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.
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> 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