

REPORT No. 112/18
CASE 12.910
MERITS REPORT
CARLOS JULIO AGUINAGA AILLÓN
ECUADOR
October 5, 2018

I. SUMMARY

1. On May 26, 2005, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition filed by Carlos Julio Aguinaga Aillón (hereinafter "the petitioner") alleging the international responsibility of the Republic of Ecuador (hereinafter "the Ecuadorian State", "the State" or "Ecuador") for the commission of a number of alleged human rights violations against him.

2. The Commission adopted Admissibility Report No. 42/13 on July 11, 2013.¹ On August 14, 2013, the Commission notified said report to the parties and placed itself at their disposal in order to reach a friendly settlement. The parties were afforded the time limits established in the Rules to submit additional observations on the merits.

3. The petitioner indicated that in December 1998 he was appointed by the Congress of the Republic as Member of the Supreme Electoral Tribunal for the period 1998-2003 and was subsequently re-elected for the period 2003-2007. However, on November 25, 2004, The National Congress issued a resolution ordering his unlawful dismissal, despite the fact that domestic legislation established that the only manner in which Congress could remove him was through charging and impeachment. He indicated that the Ecuadorian State thereby violated a number of rights protected in the American Convention.

4. The State indicated that the resolution removing the members of the Supreme Electoral Tribunal was lawfully adopted due to the fact that the Constitution provides that the National Congress is empowered to designate the members of the Supreme Electoral Tribunal and to provide for their replacements. It argued that the decision adopted by Congress did not violate any domestic law or international obligation undertaken by the Republic of Ecuador.

5. Based on the findings of fact and law, the Inter-American Commission concluded that the Ecuadorian State is responsible for the violation of Articles 8.1, 8.2 b), 8.2 c), 8.2 h) (Judicial Guarantees), 9 (Principle of Legality) and 25.1 (Judicial Protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to the obligations established in Articles 1.1 and 2 of the same instrument. The Commission issued the pertinent recommendations.

II. POSITION OF THE PARTIES

A. Position of the Petitioner

6. The petitioner indicated that the facts and violations of this case are similar to those of the *Quintana Coello et al.* and *Camba Campos et al.* cases, as decided by the Inter-American Court, in connection with the removal of the Justices of the Supreme Court of Justice and members of the Constitutional Court, respectively, in 2004.

¹ IACHR Report No. 42/13, Case 12,910, Carlos Julio Aguinaga Aillón (Member of the Supreme Electoral Tribunal), 11 July 2013. In this report the IACHR declared the petition admissible in connection with the alleged violation of Articles 8, 9 and 25 and Article 1.1 of the American Convention, and inadmissible in connection with the alleged violation of Articles 11, 23 and 24.

7. He maintained that on December 2, 1998, he was appointed by the Congress of the Republic as a Member of the Supreme Electoral Tribunal of Ecuador for the period 1998-2003, having subsequently been legitimately re-elected to serve in the position for the period 2003-2007.

8. He indicated that both his election and his re-election were made possible by the constitutional reform of 1997, as a result of a popular referendum held on May 25, 1997. He mentioned that when appointed as a member, the National Congress assessed the constitutional norms, legal and regulatory provisions and proceeded with an election in accordance with the Ecuadorian legal framework in force at the time of the events, in particular, the Organic Law of Elections of the Republic of Ecuador and its General Regulations.

9. He stated that on November 25, 2004, the National Congress, by means of Resolution No. R-25-160, declared that the members of the Constitutional Court and the Supreme Electoral Tribunal were appointed illegally, in breach of Article 209 of the Constitution, specifically with regard to the manner of voting, and ordered his removal and the appointment of other members according to the Political Constitution of the Republic and the law, from among the candidates nominated at the time by the National Congress. He stressed that one of the articles of the decision stipulated that it would enter into force immediately, without prejudice to its publication in the Official Registry. The petitioner stated that this was *prima facie* unconstitutional.

10. He indicated that a few days later the National Congress dismissed the justices of the Supreme Court of Justice, restricting the independence and impartiality of the administration of justice in the Republic of Ecuador.

11. He said that the aforementioned resolution was a breach of the Constitution, as it failed to take into account the constitutional articles regulating the appointment and the duration of the position. He also alleged that the resolution lacks legal validity, since the National Congress does not have jurisdiction to declare an illegality. He added that this caused irreparable damage to Ecuador's democratic system, causing one of the greatest crises in the legal and political institutions in the period from November 2004 to April 2005.

12. He argued that, if his appointment as a Member was illegal or unconstitutional - as established by the National Congress at the moment of his removal - this body was under an obligation to initiate an action of unconstitutionality or impeachment proceedings for constitutional or legal breaches, which never happened. The petitioner alleged that the latter was evidenced and proved in the judgments of the Inter-American Court in the cases referred to above.

13. He argued more specifically that the only grounds contemplated in domestic law upon which Congress could remove him from office were "oversight" and impeachment. With regard to the first, he argued that neither of the grounds for an exception or impediment to the exercise of the position applied to him. Regarding the second, he maintained that there was no reason justifying said proceedings.

14. He added that, had Congress eventually dismissed the members by means of an 'oversight' or impeachment, it would have been appropriate to apply the process of surrogacy, with the substitute members assuming the post of the electoral magistrates. However, the petitioner stated that Congress' decision violated the Constitution and human rights to such an extent, that even the designated substitutes were dismissed.

15. He maintained that despite the fact that the Supreme Electoral Tribunal was not an organ of the Judicial Branch under the Political Constitution of Ecuador of 1998, it exercised material jurisdiction and, therefore, the Inter-American standard on judicial independence was applicable, especially in relation to security of tenure.

16. With regard to this right, the petitioner argued the violation of the rights to judicial guarantees, the principle of legality, political rights and judicial protection.

17. With regard to **judicial guarantees**, he indicated that the State failed to comply with his right to be heard by a competent, independent and impartial judge, since Congress decided a matter bearing on his

acquired right to remain in office, without providing him with an opportunity to state his case in this regard and without respecting minimum guarantees.

18. He maintained that **the principle of legality in relation to his right to a defense** was violated, because there was no statutory provision for the possibility of removing him from office, through a Decree such as the one issued by Congress. He added that the decision was unfounded, as it did not refer to the reasons and legal norms supporting his removal from office.

19. He argued the violation of **the right to judicial protection**. Although the remedy provided for in the Constitution in force at the time was the *amparo* action, this was not effective, since a decision issued by Congress established that the only way to suspend the effects of a parliamentary resolution for alleged violation of the Constitution was the unconstitutionality action. He stated that the action of unconstitutionality was also ineffective and that its submission would have produced a manifestly absurd result because a declaration of unconstitutionality of Resolution R-25-160 would have caused the new members of the Constitutional Tribunal themselves de facto to declare that their appointments were made arbitrarily and, therefore, that they should be removed from their positions. Regarding the contentious administrative proceedings, he argued that this was not adequate, since this jurisdiction was not competent according to the Statute on the Contentious Administrative Jurisdiction.

20. He stated that the lack of an effective remedy was aggravated by the fact that during several months in 2005, the country lacked a Constitutional Court, since the National Congress, through another decision, had dismissed the Members arbitrarily appointed on November 25, 2004.

21. The IACHR will not refer to the arguments related to political rights taking into account that in its Decision on Admissibility it declared such claims inadmissible.

B. Position of the State

22. The State indicated that Resolution R-25-160 is an administrative act emanating from a competent authority, since the Political Constitution of the Republic of Ecuador of 1998 established that the National Congress was in charge of appointing the members of the Supreme Electoral Tribunal, to examine their requests and also to designate their replacements.

23. It argued that the Ecuadorian domestic legal system does not provide for jurisdictional features among the functions or powers of the Supreme Electoral Tribunal, and that the argument of attempting to assimilate it with a judicial authority is weak because of the different nature of the functions performed. It also pointed out that the position of Member of the Supreme Tribunal was not exercised as a subjective right, but as a subjective public right on behalf of society.

24. It argued that if there were an inference to be drawn – without reference to context - from the decisions of the Inter-American Court in the *Camba Campos and others and Quintana Coello et al.* cases, as proven facts in this case, the State of Ecuador's right of defense would be irremediably breached, as well as the basic procedural principles of the Inter-American system.

25. It also indicated that the petitioner did not satisfactorily demonstrate the reasons why the petition was submitted solely by himself, and not by the other Members of the Supreme Electoral Tribunal, who, according to his assertions, were also affected by the Ecuadorian State.

26. Regarding the law, it argued that **judicial guarantees** had not been not violated. It pointed out that the Inter-American Court has recognized that judicial guarantees do not apply in the same way in proceedings that are not judicial in nature and stated that the regulations in force at the time of the events in this case show that the Supreme Electoral Tribunal was not a Court or judicature but an institution with an operative electoral character, for which the guarantee of being heard by a competent, independent and impartial tribunal is not applicable.

27. It argued that **the principle of legality** had not been violated, in view of the nature of the political control exercised in the case. It indicated that it is incomprehensible that the petitioner argues on the one hand as a normative basis that there was an Electoral Law, and on the other hand that there was a "legality vacuum". It argued that the aforementioned rule established the National Congress' powers of control in a fully regulated manner.

28. It argued that **the right to judicial protection** had not been violated because the petitioner failed to demonstrate the ineffectiveness of the available remedies. It added that the petitioner also had recourse to administrative litigation as a remedy available against decisions of organs of the public administration breaching fundamental rights. It indicated that the alleged bias of the Constitutional Court has not been proven and that, therefore, there was an expeditious avenue for judicial protection at the constitutional level.

29. Finally, regarding the **obligation to respect the rights** of the American Convention and the **duty to adopt provisions of domestic law**, the State maintained that it has substantially altered its electoral institutional framework to meet the Inter-American standard; and that this must be considered integrally as a guarantee of non-repetition and observance of the content of the obligations arising from said standard.

III. DETERMINATIONS OF FACT

A. Context

30. The Commission considers applicable to the present case the background and context that the Inter-American Court had as proven in the *Cases of Quintana Coello and Camba Campos against Ecuador*. In particular, the Commission summarizes the following:

From 1996 until 2007, the Republic of Ecuador had seven Presidents. Over this period none of them could complete the four-year constitutional mandate.

(...)

Over the years, structural reforms and changes to the composition of the high courts have been frequent in Ecuador and, at times, the high courts were intervened by the political authorities. According to expert witness Mónica Rodríguez, proposed by the State, "[i]n Ecuador, the independence of the Supreme Court of Justice has been compromised and the institution exploited throughout its history.

The context of this case is related to the termination of mandates of members of the Constitutional Tribunal, the Supreme Electoral Tribunal, and the Supreme Court of Justice of Ecuador in November and December 2004. These terminations emanated from the National Congress

(...)

President Abdalá Bucaram was elected on August 10, 1996; however, his government only lasted 180 days, because Congress removed him from office in February 1997.

Following his removal, Fabián Alarcón Rivera was appointed interim President of the Republic. On April 7, 1997, this President convened a referendum by Executive Decree No.201. The political objective of the referendum was to legitimate Alarcón's government, because the constitutionality of his appointment had been questioned. However, the consultation had two other clear objectives: to legitimate the actions of the public organs and to restore the

country's institutional framework. The referendum authorized amendments to the Constitution and, also, constituted the basis for convening a Constituent Assembly.

(...)

The referendum has held on May 25, 1997, and the answers to all the questions of the consultation were mostly in the affirmative.

(...)

As previously mentioned, the referendum also accepted the creation of a National Constituent Assembly. (...) The Assembly approved the New Constitution of the Republic of Ecuador, which was published on August 11, 1998.

The new Constitution contained norms to guarantee judicial independence. First, it established the principle of the separation of powers and of judicial independence in article 199. Second, it determined that, in public law, the public authorities could only do what is established in the Constitution and took away the competence of the National Congress to examine matters relating to the Judiciary.²

B. Relevant Legal Framework

31. The Political Constitution of the Republic of Ecuador of 1998³ stipulates, so far as is relevant:

Article 130. The National Congress shall have the following duties and powers:

9. To proceed to impeach, at the request of at least one quarter of the members of the National Congress, (...) the members of the Constitutional Tribunal and of the Supreme Electoral Tribunal, during the exercise of their functions and up to one year after their term has concluded.

(...) may be impeached for statutory or constitutional offenses, committed in the performance of their functions. Congress may censure them in the case of a declaration of guilt, by a majority of its members.

The censure shall result in the immediate removal of the official, except in the case of State Ministers, when it shall be for the President of the Republic to decide whether they stay in office.

11. Appoint (...) the members of the Constitutional Tribunal and the Supreme Electoral Tribunal (...) examine their requests or resignations, and designate their replacements.

In the cases in which the appointments require a list of candidates, such must be submitted within twenty days following the vacancy of the position. Should such lists not be received within this period, Congress shall proceed with the appointments, without them.

The National Congress shall make the appointments within thirty days as from the date of reception of each list of candidates. Should it fail to do so, the candidate appearing first on the list named will be considered appointed.

Article 209. The Supreme Electoral Tribunal, based in Quito and with jurisdiction in the national territory, is a legal entity under public law. It shall enjoy administrative and economic autonomy, for its organization and in the fulfillment of its functions of organizing, directing, monitoring and guaranteeing the electoral processes, and hold accountable political parties, movements, organizations and candidates on the amount, origin and destiny of the resources used in the electoral campaigns. Its organization, duties and attributions will be determined by law.

² I/A Court H.R., *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, paras. 40-49 (original footnotes omitted).

³ Political Constitution of the Republic of Ecuador of 1998.

It shall consist of seven principal members, with their respective deputies, representing political parties, movements or political alliances obtaining the highest number of votes in the last multi-seat elections, at the national level, and who shall submit to the National Congress the lists of candidates from which the principal members and their deputies shall be elected.

The members shall be appointed by a majority of the members of the Congress, they will remain in office for four years and may be re-elected (...).

Article 276. The Constitutional Tribunal shall have competence:

1. To hear and decide appeals on the unconstitutionality, in substance or in form, of organic and ordinary laws, decree-laws, ordinances, statutes, regulations, and resolutions issued by organs of the institutions of the State, and to suspend all or some of their effects.

2. To hear and decide on the unconstitutionality of the administrative acts of all public authorities. The declaration of unconstitutionality shall result in the annulment of the act, without prejudice to the administrative organ adopting the necessary measures to preserve respect for the constitutional norms.

Article 277. Actions on unconstitutionality may be presented by: (...) 5. One thousand citizens exercising their political rights, or any person following a favorable report of the Ombudsman on its admissibility, in the cases of sub-paragraphs (1) and (2) of the same article (...).

32. Finally, the Law on Contentious Administrative Jurisdiction provides, so far as is relevant:

Article 6. The Contentious-administrative jurisdiction shall not have jurisdiction over: (...) c) Matters arising in connection with the political acts of the Government (...) d) The resolutions issued by electoral bodies. (...)

C. Appointment Proceeding of the Alleged Victim to the Supreme Electoral Tribunal

33. As indicated in the previous section, article 209 of the 1998 Constitution provided that the Supreme Electoral Tribunal shall be composed of seven principal members and seven deputies, representing the political parties obtaining the greatest number of votes in the multi-seat elections, who will submit to the National Congress the list of candidates from which the principal and deputy members shall be elected.⁴

34. On December 2, 1998, the National Congress, taking into account the electoral results of May 31, 1998, and the candidates sent to it, appointed the members of the Supreme Electoral Tribunal for the period 1998-2003, among who was the alleged victim.⁵

35. On December 3, 1998,⁶ the alleged victim was appointed as vice president of the Supreme Electoral Tribunal, and as its president on December 7, 2000.⁷

36. On January 9, 2003, the National Congress, in Resolution 24-017, and in exercise of the powers established in Articles 130(11), and 209 of the Constitution of the Republic, again appointed the members of

⁴ This law is the result of a popular referendum referred to earlier in this Report. Prior to its reform, Article 137 of the Constitution provided that the Supreme Electoral Tribunal would be constituted by seven members representing each of the seven lists obtaining the greatest number of votes at a national level.

⁵Annex. 1 Resolution of Appointment as Member, of December 2, 1998. Annex 1 to the initial petition received on May 26, 2005, document 1.

⁶Annex 2. Certification of November 15, 1999. Annex 12 to the petition received on May 26, 2005, document 7.

⁷Annex 3. Certification of February 1, 2001. Annex 12 to the petition received on May 26, 2005, document 7.

the Supreme Electoral Tribunal, re-electing 5 of the 7 members, among whom was the alleged victim⁸ for an additional period of 4 years. On January 14, 2003, the alleged victim took up his post.⁹

D. Dismissal of the Supreme Electoral Tribunal

37. In the *Case of Camba Campos and others v. Ecuador*, the Inter-American Court considered the following proven facts to be relevant in this case as a background to Resolution 25-160 dismissing the members of the Supreme Electoral Tribunal and of the Constitutional Tribunal described below:

On November 9, 2004, in the National Congress, the parties opposing the Government prepared the impeachment of the President of the Republic for the offense of embezzlement. To counteract this action, the evidence in the case file, which was not disputed by the State, indicates that the Government was able to put together a parliamentary majority and entered into political agreements with, among others, the Ecuadorian Roldosista Party (PRE). The leader of the PRE, the former President of the Republic, Abdalá Bucaram Ortíz, sought the annulment of several criminal trials that were being processed before the Supreme Court of Justice, based on which there was an order for his arrest and he was a fugitive from justice in Panama.

On November 23, 2004, the President of the Republic, Lucio Gutiérrez, announced the Government's intention of submitting to Congress a proposal for the reorganization of the Constitutional Tribunal, the Supreme Electoral Tribunal, and the Supreme Court of Justice.¹⁰

38. On November 25, 2004, in Resolution 25-160, the National Congress declared that it has removed from their positions the members of the Supreme Electoral Tribunal and the Constitutional Tribunal.¹¹

39. In said resolution, Congress made the following considerations:

That there is a unanimous clamor from the Ecuadorian population to end the state of constitutional chaos that prevails in public bodies;
That the main and alternate members of the Constitutional Court were designated illegally

(...)

That the principal and alternate members of the Supreme Electoral Tribunal were appointed without considering what is established in article 209 of the Political Constitution of the Republic and the laws (...).¹²

40. By virtue of the foregoing, Congress decided, so far as is relevant in this case:

2. To remove from their positions the principal and deputy members of the Supreme Electoral Tribunal on the ground that they have been appointed in breach of article 209 of the Political Constitution of the Republic, in connection with the manner of appointment, and, to proceed to the appointment of new members in accordance with the aforementioned constitutional rule, pursuant to the election results of October 20, 2002.

3. This resolution shall enter into force immediately, without prejudice to its publication in the Official Gazette (...).¹³

⁸Annex 4. Resolution of Appointment as Member of January 9, 2003. Annex 1 to the petition received on May 26, 2005, document 1.

⁹Annex 5. Certificate of Incumbency of January 14, 2003. Annex 1 to the petition received on May 26, 2005, document 2.

¹⁰I/A Court H.R., *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, paras. 55 and 56 (original citations omitted).

¹¹ Annex 6. R-O of December 20, 2004. Annex 4 to the petition received on May 26, 2005, document 1.

¹² Annex 6. R-O of December 20, 2004, R-25-160. Annex 4 to the petition received on May 26, 2005, document 1.

¹³ Annex 6. R-O of December 20, 2004, R-25-160. Annex 4 to the petition received on May 26, 2005, document 1.

41. On November 26, 2004, the Congress appointed new principal and deputy members of the Supreme Electoral Tribunal.¹⁴

42. The Commission observes that Article 95 the Constitution in force at the time of the events provided for the possibility of filing a writ of amparo. However, there were two resolutions that limited the possibility of filing this remedy in this particular case. On the one hand, the Supreme Court of Justice, on June 27, 2001, issued Resolution 01-027, in which it limited the scope of the amparo actions, and ruled that this type of remedy was not admissible and that it must be rejected when filed in connection with government acts.¹⁵ In addition, on December 2, 2004, the new Constitutional Tribunal established after the removal of all its members by means of the aforementioned Resolution 25-160, at the request of the President of the Republic,¹⁶ issued a resolution establishing that the only remedy to suspend the effects of Resolution 25-160 was the action of unconstitutionality, and "that any amparo writ filed in the courts of the land in connection with the aforementioned resolution, must be rejected *in limine* and declared inadmissible, because otherwise they would be deciding a case against the law, with the corresponding legal consequences"(...).¹⁷

43. Several of the dismissed members of the Constitutional Tribunal filed amparo actions, which were rejected by virtue of Resolution 25-160.¹⁸

IV. ANALYSIS OF LAW

A. Preliminary Issue

44. The Commission takes note of the State's argument that the Supreme Electoral Tribunal did not have jurisdictional functions and therefore cannot be assimilated to a judicial authority.

45. Regarding this argument, the IACHR emphasizes that regardless of the organic placement of the Supreme Electoral Tribunal in the institutional design of the State, said authority exercised materially jurisdictional functions, since under Article 209 of the Political Constitution of 1998, it had the power, among other issues, to hold accountable the parties, political movements, organizations and candidates in connection with their finances. By virtue of the foregoing, the IACHR considers that the alleged victim played a role as a justice operator, and therefore in subsequent sections it will apply the international standards derived from the principle of judicial independence vis-a-vis the removal of judicial authorities.

B. Right to Judicial Guarantees and the Principle of Legality (Articles 8.1, 8.2,¹⁹ 9, 1.1 and 2²⁰ of the Convention)

¹⁴ See decisions 25-170, 25-171, 25-172, 25, 173, 25-174, 25-175, 25-176 of November 26, 2004.

¹⁵ Annex 7. R-O of July 27, 2001, R 01-027 of the Supreme Court of Justice. Annex E to the additional observations of the State dated September 18, 2014.

¹⁶ Report No 99/11. Case 12.597. Miguel Camba Campos and others. Members of the Constitutional Tribunal. July 22, 2011, para. 54; and Report No 65/11. Case 12.600. Hugo Quintana Coello and others. Justices of the Supreme Court of Justice. March 31, 2011, para. 46.

¹⁷ Annex 8. Resolution of the Constitutional Tribunal issued on December 2, 2004, published in R-O 477 on December 8, 2004. Annex E to the additional observations of the State dated September 18, 2014.

¹⁸ I/A Court H.R., *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.101 et seq.

¹⁹ Article 8 of the American Convention establishes, so far as is relevant: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: (..) b. prior notification in detail to the accused of the charges against him; (..) h. the right to appeal the judgment to a higher court.

²⁰ Article 1.1 of the American Convention establishes: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. Article 2 of the American Convention establishes: Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake 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 those rights or freedoms.

1. General Considerations on the applicable guarantees and the principle of judicial independence

46. The Commission recalls that both organs of the Inter-American system have indicated that the guarantees established in Article 8 of the American Convention are not limited to criminal proceedings, but apply to processes of other natures.²¹ Specifically, when dealing with proceedings involving imposition of sanctions, both bodies have indicated that they apply in an analogous manner, the guarantees established in Article 8.2 of the American Convention.²² Likewise, the principle of legality is applicable to disciplinary proceedings that are "an expression of the punitive power of the State" since they infringe or alter individual rights as a consequence of unlawful conduct.²³

47. In the present case, the alleged victim was dismissed from his post as member of the Supreme Electoral Tribunal as a result of a decision of the legislative body that had the stated purpose of rectifying an appointment allegedly incompatible with the applicable law. In this sense, the punitive nature of this particular action by the State and the consequent determination of the applicable guarantees do not derive, as in other cases, from the formal nature of the process. For this determination, the Commission refers to the decision by the Inter-American Court in the *Case of Camba Campos et al. v. Ecuador* regarding the true punitive nature of Resolution 25-160. In the words of the Court: "the supposed illegality in the appointment constituted only a justification to impose a de facto sanction".²⁴

48. In this regard, the Commission considers that the present case must be analyzed in the light of the due process guarantees established in Article 8 of the Convention and the principle of legality established in Article 9 of the same instrument.

49. In addition, the IACHR emphasizes that disciplinary proceedings against justice operators must be carried out in a manner compatible with the principle of judicial independence. The organs of the Inter-American system have interpreted the principle of judicial independence in the sense of incorporating the following guarantees: adequate appointment process, tenure in office and guarantee against external pressures.²⁵ Specifically, as is relevant in the present case, with respect to the enhanced guarantees to ensure tenure, the Court has indicated that "[they] result in the subjective right of judges to be dismissed exclusively for the reasons permitted, either by a proceeding that complies with judicial guarantees or because their mandate has terminated".²⁶ When the permanence of the judges in their position is arbitrarily affected, "the right to judicial independence enshrined in Article 8.1 of the Convention is violated."²⁷

²¹ IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello and others "Justices of the Supreme Court of Justice", Ecuador, March 31, 2011, para. 102; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127; *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, paras. 69-70; and *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 111.

²² IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*. OEA/Ser.L/V/II.129. September 7, 2007, paras. 98-123; and Case No. 12.828, Report 112/12, Marcel Granier and others, Venezuela, Merits, November 9, 2012, para. 188; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 126-127.

²³ IACHR, Report No 99/11, Case 12.597, Merits Report, Miguel Camba Campos and others "Members of the Constitutional Tribunal", Ecuador, July 22, 2011, para.94; I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 257 and *Case of Maldonado Ordóñez v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of May 3, 2016. Series C No. 311, para. 89. I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 106 and 108.

²⁴ I/A Court H.R., *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.130.

²⁵ IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, paras. 56, 109 and 184, I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 191.

²⁶ I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

²⁷ I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 192.

2. The Right to a Competent Authority through Proceedings Previously Established by Law and the Principle of Legality

50. The IACHR recalls that the guarantee of competence of the sanctioning authority implies the right to be tried by the respective authorities in accordance with previously established procedures. Therefore the State should refrain from creating tribunals that do not use the duly established procedures to displace the jurisdiction normally belonging to the ordinary courts.²⁸ Such guarantee is satisfied when the sanctioning authority originates in a norm established prior to the case²⁹ and, correlatively, said norm is violated when the organ lacks jurisdiction, established by law.³⁰

51. The Commission has also indicated that in the framework of punitive procedures against justice operators, there must be clear rules regarding the grounds and procedures for removing judges from office, and their absence, in addition to raising doubts about the judicial independence, can lead to arbitrary actions of abuse of power, with direct repercussions on the rights to due process and legality.³¹

52. In the present case, the Commission reiterates that the alleged victim and the other members of the Supreme Electoral Tribunal and of the Constitutional Tribunal were dismissed through Resolution 25-160 of the National Congress on the grounds that they were appointed in a manner contrary to law. At the time of the events, the law established that they had a four-year mandate and the only way provided for in the Constitution to remove them was through impeachment.

53. As already mentioned in the present report, this ground constituted an apparent justification that concealed a de facto sanction. In particular, regarding the manner in which said Resolution violated the right to a competent authority through the previously established procedures, in the *Case of Camba Campos et al. v. Ecuador*, the IACHR indicated the following regarding the Constitutional Tribunal, which is fully applicable to the Supreme Electoral Tribunal, as indicated in the relevant normative framework section:

(...) the Constitution and the law established expressly that [the] mandate was four years, and the only way to remove them established in the Constitution was by impeachment (...) in a difficult political context among the different branches of government, Congress created an ad hoc mechanism not proved for in the Constitution or by law to proceed to terminate all the members of the Constitutional Tribunal based on the argument that they had been elected illegally in 2003 and that it was necessary to correct that illegality.³²

54. For its part, in the same case, the Court stated that:

the National Congress was not competent to take the decision to terminate the judges, and this was not an appropriate decision in light of the principles of judicial independence (...).³³ Within a period of 14 days, not only the Constitutional Tribunal was removed, but also the Electoral Tribunal and the Supreme Court of Justice, which constitutes an abrupt and totally unacceptable course of action. All these acts signify an impairment of judicial independence.³⁴

55. Based on these considerations, the IACHR finds that the State removed Mr. Aguinaga Aillón arbitrarily, by means of a procedure and grounds not provided for in domestic law, without the National

²⁸ I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 50.

²⁹ Cf. I/A Court H.R., *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 53.

³⁰ I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 221.

³¹ IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 206 and 207.

³² I/A Court H.R., *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.145.

³³ I/A Court H.R., *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. 180.

³⁴ I/A Court H.R., *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. 212.

Congress having jurisdiction to do so, that is in the event of an impeachment that did not take place. This affected the principle of judicial independence, the principle of legality and the right to a competent authority through previously established procedures.

56. Based on the foregoing, the IACHR concludes that the State violated Articles 8.1 and 9 of the American Convention in relation to Article 1.1 of the same instrument to the detriment of Carlos Julio Aguinaga Aillón.

3. Right to Prior Notification in Detail of the Charges and to Adequate Time and Means for a Defense

57. The Commission recalls that the right to a defense implies that a person subject to judicial proceedings, including of an administrative nature, can defend their interests or rights effectively and in "conditions of equality of arms (...) by being fully informed of the accusations that are made against him"³⁵. Specifically, regarding the disciplinary procedures of judges, the Inter-American Court, following the provisions of the Basic Principles, has indicated that the authority in charge of the proceedings for the imposition of sanctions must conduct it in accordance with the law and ensure the exercise of the right to a defense.³⁶

58. The IACHR observes that in this case there is no evidence that the State has notified the alleged victim of the initiation of a proceeding that could result in his removal, nor that he has had any possibility of being heard and of presenting a defense prior to his removal from the post of member of the Supreme Electoral Tribunal, through Resolution 25-160 of the National Congress.

59. Based on the foregoing, the IACHR concludes that the State violated Articles 8.2 b) and 8.2 c) of the American Convention in relation to Article 1.1 of the same instrument to the detriment of Carlos Julio Aguinaga Aillón.

4. The Right to Appeal the Case³⁷ and Judicial Protection³⁸

60. The IACHR recalls that the right to appeal the judgment is part of due process in a proceeding involving the imposition of sanctions³⁹ and it is a fundamental guarantee whose purpose is to prevent the consolidation of a situation of injustice.⁴⁰ Regarding the scope of the right to appeal, both the IACHR and the Court have indicated that this implies an examination, both in fact and in law of the appealed decision, by a judge or by a different tribunal of superior hierarchy.⁴¹ This must take place before the judgment acquires the status of *res judicata*; it must be resolved within a reasonable time; and it must be timely and effective, that is, it must respond to the purpose for which it was conceived. In addition, it must be accessible, without requiring formalities that render the right illusory.⁴²

61. Finally, the IACHR recalls that the State has a general obligation to provide effective judicial remedies to persons claiming to be victims of human rights violations, which must be substantiated in accordance with the rules of due process of law. In order for an effective remedy to exist, it is not enough that

³⁵ I/A Court H.R., *Juridical Condition and Rights of the Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18. para. 117.

³⁶ IACHR, Report No. 103/13, Case 12.816, Merits Report, Adan Guillermo López Lone et. al., Honduras, para.143.

³⁷ Article 8.2 establishes the "right to appeal the judgment to a higher court"

³⁸ Article 25.1 provides that: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

³⁹ IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/ser.L/V/II.Doc.44, December 5, 2013, para. 235; I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218. Para. 179.

⁴⁰ IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et. al., Costa Rica. April 4, 2014, para.186.

⁴¹ IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et. al., Costa Rica. April 4, 2014, para.186.

⁴² IACHR, Report No. 33/14, Case 12.820, Manfred Amrhein et. al., Costa Rica. April 4, 2014, para.186 et seq..

it be legally envisaged, but it must be adequate to establish whether a violation of human rights has been committed, and provide what is necessary to remedy it.⁴³

62. The Commission has already declared that the State removed the alleged victim as a form of *de facto* sanction, in violation of the principle of judicial independence, the guarantees of due process and the principle of legality. According to the proven facts, Mr. Aguinaga Aillón did not have any mechanism to question the decision to remove him due to two fundamental reasons. Firstly, as already analyzed, because the procedure followed was not provided for in the legislation and therefore there was no appeal to challenge the decision. Secondly, because - as established in the proven facts - the State issued a resolution to obstruct a possible *amparo* remedy against the resolution of Congress. In that sense, the only remedy available was the unconstitutionality action, which had to be resolved by the new Constitutional Tribunal appointed precisely as an effect of Resolution 25-160, thus preventing any chance of an impartial and effective decision, since it would involve a determination on the constitutionality of the act that enabled its own appointment.⁴⁴

63. In light of the foregoing reasons, the Commission concludes that the Ecuadorian State violated Articles 8.2 h) and 25.1 of the American Convention in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Carlos Julio Aguinaga Aillón.

V. CONCLUSIONS AND RECOMMENDATIONS

64. The Commission concludes that the Ecuadorian State is responsible for the violation of the right to judicial guarantees, the principle of legality and judicial protection, enshrined in Articles 8.1, 8.2 b), 8.2 c), 8.2 h), 9 and 25.1 of the American Convention, in relation to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Carlos Julio Aguinaga Aillón.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF ECUADOR

1. Reinstate Carlos Julio Aguinaga Aillón in a position similar to that previously held, with the same remuneration, social benefits and rank comparable to those comparable to the ones that he would be entitled to today had he not been removed, for the period of time pending of his mandate. If for objective and well-founded reasons reinstatement is not possible, pay an alternative compensation.

2. Repair in an integral manner the consequences of the violations found in the present report, including the necessary compensation and satisfaction in connection with the material and non-material damage suffered by the victim.

⁴³ I/A Court H.R., *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. 125; I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125. Para. 61; I/A Court H.R., *Case of the "Five Pensioners" v. Peru*. Judgment of February 28, 2003. Series C No. 98. Para. 136.

⁴⁴ See IACHR, Report No. 99/11, Case 12.597, Merits Report, Miguel Camba Campos et. al. "Members of the Constitutional Tribunal", Ecuador, July 22, 2011, paras. 134-136.