pursuant to the following paragraphs.

168. If the beneficiaries are deceased or die before they receives the respective amounts, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

169. The State shall comply with the monetary obligations by payment in United States dollars or the equivalent in national currency using the exchange rate in force on the New York Stock Exchange (United States of America) the day before payment to make the respective calculation.

170. If, for reasons that can be attributed to the beneficiary of the compensation or his heirs, it is not possible to pay the amount determined within the indicated time frame, the State shall deposit the amount in his favor in a deposit account or certificate in a solvent Chilean financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amount shall be returned to the State with the interest accrued.

171. The amounts allocated in this judgment as compensation for non-pecuniary damage, and to reimburse costs and expenses, shall be delivered to the persons indicated in full, as established in this judgment, without any deductions arising from possible taxes or charges.

172. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Chile.

X
OPERATIVE PARAGRAPHS

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144 *Cf.* Vouchers for costs and expenses provided by the representatives (evidence files, folios 3663 to 3742).

145 *Cf. Case of Órdenes Guerra et al. v. Chile. Merits, reparations and costs*. Judgment of November 29, 2018. Series C No. 372., para. 140, and *Case of Gómez Virula et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 21, 2019. Series C No. 393, para. 115.

146 *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 276.

173. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To reject the preliminary objection concerning the request to review the legality of the submission of the case to the Inter-American Court pursuant to paragraphs 25 to 27 of this judgment.

2. To reject the preliminary objection concerning the "fourth instance" and the complementarity of the inter-America system pursuant to paragraphs 31 to 34 of this judgment.

DECLARES,

Unanimously, that:

3. The State is responsible for the violation of the right to freedom of thought and expression recognized in Article 13 of the American Convention on Human Rights, in relation to the obligation to respect and to ensure this right established in Article 1(1) of this instrument, to the detriment of Daniel David Urrutia Laubreaux, pursuant to paragraphs 75 to 96 of this judgment.

4. The State is responsible for the violation of the right to the judicial guarantees recognized in Article 8(1), 8(2)(b) and 8(2)(c) of the American Convention on Human Rights, in relation to the obligation to respect and to ensure this right established in Article 1(1) of this instrument, to the detriment of Daniel David Urrutia Laubreaux, pursuant to paragraphs 100 to 125 of this judgment.

5. The State is responsible for the violation of the principle of legality, recognized in Article 9 of the American Convention on Human Rights, in relation to the obligation to respect and to ensure this right and the obligation to adopt domestic legal provisions established in Articles 1(1) and 2 of this instrument, to the detriment of Daniel David Urrutia Laubreaux, pursuant to paragraphs 129 to 141 of this judgment.

ESTABLISHES

Unanimously, that:

6. This judgment constitutes, *per se,* a form of reparation.

7. The State shall make the publications indicated in paragraph 147 of this judgment.

8. The State shall eliminate paragraph 4 of article 323 of the Organic Code of the Courts, pursuant to paragraph 150 of this judgment.

9. The State shall pay the amounts established in paragraphs 164 and 166 of this judgment as compensation for non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 167 and 172 of this judgment.

10. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures taken to comply with it, without prejudice to the provisions of paragraph 147 of this judgment.

11. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

Judges L. Patricio Pazmiño Freire and Eugenio Raúl Zaffaroni informed the Court of their separate opinions.

DONE, at San José, Costa Rica, in a virtual session, on August 27, 2020, in the Spanish language.

I/A Court HR. *Case of Urrutia Laubreaux v. Chile.* Preliminary objections, merits, reparations and costs. Judgment of August 27, 2020. Judgment adopted in San José, Costa Rica, in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Romina I. Sijniensky
Deputy Secretary

So ordered,

Elizabeth Odio Benito
President

Romina I. Sijniensky
Deputy Secretary

CONCURRING OPINION OF
JUDGE L. PATRICIO PAZMIÑO FREIRE

CASE OF URRUTIA LAUBREAUX V. CHILE

JUDGMENT OF AUGUST 27, 2020

1. In its judgment in the *Case of Urrutia Laubreaux v. Chile,* the Court has developed and reinforced the standards for judicial independence and, in particular, the guarantees against internal and external pressure that are required to ensure this.

2. Regarding internal independence, the Court, citing the Statute of the Iberoamerican Judge, indicated that the State must ensure that "judges are not subject to superior judicial authorities, notwithstanding the power of the said authorities to review jurisdictional decisions using legally established remedies, or the weight that each national legal system accords to the jurisprudence and precedents emanating from the Supreme Courts and Tribunals."[1] In this specific case, this guarantee is particularly relevant because the rule used to sanction Mr. Urrutia Laubreaux prohibited judicial officials from "[p]ublishing, without the authorization of the President of the Supreme Court, documents defending their official conduct, or attacking, in any way, that of other judges or justices."

3. In the words of the Court, this prohibition "signifies opting for a hierarchized model of the Judiciary in the form of a corporation in which judges lack internal independence, with a propensity towards unconditional subordination to the authority of their own collegiate organs and although, formally, the intention may be to limit this to the disciplinary sphere, in practice, owing to inherent fear of this power, it results in subjugation to so-called "superior" jurisprudence and paralyzes the interpretive dynamic in the application of the law."[2]

4. Judges should only be subject to the law and to decide the matter submitted to them on this basis. The Court has indicated that judges "should not feel compelled to avoid dissenting with the organ that reviews their decisions, which, ultimately, only exercises a distinct judicial function limited to dealing with issues raised on appeal by the parties who disagree with the original ruling."[3] Similarly, the European Court of Human Rights has indicated that judges should be "free from directives or pressures from the fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court."[4]

5. The existence of laws that promote a culture of hierarchies and of respect for the higher authorities of the Judiciary creates an environment conducive to judges being obliged to act in a certain way and, consequently, undermines the internal independence of judges.

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[1] *Case of Urrutia Laubreax v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2020. Series C No. 409, para. 107, *citing* Iberoamerican Summit of Presidents of Supreme Courts. Statute of the Iberoamerican Judge. Adopted at the Sixth Summit held in Santa Cruz de Tenerife, Canary Islands, Spain, on May 23, 24 and 25 2001, article 4.

[2] *Case of Urrutia Laubreax v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2020. Series C No. 409, para. 138.

[3] *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. 84.

[4] ECHR. *Case of Parlov-Tkalčić v. Croatia*. No. 24810/06 [First Section]. Judgment of December 22, 2009, para. 86.

6. In addition, regarding external independence, the Court underlined that this requires protecting the judge from "undue interference […] by persons or organs outside the judiciary."[5] Accordingly, guarantees against external pressures entail protecting judges from interference by the other powers of the State but also, in general, by other social groups and organizations of any kind including, therefore, the media. In this regard, the Statute of the Iberoamerican Judge establishes:

> Art. 3. *Judicial independence and the media*. The use of means of social communication with the purpose of supplanting jurisdictional functions, imposing or influencing the content of judicial decisions, in conditions exceeding the legitimate right to freedom of expression and information, is considered harmful for judicial independence.[6]

7. Although the foregoing supposes that a difficult balance must be achieved between freedom of expression and the protection of judicial independence, it is essential that States do not lose sight of the fact that the guarantees to avoid and to curb external pressures in order to ensure the independence of judges when taking their decisions also entail a necessary proactive action by public policies and local laws that result in real preventive protection against communication practices that could possibly be implemented and that can be identified, above all, by their intention of influencing judicial rulings that are still being analyzed by the courts.

8. Lastly, I would like to emphasize that in cases concerning disciplinary proceedings, it is essential to examine all the facts that surrounded the procedure. In this regard, I would like to refer back to my considerations in my partially dissenting opinion in the case of *Petro Urrego v. Colombia:*

> In circumstances of the regional and international context, where academia, the judiciary and social and political actors are raising their concerns in the face of possible and not so isolated practices of interference in the dynamics of democratic debate, under the guise of legality, it is essential that we reaffirm some of the original sources that feed and sustain a republican state: the right to dissent, to the diversity of opinions and creeds, and to political participation within the framework of a system of representative electoral democracy. Principles, values and rules that, by assuming them already incorporated into institutional practice, we have taken for granted their convenient existence, without realizing that they are slowly but systematically diluted in the heat of practice, whether of a veiled or explicit nature or, by the use – increasingly less concealed – of actions taken within institutional frameworks that, if not opportunely identified and legally contained, could foster a progressive and irreparable deterioration of the founding principles of the inter-American system and its public order, seriously challenging the republican model of law.
>
> [...]
>
> On this point, it is necessary to ask ourselves whether it is possible to overcome the inflexibility of the procedural analysis limited to the facts and evidence examined and recognized in the Merits Report of the Commission, considering them conclusive and therefore exclusive. In this regard, the first aspect to remember is that Article 58 of the Court's Rules of Procedure empowers the Court "at any stage of the proceedings," to seek "on its own motion any evidence it considers useful and necessary. In particular, it is able to hear – as an alleged victim, witness, expert or in any other capacity – any person whose statement, testimony, or opinion it deems relevant." It is clear from this article that, as judges, we are empowered to examine different elements that allow us to obtain verifiable information in order to reach a just decision. In fact, the Court has carried out this practice on several occasions, when conducting its own investigations or summoning witnesses *ex*

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[5] *Case of Urrutia Laubreax v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2020. Series C No. 409, para. 106.

[6] Iberoamerican Summit of Presidents of Supreme Courts and Tribunals of Justice. Statute of the Iberoamerican Judge. Adopted at the VI Summit held in Santa Cruz de Tenerife, Canarias, Spain, on May 23, 24 and 25 2001, article 3.

offico, in order to gain a better appreciation of the evidence even when it has not been provided by the parties or the Commission.[7]

9. In this case, I share fully the decision adopted; however, I respectfully call on the Inter-American Court to remain alert and on the watch for proceedings that are submitted to its consideration and that, in principle, are legal in appearance but that, when a comprehensive analysis of the context and of the different probative elements is made, reveal a clear motivation and censorious components that violate the principle of equality and the guarantee of non-discrimination.

L. Patricio Pazmiño Freire
Judge

Pablo Saavedra Alessandri
Secretary

[7] Partially dissenting opinion of Judge L. Patricio Pazmiño Freire in the *Case of Petro Urrego v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of July 8, 2020. Series C No. 406.

CONCURRING OPINION OF
JUDGE EUGENIO RAÚL ZAFFARONI

IN THE JUDGMENT OF AUGUST 27, 2020
OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF URRUTIA LAUBREAUX V. CHILE

1. The sanction imposed on the judge in this case reveals the corporate significance that judges of collegiate bodies tried to assign to the Judiciary of which they formed part. It was argued, and not contested, that in the paper sent by the victim he criticized the conduct of the highest court during a dictatorship that committed gross human rights violations.

2. The law that authorized the sanction imposed on that occasion did not protect a mandate inherent in the judicial function, such as the prohibition of judges issuing irresponsible or undue public statements on proceedings in which they intervened or other similar proceedings. Rather, the law in question prohibited public criticism of other judges which, added to the ambiguity of the wording of the text, entailed prohibiting criticism of the very functioning of the Judiciary – and even criticism of the case law of other judges – without authorization from the highest authority.

3. In this case, the victim was sanctioned because he had criticized the highest authority owing to its conduct during a dictatorship under which execrable crimes against humanity were committed, even though he had not made his criticism public.

4. This signifies that the collegiate organs understood that members of the Judiciary lost the right of the citizen to criticize the exercise of the powers of the State and of the power of which they were members, even in a case of gross crimes against humanity, in order to protect a supposed honor, dignity or prestige of the entity to which they belonged.

5. Even though this is not stated, and it was not even considered in this way, the reality is that this kind of restriction involves the adoption of a corporate model that is valid for legal persons in the sphere of private law. Using an extreme simplification of the theory of the *reality* of legal persons – once used in common law – an anthropomorphic model is proposed in which the corporate human being is integrated as a cell of a hierarchized higher organism, under the command of a leadership that assumes the functions of a sort of guiding brain. This entity would, thus, be entitled to a different objective honor or prestige from the persons that compose it.

6. It is not necessary to define the corporate organization of a Judiciary in this way, when the rules that authorize sanctions – and the imposition of those sanctions – reveal that they respond to this underlying model where the judicial organization is conceived hierarchically and judges renounce the citizen's right to criticize the decisions of their colleagues.

7. This hierarchized corporate organization corresponds to a vertical Judiciary, with no internal discussions, where freedom of thought and to criticize judges cedes before the collegiate bodies.

8. In this type of organization, judges must renounce the rights inherent in their condition as individuals with their own ideas, world views and values, to obey those of the leadership of the corporation, becoming its subordinates.

9. It is impossible to ensure judicial impartiality – which is implicitly essential for judicial independence – by seeking to incorporate individuals who lack ideologies, values and world views as judges, because they do not exist; at least, with minimum mental health. Moreover, it is also impossible to do this by incorporating individuals who, in order to remain in their posts, give up their personal values, ideas and world vision, assuming those of the organ's leadership, in an attitude of obedience, subordination and inhibition, unworthy not only of a judge but also of any citizen.

10. The only judicial impartiality – humanly and democratically possible and imperative – is the impartiality provided by the internal pluralism of the Judiciary that enables discussions and critiques among judges that are informative for public opinion and for the judges themselves.

11. No Judiciary is perfect, just as nothing human is perfect, and the urge towards higher levels of perfection depends on the dynamic of open and democratic criticism, especially within the Judiciary – in other words, among judges.

12. To this end, it is evident that judges must be free from external pressure, but also internal pressure from the collegiate organs themselves. The external independence of the Judiciary, as a condition of the impartiality of the judges, is only achieved by also ensuring the internal independence of judges that conditions ideological pluralism among judges as a guarantee of the internal debates of the Judiciary.

13. Judges are not employees or subordinates of the collegiate organs composed of their colleagues. The Judiciary of every democratic State should be organized horizontally. Thus, a democratic State with a *verticalized* Judiciary is as absurd as a *horizontalized* army.

14. The judicial structure of democratic States should respect – above all – the personal dignity of every judge and, consequently, hierarchies among judges should not be admitted, with *superiors and inferiors*, because this is true of the courts, but not of the judges. There cannot be hierarchization among judges – all of whom areindividuals and citizens – only different jurisdictions.

15. Any corporative pretension conspires against the guarantee that everyone will be tried by independent and impartial judges by subjecting them to judges who have accepted the curtailment of their own right to express themselves freely and critically. Hence, the individual who has renounced his civic freedom is not in a position to assess that of others.

16. It is not possible to ignore that any legal system that respects human rights must respond to an *non-transcendental* concept of law as such; in other words, law whose objective does not transcend the individual towards any *ultrapersonal* entity. It would be difficult to apply law conceived in this way for an individual who – as a judge – was subject to an *ultrapersonal* entity – in other words, immersed in a biased or transcendent legal sector.

17. However, it should be noted that the rule that authorized the sanction imposed on the victim in this case goes much further, because it even prohibits the judge from publicly defending his own functional conduct without authorization from the leadership.

18. We are aware that, today, throughout the region, the media has a tendency towards a dangerous oligopolistic hegemony and that the so-called *networks* also exercise a strong influence on public opinion, all of which facilitates what is known as fake news, a phenomenon that has been specifically studied by sociologists and communication specialists. It is also a well-known fact that this fake news often affects judges who are thereby stigmatized by what some experts call *media lynching.*

19. According to the rule in question, which prohibits the judge from publicly defending his function-related conduct, it would be sufficient that the leadership of the corporation disliked the case law established by a judge, or even the person him or herself for particular reasons, to leave him defenseless and completely powerless in the face of any falsehood published or disseminated.

20. In short, the horizontal or corporate structure of Judiciaries is not a matter that remains at the complete discretion of the States, without engaging international human rights law. Although States have an undeniable and broad range of options among the different models of judicial structures, it is incumbent on international human rights law to ensure to everyone the basic right established in Article 8(1) of the American Convention, which is not possible when the judge who should act in accordance with the Convention forms part of a hierarchized, vertical corporate structure; in other words, when the State does not accord the judge the rights inherent in his condition as an individual with moral autonomy and of a citizen with the freedom to express criticism.

21. *Obiter dicta*, it is necessary to recall the disastrous results of corporate and verticalized judiciaries in the face of the irruption of the totalitarian regimes in the inter-war years in Germany, Italy and France. Moreover, it should also be added that, even though this case relates to a rule applicable by the collegiate organs of the Judiciary itself, the prohibitions that it contains could not be tolerated even if the sanctions were imposed by an organ external to the Judiciary or belonging to the Judiciary but distinct from the collegiate instances of judges, such as councils of the judicature or similar, or even that a political body should sanction or dismiss a judge for the conducts that the said rule was intended to prohibit, because this would be equally harmful for his subjective independence and also, in this situation, dangerous for external independence.

22. I add these considerations in concurrence with those expressed unanimously in this judgment.

23. This is my opinion.

Eugenio Raúl Zaffaroni
Judge

Pablo Saavedra Alessandri
Secretary