

REPORT No. 74/21
CASE 13.638
REPORT ON MERITS
JOSÉ ANTONIO GUTIÉRREZ NAVAS ET AL.
HONDURAS
April, 16, 2021

I. INTRODUCTION

1. On February 5, 2013, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, Gustavo Enrique Bustillo Palma, and the *Centro Latinoamericano de Derechos Humanos* (hereinafter “the petitioners”) alleging the international responsibility of Honduras (hereinafter “the Honduran State,” “the State,” or “Honduras”) to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma (hereinafter “the alleged victims”) for their purported arbitrary and illegal removal from office as justices of the Constitutional Chamber of the Supreme Court of Justice, in an act of political retaliation by the Honduran National Congress.

2. The Commission approved Admissibility Report No. 83/18 on July 17, 2018.¹ On July 20, 2018, the Commission notified the parties of the report and made itself available to them to reach a friendly settlement, but the conditions were not in place to initiate such a proceeding. The parties had the requisite time frames in which to submit additional comments on the merits. All the information the Commission received was duly forwarded to the parties.

II. POSITIONS OF THE PARTIES

A. Petitioners

3. The petitioners indicate that the alleged victims were justices of the Constitutional Chamber of the Supreme Court of Honduras.

4. They indicate that the National Congress, by means of Decree No. 89-2012, passed the Special Law to Purge the Police Force of Corruption (*Ley Especial de Depuración Policial*), which entered into force on May 25, 2012. They report that a number of citizens brought a constitutional complaint before the Constitutional Chamber, on grounds that the law violated provisions of the Honduran Constitution. They indicate that after the legal proceedings were completed, on November 27, 2012, the Constitutional Chamber voted on the matter but that the draft judgment did not have the unanimous vote needed for it to be approved. They explain that the four alleged victims voted to declare that the aforementioned law was unconstitutional and that only one justice voted to declare it constitutional. Therefore, pursuant to established procedure, the complaint was submitted to the Plenary of the Supreme Court for its decision.

5. The petitioners allege that in retaliation for the events described above, on December 10, 2012, the Congress appointed a Committee, made up of representatives of the ruling party, with the mandate to investigate the administrative conduct of the judiciary. On the evening of December 11, 2012, that Committee presented its report to the Congress, establishing that there had been administrative irregularities in the processing of the constitutional complaint filed against the Special Law to Purge the Police Force of Corruption. According to the petitioners, the report indicated that the Constitutional Chamber’s decision with respect to that law was inconsistent with the security policy adopted by the executive and legislative branches of government and that this caused serious harm to the State. They note that this congressional session was held

¹ IACHR, Report No. 83/18, Petition 455-13, Admissibility, José Antonio Gutiérrez Navas et al., Honduras, July 17, 2018. The Commission declared the petition admissible in relation to Articles 5, 8, 9, 23, 25, and 26 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. The Commission found the petition inadmissible in relation to Article 11 of the American Convention.

with the building surrounded by members of the armed forces. They state that at 4 a.m. on December 12, 2012, the Congress voted in favor of dismissing four of the five justices of the Constitutional Chamber (those who voted that the Special Law to Purge the Police Force of Corruption was unconstitutional) and elected four replacements.

6. The petitioners argue that the alleged victims were unable to defend their rights and that their removal from office was illegal, as the Congress did not have the authority to do so and there were no legal procedures in place for prosecuting the highest authorities of the Supreme Court. They allege that under the Honduran legal system, the purported administrative irregularities were not a legal cause for the justices' removal. They indicate that it was not the dismissed justices but the President of the Supreme Court who had administrative functions, by order of the Congress itself, through Decrees 282-2010 and 5-2011. They add that in an act of acquiescence and submission, the President of the Supreme Court swore in the new justices on the morning of December 12, 2012, thus implementing a "political coup of the judicial institution".

7. The petitioners claim that since there were no legal procedures in place to remove Supreme Court justices, the investigation undertaken by the Committee of Deputies and the subsequent motion filed by the Congress were illegal and arbitrary mechanisms used as legal grounds for dismissing the alleged victims. They state that their removal came in retaliation for actions that were inherent to the alleged victims' judicial office, which they carried out within the boundaries of their constitutional and legal powers. In addition, they indicate that the then-President of the Congress justified the legislative branch's illegal actions, declaring that it had been found that the justices of the Constitutional Chamber had conspired against decisions of the Congress.

8. The petitioners indicate that in response to this situation, the alleged victims lodged an appeal for protection of constitutional rights (*recurso de amparo*) on December 12, 2012, including objections to the four newly appointed justices and the justice who was not removed from office, in the belief that these individuals would have a direct interest in the case if it were to come before them. Moreover, on that same date, a civil organization called the "Bar of Anti-Corruption Lawyers" (*Barra de Abogados Hondureños Anticorrupción*) filed another *amparo* appeal, which was joined with the first appeal filed by the alleged victims, to be resolved jointly. The petitioners indicate that the newly constituted Constitutional Chamber declined to hear the case and that the President of the Supreme Court then proceeded to set up a Second Special Chamber made up of other Supreme Court justices. They explain that the new Special Chamber also declined to hear the case and that as a result, the President of the Supreme Court created a Third Special Chamber.

9. The petitioners indicate that on January 29, 2013, the Special Chamber, by a majority of votes (four to one) refused from the outset to grant constitutional protection, arguing that the actions of the Congress were beyond this Chamber's jurisdiction. It found that congressional deputies have only legislative functions and that they do not fall under the category of public officials, whose actions can be subject to constitutional appeals. The petitioners indicate that provisions of the Law on Constitutional Justice establish that when the jurisdictional body declares that it lacks competence to hear a constitutional appeal, it must forward the case to the competent officer within the following 24 hours. They maintain, however, that the Special Chamber refrained from sending the case file to any other authority. They submit that the arbitrary interpretation of the Constitution violated the alleged victims' right of access to justice.

10. The petitioners say that since the aforementioned judgment was not unanimous, the Plenary of the Supreme Court analyzed the *amparo* appeal filed by the alleged victims, and that on February 6, 2013, it ruled to dismiss it (by 13 votes in favor and 2 votes against), arguing that it lacked jurisdiction to hear or decide it. The petitioners indicate that the ruling simply reiterated the arguments of the judgment of January 29, 2013. They submit that this demonstrates the ineffectiveness of the domestic remedies, the distorted interpretation of basic rights, and the lack of judicial independence of the Supreme Court of Justice.

11. The petitioners state that they filed an appeal for review of that decision (*recurso de reposición*) but that on February 18, 2013, the Plenary of the Supreme Court dismissed it (again by 13 votes in favor and 2 against), on the grounds that judgments, once signed, cannot be changed. They argue that this confirmed that the domestic remedies are merely useless and ineffective formalities, as they led to the complete denial of justice to the alleged victims. They also maintain that having been illegally and arbitrarily dismissed, the alleged

victims have been deprived of their right to remain in office and of the opportunity to be reelected, which thus violated their right to work.

12. The petitioners point out that since the four justices were wrongfully removed, the Constitutional Chamber is made up of illegally appointed replacements. They indicate that this demonstrates the judiciary's submission to the legislative and executive branches. Moreover, they claim that the alleged victims, since their dismissal, have been constantly threatened and harassed by police officers and unidentified individuals. They submit that these incidents have been reported to the Attorney General's Office and brought to the attention of the National Human Rights Commission and the Committee of Relatives of the Detained-Disappeared in Honduras but that State authorities have failed to take any steps to investigate or afford protection. Furthermore, the petitioners claim that both the President of the Republic and the President and deputies of the Congress have lodged frivolous and malicious accusations against the alleged victims, which harm the dignity and honor of the alleged victims themselves and their families.

B. State

13. For its part, the State maintains that the procedure followed by the National Congress ensured the alleged victims' right of due process. It claims that on December 10, 2012, the Congress created a Special Committee that investigated the administrative conduct of the justices of the Supreme Court, in particular those on the Constitutional Chamber. It points out that the investigation concerned "their administrative conduct in matters of public security, by way of complementing the efforts made by the Congress in reforming the Constitution and issuing specific laws to afford more security to the citizens."

14. The State submits that the Committee's report established that the constitutional complaint filed to challenge the Special Law to Purge the Police Force of Corruption was resolved on November 27, 2012, after that law was no longer in force. In this regard, it notes that Decree 89-2012 concerning the Special Law to Purge the Police Force of Corruption was in force from May 25, 2012, to November 25, 2012. The Committee therefore deemed that the Constitutional Chamber's decision was inconsistent with the security policy implemented by the legislative and executive branches, and that it caused serious harm to the State because it represented a setback in the progress made in fighting crime and jeopardized the security of people and their property.

15. The State indicates that several congressional deputies believed that the conduct of the justices of the Constitutional Chamber was manifestly contrary to the State's public interest and that, as a result, they lodged a motion requesting their immediate removal from office. The State submits that afterward, the judicial vacancies were filled pursuant to the provisions of domestic law.

16. Lastly, the State affirms that the processing and resolution of the constitutional appeal and the appeal for review were done in full observation of the rights of access to justice and due process, without any constraints on the alleged victims.

III. DETERMINATIONS OF FACT

A. Relevant legal framework

17. The Constitution of Honduras establishes the following:

Article 205. The National Congress shall have the following powers:

.... 9. To elect for the corresponding term, and from the nominee pool of candidates proposed by the Nominating Board referred to in this Constitution, the Justices of the Supreme Court of Justice....

20. To approve or disapprove the administrative conduct of the executive branch, the judicial branch and the Supreme Elections Tribunal, the Superior Tribunal of Accounts, the Office of the Attorney General of the Republic, the Office of the Attorney for the Environment, Public Ministry, Office of the National Commissioner of Human Rights, National Registry of Persons, decentralized institutions and other Auxiliary and Special Institutions of the State.

21. To appoint special committees to investigate matters of national interest. The summons of such committees shall be compulsory under the same penalty of contempt as the one used in the judicial process....

Article 303. The power to dispense justice emanates from the people and is administered free of charge on behalf of the State by independent justices and judges, subject only to the Constitution and the laws. The judicial branch consists of a Supreme Court of Justice, the Courts of Appeals, the courts, by tribunals with exclusive competence in zones of the country subject to special regimes created by the Constitution of the Republic and additional offices specified by law....

Article 311. The Justices of the Supreme Court of Justice shall be elected by the National Congress, with the favorable vote of two thirds of its total membership, from a nominee pool of candidates of no less than three for each one of the justices to be elected....

Article 314. The term of the Justice of the Supreme Court of Justice shall be seven years beginning at the date on which they take oath, and they may be re-elected. In the case of death, disability that impedes the exercise of office, substitution for legal reasons or resignation, the Justice that fills the vacancy shall occupy the office for the rest of the term and shall be elected by the National Congress through the favorable vote of two thirds of the total membership. The substitute shall be elected from the remaining candidates proposed by the Nominating Board at the beginning of the term.

Article 316. The Supreme Court of Justice is organized in chambers, one of which is the Constitutional [Chamber], formed by five Justices. When the decisions of the chambers are pronounced by unanimity of votes, they must be put forth in the name of the Supreme Court of Justice and have decisive character. When there is not unanimity in making the decision on the matter, the justices who have participated in the chamber may not be included in the full court. The constitutional chamber has the following powers and duties:

1. To take cognizance of, in accordance with this Constitution and the law, of writs of habeas corpus or personal appearance, habeas data, amparo, unconstitutionality, and review; and
2. To resolve conflicts between the powers of state, including the Supreme Elections Tribunal, as well as between the other entities and bodies indicated by law. The decisions in which unconstitutionality of a law is declared are of immediate execution and have general effect, and abrogate the unconstitutional law, and must be communicated to the National Congress, which shall make it published in the official journal La Gaceta. The regulations shall establish the organization and operation of the chambers.

B. Appointment of the alleged victims and decisions issued by the Constitutional Chamber of the Supreme Court

18. José Francisco Ruiz Gaekel, José Antonio Gutiérrez Navas, Gustavo Enrique Bustillo Palma, and Rosalinda Cruz Sequeira were elected by the Congress of the Republic, by means of Decree No. 02-2009 of January 26, 2009, as justices of the Constitutional Chamber of the Supreme Court for the constitutional term of January 26, 2009, to January 25, 2016.²

19. Since the beginning of its judicial term, the Constitutional Chamber heard and ruled on several laws passed by the Congress that it found unconstitutional, having deemed them to be contrary to the supreme law of Honduras. On February 1, 2012, it declared that Legislative Decree 108-11, known as the “1% Law,”³ was unconstitutional, which prompted the then-President of the Republic, Porfirio Lobo, to make statements about that action by the judicial branch.⁴

² Annex 1. National Congress of the Republic, Decree No. 02-2009 of January 26, 2009, published in the Official Gazette, No. 31,828 of February 3, 2009. Annex to the initial petition of February 5, 2013.

³ Annex 2. Constitutional Chamber of the Supreme Court of Justice, Judgment of February 1, 2012. Annex to the petitioners’ brief of November 20, 2018.

⁴ Annex 3. Press reports: *El Heraldo*, Friday, December 14, 2012, available at <https://www.elheraldo.hn/alfrente/565663-209/hechos-que-originaron-zarpazo-contral-poder-judicial>, and *El Heraldo*, Thursday, February 23, 2012, available at <https://www.elheraldo.hn/pais/569202-214/pepe-contratara-comision-para-evaluar-fallos-de-la-corte-suprema-de-justicia>. Annexes to the petitioners’ brief of November 20, 2018.

20. Subsequently, the Constitutional Chamber declared Decree No. 185-2010, called the “Framework Law on the Evangelical Church in Honduras,”⁵ to be unconstitutional. In response, the then-President referred to the Supreme Court publicly, calling its actions into question.⁶

21. Another law the Supreme Court found to be unconstitutional was Legislative Decree No. 283-2010, known as the “Model Cities Law,” which created Special Development Regions.⁷ Following the ruling, Porfirio Lobo said that “it is lamentable, the justices are doing great harm to the country.”⁸

C. Draft judgment on the unconstitutionality of the Special Law to Purge the Police Force of Corruption and the alleged victims’ dismissal

22. In the course of fulfilling its duties, the Constitutional Chamber heard two appeals filed by a number of citizens challenging the constitutionality of the Special Law to Purge the Police Force of Corruption, contained in Decree 89-2012 of May 25, 2012, as well as other regulations related to the institution of the Honduran police.⁹ As part of the constitutional proceedings, the Office of the Public Prosecutor [*Ministerio Público*] issued an expert opinion on August 7, 2012, which deemed that the laws being challenged should be declared unconstitutional.¹⁰

23. On November 27, 2012, the Constitutional Chamber, by a vote of four in favor and one against, declared that the police regulations being challenged were unconstitutional and could not be enforced. Nevertheless, since the judgment was not unanimous, as required by law at that time, the ruling was sent to the Plenary of the Supreme Court of Justice for a final decision.¹¹ The four votes in favor were issued by the alleged victims.

24. On December 4, 2012, the then-President called into question the justices of the Constitutional Chamber for their decision, which was reported in the press as follows:

“... In recent weeks, Lobo unleashed his anger against the Court after the Constitutional Chamber declared (on November 27) that the Special Law to Purge the Police Force of Corruption, approved for six months until November 25, was unconstitutional.

“In last week’s Council of Ministers, the president said aloud the names of the four justices of the Constitutional Chamber who voted against the police purge and asked, ‘Whose side are they on? On the side of criminals or on the side of the honest people of this country? Whose side are they on? The victims or their assailants? I tell you this: I feel deceived [there was silence while he made a gesture of disapproval and hit one of his fists on the table], I sincerely do.’

“Last Friday, after participating in a ceremony at the General Francisco Morazán Military Academy, he again called into question the justices of the Constitutional Chamber, and this time he accused *El Heraldo* and *La Prensa* of conspiring to act as a conduit for reactions from justices, judges, and church sources who called for the independence of powers to be respected.”¹²

25. On December 5, 2012, twelve Supreme Court justices issued a press release about comments questioning actions the Court had taken through the Constitutional Chamber, in which they stated:

⁵ Annex 4. Constitutional Chamber of the Supreme Court of Justice, Judgment of February 7, 2012. Annex to the petitioners’ brief of November 20, 2018.

⁶ Annex 5. Press report, *La Tribuna*, Thursday, February 23, 2012. Annex to the petitioners’ brief of November 20, 2018.

⁷ Annex 6. Constitutional Chamber of the Supreme Court, Judgment of October 17, 2012. Annex to the petitioners’ brief of November 20, 2018.

⁸ Annex 7. Press report, *El Heraldo: Hechos que originaron el zarpazo contra el Poder Judicial*, Friday, December 14, 2012. Annex to the petitioners’ brief of November 20, 2018.

⁹ Annex 8. Constitutional Chamber of the Supreme Court, Judgment of November 27, 2012. Annex to the petitioners’ brief of November 20, 2018.

¹⁰ Annex 9. Office of the Public Prosecutor, Expert Opinion of August 7, 2012. Annex to the initial petition of February 5, 2013.

¹¹ Annex 8. Constitutional Chamber of the Supreme Court, Judgment of November 27, 2012. Annex to the initial petition of February 5, 2013.

¹² Annex 10. Press report, *LaPrensa.HN: Lobo arremete contra la Corte ¿de qué lado están?*, December 4, 2012, available at <https://www.laprensa.hn/honduras/tegucigalpa/330819-98/lobo-arremete-contra-la-corte-de-qu%C3%A9-lado-est%C3%A1n-dice>. Annex to the petitioners’ brief of November 20, 2018; *El Heraldo*, press report: *Hechos que originaron zarpazo contra el Poder Judicial*, Friday, December 14, 2012. Annex to the initial petition of February 5, 2013.

“.... Likewise, exercising control over [the guarantees] granted to the Supreme Court of Justice through the Constitutional Chamber, in its indisputable capacity as the last and definitive interpreter in the making of decisions submitted for its consideration. When its decisions are not unanimous, [the matter] goes before the Plenary of Justices to be heard and decided upon.

“That [the Court], fully embracing the promise under the law ‘to be faithful to the Republic, to comply with and enforce the Constitution and laws,’ with independence of legal judgment and disregarding exogenous elements of any kind, firmly rejects the insinuation that the decisions issued by the Constitutional Court of the Supreme Court of Justice are biased toward one sector of the Honduran nation, something that is incongruous because its decisions are made solely in compliance with the Constitution and the laws in effect, so that it acts properly, without applying anything beyond the legal criteria.

“.... It is once again affirmed that the Constitutional Chamber and the Supreme Court of Justice will continue to purposefully assume the democratic role that they must maintain in order to ensure unrestricted constitutional supremacy, controlling and submitting to the judicial system the actions of the other branches of government when these do not fit in harmoniously with the international human rights instruments, the Constitution, and the laws....

“For the sake of institutional tranquility and respect for the principle of powers, we believe that the attacks on the independence of the judiciary and on democratic institutions must cease, given that the branches of government do not have any more powers than those granted to them expressly by the Constitution and the law, and they must submit themselves to the rule of law.”¹³

26. Subsequently, Deputy Rodolfo Zelaya of the ruling party, using his prerogative of legislative initiative, presented a motion to the Congress to establish a Special Committee to investigate the supposed “administrative conduct of the justices of the Supreme Court of Justice of Honduras.”¹⁴

27. As the information attached to the case file shows, on December 10, 2012, the Honduran Congress created a committee to investigate the conduct of the justices of the Constitutional Chamber of the Supreme Court who voted to declare the Special Law to Purge the Police Force of Corruption to be unconstitutional. One news account reported the following:

“The National Congress created a committee made up of four *juanorlandista* deputies, two from the liberal party, one from the UD, and another one from the DC, to examine the conduct of the justices of the Constitutional Chamber. The measure took place two hours after the plenary of the CSJ [Supreme Court] issued a decision on the legality of the decree that allows members of the police force to be terminated based on confidence tests.

“.... This decision came about after the legislative and executive branches launched a series of attacks on the judiciary, after the Constitutional Chamber voted 4 to 1 against the decree related to the police purge because they considered it to be unconstitutional.”¹⁵

28. On the evening of December 11, 2012, the Special Committee appointed by the Honduran Congress issued a report affirming that administrative irregularities had been committed in the proceeding related to the constitutional challenge filed against the Special Law to Purge the Police Force of Corruption. This report was approved by the Plenary of the Legislative Chamber, and consequently a motion was presented, signed by a number of congressional deputies, calling for the dismissal of the justices of the Constitutional Chamber for conduct “contrary to the public interest.”¹⁶ According to publicly available information, the session of Congress took place with the building surrounded by members of the armed forces.¹⁷

29. Meeting in session during the early morning hours of December 12, 2012, the Honduran Congress decided to remove the alleged victims from their posts as justices of the Constitutional Chamber of the Supreme Court. It was also determined that they would be replaced by the attorneys Germán Vicente García, Silvia Trinidad

¹³ Annex 11. Judiciary of Honduras, public communiqué of December 5, 2012. Annex to the initial petition of February 5, 2013.

¹⁴ Annex 12. National Congress, Official Document No. 480-2012/CN. Annex to the petitioners’ brief of November 20, 2018.

¹⁵ Annex 13. *El Heraldo*, press report: *Aplanadora nacionalista aprueba investigar conducta de magistrados*, Tuesday, December 11, 2012. Annex to the initial petition of February 5, 2013.

¹⁶ Annex 14. Press report, *Diario Tiempo: Aprobada moción para investigar la conducta de magistrados de la CSJ*, Tuesday, December 11, 2012. Annex to the petitioners’ brief of November 20, 2018.

¹⁷ Annex 15. Press report, *El Heraldo: Congreso de Honduras asesta golpe técnico al poder judicial*, December 12, 2012, available at <http://www.elheraldo.hn/Secciones-Principales/Al-Frente/Congreso-de-Honduras-asesta-golpe-tecnico-a-la-CSJ>. Annex to the petitioners’ brief of November 20, 2018.

Santos Moncada, José Elmer Lizardo, and Víctor Manuel Lozano.¹⁸ These decisions were later formalized through Decree No. 191-2012 published in the Official Gazette on December 29, 2012.¹⁹ That decree stated the following:

“CONSIDERING: That four (4) Justices that belonged to the Constitutional Chamber of the Judiciary were removed from office due to disapproval of their administrative conduct, in accordance with Article 205, Powers, paragraphs 20) and 21) of the Constitution of the Republic, the respective vacancies remain, which must be filled to complete the remainder of the term of the substituted justices.”²⁰

30. In the face of this situation, the alleged victims issued a communiqué stating that their dismissal was for political, not juridical, reasons, since they had issued their decisions in a reasoned and independent manner, without submitting to any type of pressure. They also indicated the following:

“.... That the dismissal proceeding that was carried out has no legal basis whatsoever. The ostensible ground for this action was our ‘administrative conduct,’ pursuant to the power contained in paragraph 20 of Article 205 of the Constitution of the Republic, and the report that was read in the Legislative Chamber refers to a decision issued by the Constitutional Chamber, which is not yet final, as it was not unanimous and therefore was sent to be heard and decided upon by the Plenary of the Supreme Court of Justice. Said decision was issued pursuant to the law, as the product of a jurisdictional function of the judicial branch. It is worth remembering that we justices on the various Chambers of the Supreme Court of Justice have no administrative functions, because the National Congress itself determined that to be the case since January 2011. The only person in charge of administrative functions is the President of the Court, Jorge Alberto Rivera Avilés.

“That our dismissal has violated our constitutional rights, such as due process, the right of defense, the right to be heard, and other fundamental rights which are recognized in the national as well as international framework and which we will vindicate by legal means.

“That the action carried out by a segment of the National Congress of the Republic violates the principle of separation of powers contained in the Constitution of the Republic and has abruptly interfered with the jurisdictional function of this branch of government, in such a way that it has resulted in an alteration of the constitutional order, as the Congress does not have the authority to take that action.”²¹

31. Along the same lines, seven justices of the Supreme Court also issued a communiqué expressing their concern regarding their colleagues’ dismissal:

“.... That given the decision by a branch of the State that resulted in the substitution of four Justices of the Constitutional Chamber, we consider that this is not consistent with democratic institutions and represents an attack on the independence of the judicial branch.

“That judicial independence is not a privilege of Judges and Justices but a right of citizens, so that the cases that are brought before the judicial system may be resolved without undue interference from any authority or individuals, but only in accordance with the proven facts of the case and the application of the legal regime.”²²

32. On January 3, 2013, the President of the Supreme Court of Justice, Jorge Rivera Avilés, issued Official Letter PCSJ No. 001-2013, addressed to the Justices of the Supreme Court, in which he stated:

“For your information, you are being sent a copy of Official Letter No. 462-2012/CN dated December 12, 2012, subscribed by Gladys Aurora López Calderón, Secretary of the National Congress, and the Certification dated December 19, 2012, subscribed by Attorney Rigoberto Chang Castillo, First Secretary of the National Congress.

“Taking into consideration the aforementioned documents and in order for you to express an opinion regarding the invitation to refrain from hearing *amparo* appeal No. 1026-12, the Presidency of the Supreme Court of Justice, pursuant to the provisions established in Article 16 of the Internal Rules of Procedure of this Supreme Court, determines to:

¹⁸ Annex 16. Secretariat of the National Congress, Official Letter No. 482-2012/CN of December 12, 2012; Secretariat of the National Congress, Certification of Session held on December 12, 2012. Annexes to the petitioners’ brief of November 20, 2018.

¹⁹ Annex. 17. Official Gazette of the Republic of Honduras, Decree No. 191-2012 of December 29, 2012. Annex to the initial petition of February 5, 2013.

²⁰ Annex 17. Official Gazette of the Republic of Honduras, Decree No. 191-2012 of December 29, 2012. Annex to the initial petition of February 5, 2013.

²¹ Annex 18. Communiqué of December 12, 2012. Annex to the initial petition of February 5, 2013.

²² Annex 19. Communiqué of December 13, 2012. Annex to the initial petition of February 5, 2013.

"1. Designate as members of the Constitutional Chamber, in addition to Justice Oscar Fernando Chinchilla Banegas, who is already a member, the attorneys Silvia Trinidad Santos Moncada, Germán Vicente García, José Elmer Lizardo, and Víctor Manuel Lozano.

"2. Designate Justice Oscar Fernando Chinchilla Banegas as President of the Constitutional Chamber as of today's date and until January 27, 201[illegible]." ²³

D. Constitutional appeal filed to challenge the dismissal decision

33. On December 12, 2012, José Francisco Ruiz Gaekel, José Antonio Gutiérrez Navas, Gustavo Enrique Bustillo Palma, and Rosalinda Cruz Sequeira, representing themselves, lodged an appeal for protection of constitutional rights (*recurso de amparo*) challenging the decision made by the Congress of the Republic to dismiss them from office.²⁴ In addition, Mauricio Torres Molinero and Rafael Virgilio Padilla Paz filed another writ of *amparo* on behalf of the alleged victims to appeal their separation.²⁵

34. The alleged victims argued that the Honduran Congress arrogated to itself the power to remove them from their positions as justices, even though that power had not been conferred on it by the Constitution, and that this was therefore an arbitrary and illegal act. They further claimed that there had been a violation of judicial independence and the minimum guarantees of due process, and noted that the decision to dismiss them was an unnecessary response to a judgment issued by the justices of the Constitutional Chamber in the exercise of their jurisdictional authority. Lastly, they requested that Justice Oscar Fernando Chinchilla Banegas recuse himself from hearing the *amparo* case, due to his personal and direct relationship with the act being challenged.²⁶

35. The aforementioned constitutional actions were registered under the numbers 1019 and 1026 of 2012, but because they were pursuing the same objective, they were joined for a joint decision.²⁷ The petitioners argued that the President of the Supreme Court installed the replacement justices without first having resolved the constitutional appeal. Subsequently, the Constitutional Chamber declined to hear the action in question, and so the President of the Supreme Court proceeded to set up a Special Chamber with other justices from the Plenary, who in turn declined to hear the case. Finally, a Special Chamber was established, made up three justices from the Plenary, including the President of the Court and two member justices.²⁸

36. On January 29, 2013, the Special Constitutional Chamber of the Supreme Court of Justice decided to reject the *amparo* appeal, indicating the following:

".... It can be concluded by constitutional provision, as well as the provisions of Article 9, paragraph 2, and paragraph 3, subparagraphs a), b), c), and d), of the Law on Constitutional Justice, that the actions arising from the legislative branch in the exercise of its powers, which those affected believe violate fundamental rights, are not subject to challenge by means of an *amparo* action, given that the members of the legislative branch (DEPUTIES) are not considered OFFICERS imbued with authority or power derived from the application of laws in the jurisdictional and administrative system. Consequently, the act of the National Congress that occurred on December 12, 2012, having been challenged by means of an *amparo* action or guarantee of protection, falls outside the purview of the Constitutional Chamber of the Honorable Supreme Court of Justice, as that body lacks jurisdiction or authority to hear and decide upon it; therefore, this Supreme Court of Justice deems it appropriate to refuse from the outset to hear this appeal or action for the reasons indicated above."²⁹

37. It likewise indicated the following:

²³ Annex 20. Presidency of the Supreme Court of Justice, Official Letter PCSJ N°001-2013 of January 3, 2013. Annex to the initial petition of February 5, 2013.

²⁴ Annex 21. Constitutional *amparo* action lodged by the alleged victims on December 12, 2012. Annex to the initial petition of February 5, 2013.

²⁵ Annex 22. Supreme Court of Justice, Resolution of February 6, 2013. Annex to the petitioners' communication of September 30, 2013.

²⁶ Annex 21. Constitutional *amparo* action lodged by the alleged victims on December 12, 2012. Annex to the initial petition of February 5, 2013.

²⁷ Annex 23. Supreme Court of Justice, Special Constitutional Chamber, Resolution of January 29, 2013. Annex to the petitioners' communication of September 30, 2013.

²⁸ Annex 24. Individual dissenting vote of Justice Raúl Henríquez Interiano of February 4, 2013. Annex to the petitioners' communication of September 30, 2013.

²⁹ Annex 22. Supreme Court of Justice, Resolution of February 6, 2013. Annex to the petitioners' communication of September 30, 2013.

“CONSIDERING: That in accordance with the provisions established in Article 41, final paragraph, and Article 70 of the Law on Constitutional Justice, when the jurisdictional body declares that it lacks competence to consider an *amparo* action, it shall forward the original to the competent officer within no later than twenty-four hours for the proper course of action. However, such a situation, due to the legal nature of the Constitutional Chamber’s lack of jurisdiction to hear the appeal, as well as the impossibility of another jurisdictional body having competence to hear and decide the case, [the Special Constitutional Chamber] declines to forward the *amparo* briefs to a particular official or Court.”³⁰

38. For his part, Justice Raúl Henríquez Interiano cast his individual vote on February 4, 2013, in which he expressed his dissent from the January 29, 2013, resolution that rejected the *amparo* outright, because he believed that the constitutional appeal should have been admitted and the alleged victims reinstated in their positions.³¹ The dissenting justice indicated the following with his vote:

“.... I am voicing my opinion in that respect, expressing my surprise that my colleagues in the Chamber have avoided referring to Article 42 of the Law on Constitutional Justice; to the contrary, they skipped from Article 41 to 43, it being precisely Article 42 that allows constitutional protection actions directed against the National Congress to be admitted and resolved. That article dictates that an *amparo* action is appropriate against resolutions, acts, and deeds of the branches of the State. The National Congress being the body of the legislative branch and this being a branch of the State, the *amparo* guarantees should have been found to be admissible. “.... To think about exceptions, as my colleagues in this Chamber are doing, would be to “create islands of power” in the State, an absolute and unlimited power, dangerous to all the country’s citizens. To make interpretations such as those made by my colleagues in the Chamber is to leave vacuums that would allow citizens to be left abandoned or without protection from actions of the State, specifically on the part of the National Congress, which would be left with the authority to violate individual rights and guarantees with no accountability. “.... How is it possible that judges, who can be assumed to be guarantors of protection of fundamental rights, refuse to review acts of authority that might be in violation of human rights? In their eagerness to avoid hearing the case at hand, they did not even realize that the act that is the subject of the challenge was not committed in any case by a deputy or a group of deputies but by the National Congress as a whole.”³²

39. In response to this situation, on February 13, 2013, the alleged victims filed an appeal for review, arguing that the Supreme Court’s rejection of the *amparo* appeal constituted an absolute denial of justice and resulted in a situation in which the dismissed justices were left defenseless.³³ Mauricio Torres Molinero and Rafael Virgilio Padilla Paz also filed an appeal for review of the decision rejecting the constitutional *amparo* action.³⁴

40. On February 18, 2013, the Supreme Court declared the appeal for review filed by the alleged victims to be inadmissible. It argued that:

“.... in view of the principle of the immutability of judgments, Article 6 of the Law on Constitutional Justice itself, in its first paragraph, states: The jurisdictional bodies, in the exercise of constitutional justice, may not change or modify their judgments once they are signed, but may clarify an unclear concept or correct material errors.”³⁵

E. Complaints regarding the violation of judicial independence by the legislative and executive branches

41. The case file includes information regarding statements that the then-President of the Republic made against the justices of the Constitutional Chamber of the Supreme Court. The former leader expressed his approval of the alleged victims’ dismissal:

³⁰ Annex 22. Supreme Court of Justice, Resolution of February 6, 2013. Annex to the petitioners’ communication of September 30, 2013.

³¹ Annex 24. Individual dissenting vote of Justice Raúl Henríquez Interiano of February 4, 2013. Annex to the petitioners’ communication of September 30, 2013.

³² Annex 24. Individual dissenting vote of Justice Raúl Henríquez Interiano of February 4, 2013. Annex to the petitioners’ communication of September 30, 2013.

³³ Annex 25. Appeal for review lodged on February 13, 2013. Annex to the petitioners’ communication of September 30, 2013.

³⁴ Annex 25. Appeal for review lodged on February 13, 2013. Annex to the petitioners’ communication of November 20, 2018.

³⁵ Annex 26. Supreme Court of Justice, Resolution of February 18, 2013. Annex to the petitioners’ communication of September 30, 2013.

"President Porfirio Lobo yesterday reiterated his support of the decision by the National Congress which last week dismissed four of the five justices of the Constitutional Chamber of the Supreme Court of Justice.

"The head of the executive branch maintained that he is 'totally in agreement' with the dismissal of the justices, who were removed from office for declaring the Special Law to Purge the Police Force of Corruption to be unconstitutional.

"Lobo said that if asked if he is in favor of the justices' removal, he would raise his hand and even his feet because in his opinion, the members of the Constitutional Chamber do not deserve the trust of the Honduran people for opposing the police purge.

"Who elects the President? The Honduran people. Who elects the deputies? The people. Who elects the Court? The deputies, and if the Court misbehaves, what does the Congress have to do? Cut them. What's the problem?" he said."³⁶

42. Along the same lines, according to press reports, the then-President of the Congress, Juan Orlando Hernández, had told a media outlet that "he had discussed the issue of the justices' removal with President Lobo and that they had come to a consensus that this would be best for the country, and that agreement had been reached with the President of the Supreme Court of Justice regarding the appointment of the new justices."³⁷

43. On January 4, 2013, the National Human Rights Commission presented a report on the State's institutional crisis as a result of the replacement of the justices of the Constitutional Chamber of the Supreme Court and recommended rectification of their dismissal, which it considered illegal. It stated the following:

"The four justices of the Supreme Court of Justice were dismissed without any legal cause having been established.

"The action of replacement may be an incorrect way to do things, through an arbitrary, abusive, and flawed act performed by the National Congress of the Republic, ignoring the fact that Article 314 of the Constitution of the Republic establishes that justices of the CSJ [Supreme Court] may be removed only due to death, disability that impedes the exercise of office, substitution for legal reasons, or resignation. According to several legal dictionaries, legal cause is the 'file or proceedings created to investigate an act and establish the appropriate resolution.' And so far, I must and do understand that none of the four justices was subject to a legal cause that would provide grounds for his or her replacement for legal reasons as established in Article 314 of the Constitution.

"The President of the Supreme Court's acquiescence with what was approved by the National Congress in this case...is, ipso facto, an example of unconstitutional subordination which instead of resolving the crisis affecting the State's institutional framework instead ends up complicating it, without resolving what has an institutional and constitutional solution, because all actions in jurisdictional matters from now on may have the taint of invalidity. If the note that is circulating, signed by the Secretary of the National Congress, is genuine, asking that the replacements please be incorporated, this is yet another reason to express our disagreement with the way that relations among the branches of the State are unfolding."³⁸

44. On January 3, 2013, the Inter-American Commission on Human Rights, in response to the situation involving the justices of the Constitutional Chamber of the Supreme Court of Honduras, issued a press release stressing the importance of the principle of separation and independence of the branches of government as an essential element of the rule of law. It indicated that the grounds for disciplinary sanctions imposed on a judge should never be the legal judgment developed in a decision.³⁹

45. On January 29, 2013, the United Nations Special Rapporteur on the independence of judges and lawyers issued a press release expressing her concern about the dismissal of the alleged victims and stated:

³⁶ Annex 27. *El Heraldo*, press report, "Totalmente de acuerdo con salida de magistrados," Thursday, December 20, 2012. Annex to the initial petition of February 5, 2013.

³⁷ Annex 28. Press report, *El Heraldo: Avilés concertó propuestas de nuevos magistrados*, April 7, 2014, available at <https://www.elheraldo.hn/alfrente/565674-209/aviles-concerto-propuestas-de-nuevos-magistrados>. Annex to the petitioners' brief of November 20, 2018.

³⁸ Annex 29. National Human Rights Commission, Report on the institutional crisis of the State of Honduras as a result of the replacement of four of the five justices of the Constitutional Chamber of the judiciary based on the December 12, 2102, decision by the legislative branch, January 4, 2013. Annex to the initial petition of February 5, 2013.

³⁹ Annex 30. IACHR, Press Release No. 3/13, "In View of Situation in Honduras, IACHR Stresses Importance of Principle of Independence of the Judiciary," January 3, 2013. Annex to the initial petition of February 5, 2013.

"The National Congress of Honduras exercises considerable control over the judiciary, which is incompatible with the principle of separation of powers and the independence of the judiciary, fundamental elements of every democracy and the rule of law."⁴⁰

F. Purported harassment and threats against the alleged victims

46. In December 2012, Justice Gutiérrez Navas reported that he had received a death threat by telephone after he appeared on a television program. He stated: "They called and told me that if I continued down that path, my life would be in danger."⁴¹ Due to the fear of suffering an attack on his life and integrity and on that of his family, the alleged victim left the country for a time and sought political asylum in Spain.⁴²

47. On October 13, 2014, while the alleged victim was working as a university professor, he received an anonymous package that contained a keepsake from the end of the novena held for the death of his father, which had taken place in 2012. Mr. Gutiérrez Navas reported the incidents to the Committee of Relatives of the Detained–Disappeared in Honduras.⁴³

48. On February 21, 2013, one of Justice Cruz Sequeira's daughters was the target of a car chase, and later the home of the alleged victim's family was surveilled at night by unidentified subjects in a dark vehicle. Mrs. Cruz Sequeira reported the incidents and requested security measures from the National Human Rights Commission, an agency that for a time assigned her a police officer for protection.⁴⁴

49. The petitioners alleged that the State authorities failed to take any steps to investigate or afford protection in response to the incidents that were reported.⁴⁵

IV. ANALYSIS OF LAW

A. Right to judicial guarantees, principle of legality, principle of judicial independence and judicial protection, and political rights

1. General considerations regarding applicable guarantees

50. The Commission recalls that both bodies of the inter-American system have indicated that the guarantees set forth in Article 8 of the American Convention are not confined to criminal proceedings but are applicable to other types of proceedings as well.⁴⁶ Specifically, both bodies have indicated that the guarantees for criminal proceedings apply by analogy to sanctions proceedings, as these involve the exercise of the State's punitive power.⁴⁷ Given that in the instant case the alleged victims were removed from office as justices of the

⁴⁰ Annex 31. United Nations Special Rapporteur on the independence of judges and lawyers, Press release [in Spanish] of January 29, 2013. Annex to the petitioners' brief of November 20, 2018.

⁴¹ Annex 32. Press report, *Proceso Digital: Por amenazas salió del país ex magistrado José Antonio Gutiérrez Navas*, available at <https://proceso.hn/por-amenazas-salio-del-pais-ex-magistrado-jose-antonio-gutierrez-navas/#:~:text=Tegucigalpa%2D%20El%20ex%20magistrado%20de,amenazas%20por%20la%20v%C3%ADa%20telef%C3%B3nica>. Annex to the petitioners' brief of November 20, 2018.

⁴² Annex 33. Press report, *La Tribuna: Ex magistrado abandona el país por amenaza de muerte*, December 18, 2012. Annex to the petitioners' brief of November 20, 2018.

⁴³ Annex 34. Complaint to COFADEH on August 19, 2014. Annex to the petitioners' brief of November 20, 2018.

⁴⁴ Annex 35. Complaint by Justice Rosalinda Cruz to the National Human Rights Commission, February 22, 2013. Annex to the petitioners' brief of November 20, 2018.

⁴⁵ Petitioners' brief of November 20, 2018.

⁴⁶ IACHR, Report No. 65/11, Case 12.600, Merits, Hugo Quintana Coello and Others, "Justices of the Supreme Court," Ecuador, March 31, 2011, par. 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, par. 111.

⁴⁷ IACHR, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*, OEA/Ser.L/V/II.129, September 7, 2007, paras. 98-123; and Case No. 12.828, Report 112/12, Marcel Granier et al., Venezuela, Merits, November 9, 2012, par. 188; IACHR, Report No. 42/14, Case 12.453, Merits, Olga Yolanda Maldonado Ordoñez, Guatemala, July 17, 2014, par. 69; 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.

Constitutional Chamber of the Supreme Court, the guarantees of due process and the principle of legality are applicable, in accordance with Articles 8(1), 8(2), and 9 of the American Convention.

51. In addition, the IACHR notes that disciplinary proceedings against justice operators must be exercised in a way that is compatible with the principle of judicial independence. This principle is an inherent requirement of a democratic system and a fundamental prerequisite for the protection of human rights.⁴⁸ The principle of judicial independence is enshrined as one of the guarantees of due process of law protected by Article 8(1) of the American Convention and, moreover, this principle gives rise to “reinforced”⁴⁹ guarantees that States must provide judges in order to ensure their independence.⁵⁰ The bodies of the inter-American system have interpreted the principle of judicial independence in the sense of incorporating the following guarantees: an appropriate appointment process, tenure in the position, and the guarantee against external pressures.⁵¹ Specifically, as pertains to the instant case, the Court has indicated with respect to guaranteed tenure that “the scope of judicial independence results 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.”⁵² When judges’ tenure is arbitrarily impaired, “the right to judicial independence recognized in Article 8(1) of the American Convention is violated.”⁵³

2. Guarantee of competence

52. Under Article 8(1) of the Convention, decisions affecting the rights of persons must be adopted by a competent authority, in accordance with domestic law.⁵⁴ Thus, “everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”⁵⁵ The purpose of this is to prevent individuals from being tried by special or ad hoc tribunals.⁵⁶

53. In the case at hand, the Commission observes that when the National Congress decided to dismiss the four justices of the Constitutional Chamber, Honduras did not have any legal or constitutional provisions in place to regulate disciplinary proceedings against justices of the Supreme Court. Nor is it evident from the constitutional framework that the Congress had jurisdiction to remove the members of the highest court through any type of summary proceeding.

⁴⁸ IACHR, Report on Merits 12.816, Report No. 103/13, November 5, 2013, par. 112, citing United Nations, Human Rights Committee, General Comment No. 32, CCPR/C/GC/32, August 23, 2007, par. 19. In that same connection, see I/A Court H.R., *Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*, Advisory Opinion OC-8/87 of January 30, 1987, Series A No. 8, par. 30. See also IACHR, *Democracy and Human Rights in Venezuela*, Ch. III, Independence and Separation of Public Powers, December 30, 2009, par. 80.

⁴⁹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, par. 67; IACHR, *Democracy and Human Rights*, December 30, 2009, par. 185; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011, par. 359.

⁵⁰ Thus, for example, the Inter-American Court has indicated that the State’s obligations toward parties before the courts result, at the same time, in “rights for the judges.” The Court has indicated, among other things, that “the guarantee that they will not be subject to a discretionary removal implies that the disciplinary and punishing processes of judges must necessarily respect the guarantees of the due process and shall offer those affected an effective remedy.” I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, par. 147.

⁵¹ IACHR, *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, par. 196.

⁵² 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, par. 192.

⁵³ 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, par. 192.

⁵⁴ I/A Court H.R., *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 23, 2013, Series C No. 266, par. 158.

⁵⁵ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, par. 75.

⁵⁶ I/A Court H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, par. 75.

54. The Commission notes that the provisions contained in Article 205, paragraphs 20 and 21, of the Constitution, which determine that the National Congress has the power to “approve or disapprove the administrative conduct...of the judicial branch” and to “appoint special committees to investigate matters of national interest,” do not comply with the terms established for regular disciplinary proceedings, previously established by law, pursued against justices of the Supreme Court. Moreover, the reference to “administrative conduct” does not imply that the National Congress has competence to judge justices based on their decisions. Consequently, these cannot serve as the justification or basis for the summary decisions to remove justices who were properly appointed to their positions.

55. In this regard, the Commission considers that the legal framework in existence at that time lacked provisions that would govern the jurisdiction of an authority and the sanctions proceedings of a political nature to which the four justices of the Constitutional Chamber were subjected. The text of the Constitution granted the Honduran Congress competence to elect Supreme Court justices and to approve or disapprove of their administrative conduct but did not grant the Congress competence to remove them from office or to establish itself as the deciding body in an impeachment proceeding against them. In other words, as the Congress was not a competent authority to decide on the alleged victims’ dismissal, in effect it created an ad hoc mechanism used to remove them from office.

56. In addition, the Commission takes into account that only in January 2013 did the Honduran Congress amend Article 234 of the Constitution to include Supreme Court justices on the list of authorities who could be investigated and prosecuted through an impeachment proceeding carried out by the Congress. In this regard, the Special Impeachment Law was approved on April 5, 2013, through Decree No. 51-2013, and published in Official Gazette No. 33093 of April 8, 2013. That legal provision, which was adopted subsequent to the events that are the subject of this petition, establishes an impeachment proceeding against high-level State authorities and regulates its various procedural stages.

57. It having been determined that the National Congress was not the competent body in this case and that there was no previously established procedure in place, the Commission concludes that all the actions that flowed from the Congress in the framework of the ad hoc procedure that was adopted in the case violated Article 8 of the American Convention, rendering it unnecessary to analyze the other guarantees of due process.⁵⁷ Nevertheless, in order that the State may adopt appropriate measures to avoid a recurrence of events such as those that occurred in the case at hand, the Commission considers it pertinent to examine the guarantees that apply to the disciplinary procedure against José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma.

3. Principle of legality⁵⁸

58. The principle of legality (freedom from ex post facto laws) recognized in Article 9 of the Convention governs the actions of State bodies when they exercise their power to punish.⁵⁹ As indicated above, this principle is applicable to disciplinary proceedings, which are “an expression of the punitive powers of the State” as they entail impairment or alteration of human rights as a consequence of wrongful conduct.⁶⁰

59. The Commission notes that States have the authority to design and organize disciplinary proceedings; however, these must be implemented according to pre-established procedures that indicate the authorities and

⁵⁷ IACHR, Report No. 23/17, Case 12.311, Merits, Eduardo Benjamín Colindres, El Salvador, March 18, 2017, par. 56; I/A Court H.R., *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 28, 2013, Series C No. 268, par. 223, and *Case of López Lone et al. v. Honduras*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of October 5, 2015, Series C No. 302, par. 241.

⁵⁸ Article 9 of the Convention establishes: “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

⁵⁹ IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/Doc.49/15, December 31, 2015, par. 253.

⁶⁰ 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, par. 257; *Case of Maldonado Ordoñez v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of May 3, 2016, Series C No. 311, para. 89; *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.

the procedural rules that apply.⁶¹ In disciplinary matters, the principle of legality requires that the law give detailed guidance on the infractions that may trigger disciplinary measures, including the seriousness of the infraction and the type of disciplinary measure that may be applied in different cases. The principle of legality requires not only that the impugned measure should have some basis in domestic law, but also that the law containing the measure should be accessible to the persons concerned and formulated with sufficient precision to enable them to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.⁶²

60. Both the Court and the Commission have indicated that the greater the restriction on a human right, the more precise the provisions establishing that restriction must be.⁶³ In terms of judges, the IACHR has indicated that the penalties of suspension or dismissal must be applied only in the case of the most serious misconduct. As the Council of Europe recommended with respect to disciplinary offenses, disciplinary measures should become stricter as the seriousness of the offense increases, and can include removal of cases from a judge, assigning the judge other tasks, economic sanctions, and suspension.⁶⁴

61. Along these same lines, the Court has indicated that an overly broad regulatory framework affects the predictability of the sanctions because it permits the dismissal of a judge based on open-ended grounds that grant excessive discretionary power to the body responsible for applying the sanction.⁶⁵ The Court has indicated that some degree of imprecision does not result, per se, in a violation of the Convention; in other words, the fact that a law grants some discretionary power is not incompatible with the degree of predictability required, provided that the scope of the discretion and the way in which it should be exercised are indicated with sufficient clarity so as to provide adequate protection against arbitrary interference.⁶⁶

62. In the case at hand, the Commission observes that Article 205, paragraph 20, of the Constitution states that the Congress has the power to “approve or disapprove the administrative conduct...of the judicial branch.” First of all, as established earlier in the context of the guarantee of competence, this provision may not serve as the justification or basis for the summary decisions made by the National Congress to remove the justices from office.

63. Second of all, the Commission notes that the aforementioned constitutional provision is very broad, as it does not determine or specify particular conduct that would be reproachable from a disciplinary standpoint. The Commission further notes that, contrary to the standards that have been cited, the legal framework does not even establish the grounds or the sanctions that would apply if such administrative conduct were to be proved. Finally, the Commission considers that this lack of predictability allowed the National Congress to have excessive discretion when it came to applying the most severe sanction, as occurred in this case.

64. Consequently, the Commission considers that basing the dismissal of the four justices from the Constitutional Chamber of the Supreme Court on that article is clearly contrary to the principle of legality in disciplinary matters.

65. In view of the above considerations, the IACHR concludes that the Honduran State violated Article 9 of the American Convention in connection with Articles 1(1) and 2 thereof, to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma.

⁶¹ IACHR, *Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, par. 187.

⁶² IACHR, *Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, par. 208.

⁶³ I/A Court H.R., *Case of Kimel v. Argentina*, Judgment of May 2, 2008, Series C No. 177, paras. 59 and following.

⁶⁴ IACHR, *Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, par. 217.

⁶⁵ 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, par. 264.

⁶⁶ I/A Court H.R., *Case of López Mendoza v. Venezuela*, Merits, Reparations, and Costs, Judgment of September 1, 2011, Series C No. 233, par. 202.

4. Right of defense⁶⁷ and right to duly substantiated decisions⁶⁸

66. The Inter-American Court has established that under Article 8 of the Convention, the right of defense is part of due process and that for that right to be observed, a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants⁶⁹ and must be fully informed of the charges against him.⁷⁰

67. In the case of disciplinary proceedings against justice operators, various instruments of international law establish their right to be heard in a disciplinary proceeding and to exercise their right of defense. In that regard, the Inter-American Court has indicated, in keeping with the United Nations Basic Principles on the Independence of the Judiciary, that the authority in charge of the disciplinary proceeding must behave in accordance with the procedure established for the purpose and allow the justice operator to exercise his or her right of defense.⁷¹ Likewise, the Venice Commission has recognized that prosecutors are entitled to be heard in adversarial proceedings,⁷² and the Basic Principles on the Role of Lawyers, which also apply to public defenders, provide the right to a fair hearing and the right to be assisted by a lawyer of their choice.⁷³

68. In the *Case of the Constitutional Court v. Peru*, the Inter-American Court indicated that the period of time granted for exercising the right of defense, considering the need to examine the case and review the evidence, as well as the possibility of cross-examining the witnesses whose testimony formed the basis of the charge, constituted elements to be analyzed in considering whether it was possible for the dismissed justices to defend themselves.⁷⁴

69. The Inter-American Commission observes that in the instant case, the four justices of the Constitutional Chamber of the Supreme Court did not have the opportunity to be heard and to prepare an adequate defense. The Commission notes that neither the Special Committee nor the National Congress summoned the alleged victims involved to exercise their right of defense, since among other aspects of the act of separation, it was held through a summary proceeding, as established above.

70. Specifically, the Commission notes that the justices were not even legally notified beforehand of some sort of charge or the opening of a disciplinary proceeding; nor were they summoned to testify before the Special Committee of Deputies or before the National Congress that determined their removal from office. In addition, the Commission observes that the alleged victims did not have the opportunity to dispute the arguments that formed the basis for their dismissal, or to present evidence to be analyzed by the relevant authorities.

71. Moreover, the Commission considers that the speed by which the Congress determined the maximum penalty against the four justices of the Constitutional Chamber violated their right of defense. The evidence shows that on December 10, 2012, the Congress created a Special Committee to investigate the alleged victims'

⁶⁷ Article 8(2) of the Convention establishes, in its pertinent sections: "Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: ...b. prior notification in detail to the accused of the charges against him; c. adequate time and means for the preparation of his defense; d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel...."

⁶⁸ Article 8(1) of the Convention establishes: "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."

⁶⁹ I/A Court H.R., *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03 of September 17, 2003, Series A No. 18, par. 121.

⁷⁰ IACHR, *Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, par. 219.

⁷¹ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paras. 73-74.

⁷² European Commission for Democracy through Law (Venice Commission), Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service. Adopted by the Venice Commission at its 85th plenary session (Venice, December 17-18, 2010), Strasbourg, January 3, 2011, par. 52.

⁷³ United Nations, Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Defenders, Havana, August 27 to September 7, 1990, Principle 27.

⁷⁴ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paras. 81-83.

administrative conduct; on the evening of December 11, 2012, the Congress approved the Special Committee's report; and in the early morning hours of December 12, 2012—only hours later, it must be said—the justices were dismissed. The Commission deems that the excessive speed with which the Congress acted allowed no room for even a minimal defense on technical or material grounds on the part of the alleged victims.

72. Finally, the Commission takes note that the four justices of the Constitutional Chamber learned that they had been removed from office after the Congress had already announced the sanction, as they were never provided official notification of their dismissal.

73. In view of the foregoing considerations, the IACHR considers that the Honduran State is responsible for violating the rights established in Articles 8(1) and 8(2)(b), (c), and (d) of the American Convention in connection with Article 1(1) thereof, to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma.

74. As to the obligation to provide grounds for decisions, inter-American case law has indicated that this translates into the “reasoned justification” that allows the judge to arrive at a conclusion.⁷⁵ The Court has indicated that this “is a guarantee related to the correct administration of justice, which protects the right of the people to be tried for the reasons established by law and grants credibility to judicial decisions in a democratic society.”⁷⁶ According to the Inter-American Court, administrative disciplinary decisions must indicate the violation precisely and submit arguments that allow it to be concluded that what occurred is sufficiently serious to justify removing [a public official] from a post.⁷⁷ Moreover, the requirement for proper justification is extremely important because the purpose of disciplinary oversight is to assess a public official's conduct, suitability, and performance, and therefore it is in the justification itself where the seriousness of the conduct and the proportionality of the sanction should be analyzed.⁷⁸

75. In this regard, it is not the IACHR's role to determine whether the laws being challenged were in fact unconstitutional, or whether the decisions issued by the Constitutional Chamber in relation to those cases were correct, nor whether the alleged victims committed administrative irregularities. However, under the standards cited with regard to judicial independence and under the domestic legal framework itself, in a case such as the one at hand it was the obligation of the authority that decided upon the alleged victims' dismissal, in this case the National Congress, to provide a justification that would clearly establish the reasons for the determination to impose the most severe sanction.

76. On that point, the Commission considers that Decree No. 191-2012 fails to provide any justification and simply indicates that there was disapproval of the administrative conduct of the four justices of the Constitutional Chamber, and that their positions had been left vacant in accordance with Article 205, paragraphs 20 and 21, of the Constitution. The Commission takes note that the decision of dismissal does not include any precise indication of what, in the judgment of the Honduran Congress, may have constituted a serious offense or even the alleged “disapproved administrative conduct” on the part of the justices. The terse lines of the decree in question did not develop arguments that would make it possible to conclude that the comments on the alleged victims' conduct were sufficiently serious to warrant removing them from their posts.

77. The Commission also observes that this complete lack of argumentation is in itself also a result of the legal vacuum on disciplinary proceedings against high-level judges and a violation of the principle of legality, as explained above.

⁷⁵ IACHR, Report No. 72/17, Case 13.019, Report on Merits, Eduardo Rico, Argentina, July 5, 2017, par. 116; and I/A Court H.R., *Case of Maldonado Ordoñez v. Guatemala*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of May 3, 2016, Series C No. 311, par. 87.

⁷⁶ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2011, Series C No. 227, par. 118.

⁷⁷ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2011, Series C No. 227, par. 120.

⁷⁸ I/A Court H.R., *Case of Chocrón Chocrón v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2011, Series C No. 227, par. 120.

78. In view of the foregoing considerations, the Commission concludes that the Honduran State, to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma, violated the right to duly substantiated decisions, established in Article 8(1) of the American Convention in connection with Article 1(1) thereof.

5. Right to judicial protection⁷⁹ and right to judicial guarantees⁸⁰

79. The IACHR calls to mind that States have a general obligation to provide effective judicial remedies to persons who allege having been victims of human rights violations (Article 25), remedies which must be substantiated according to the rules of due process of law (Article 8(1)). For an effective remedy to exist, it is not enough for it to be established by law; rather, it needs to be truly appropriate for establishing whether there has been a human rights violation and for providing whatever is necessary to remedy it.⁸¹

80. Article 8(1) of the Convention recognizes the right to be heard “by a competent...tribunal, previously established by law.” Thus, “people have the right to be tried, in general, by a competent tribunal, in accordance with legally established procedures.” The State must not create tribunals that do not use the duly established procedures of the legal process “to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.” The purpose of this is to prevent individuals from being tried by special or ad hoc tribunals.⁸²

81. The independence of judges must be ensured even within the judicial branch. The purpose of this protection has to do with preventing the judicial system in general, and its members in particular, from being subjected to possible undue constraints in the exercise of their function by bodies outside the judiciary or even by those judges who exercise review or appeal functions.⁸³ The parties have the right, derived from the American Convention, for the judges deciding their disputes to be and to appear to be independent.⁸⁴

82. The guarantee of impartiality implies that the disciplinary authority or the members of the disciplinary tribunal that hear and decide the case “have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy.”⁸⁵ When impartiality is being determined, regard must be had, from a subjective standpoint, to the personal conviction and behavior of a judge in a given case but also, from an objective perspective, to whether the proceeding offers sufficient guarantees to exclude any legitimate doubt in that respect.⁸⁶ The right to an impartial tribunal is the guarantee that the decision will be adopted based on the reasons that the law provides and not on other criteria that have nothing to do with the legal framework. The importance of that is particularly acute where punitive matters are concerned and even more so in punitive proceedings against judges, bearing in mind the principle of judicial independence, as described earlier.

⁷⁹ Article 25(1) of the Convention establishes: “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.”

⁸⁰ Article 8(1) of the Convention establishes: “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.”

⁸¹ 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, par. 125; *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17, 2005, Series C No. 125, par. 62; *Case of the “Five Pensioners” v. Peru*, Merits, Reparations, and Costs, Judgment of February 28, 2003, Series C No. 98, par. 136.

⁸² I/A Court H.R., *Case of Barreto Leiva v. Venezuela*, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, par. 75.

⁸³ 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, par. 55, and *Case of the Constitutional Tribunal (Camba Campos et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 28, 2013. Series C No, 268, par. 188.

⁸⁴ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of June 30, 2009, Series C No. 197, par. 114, and *Case of Chocrón Chocrón v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 1, 2011, Series C No. 227, par. 103.

⁸⁵ I/A Court H.R., *Case of Palamara Iribarne v. Chile*, Merits, Reparations, and Costs, Judgment of November 22, 2005, Series C No. 135, par. 146.

⁸⁶ See European Court of Human Rights, *Case of Thomann v. Switzerland*, Judgment of June 10, 1996, § 30.

83. In the instant case, with regard to the guarantee of impartiality, the Commission observes that while the *amparo* appeal lodged by the alleged victims was being processed and a decision was pending before the Supreme Court of Justice, the President of the Supreme Court, Jorge Rivera Avilés, issued an official statement on January 3, 2013, ordering the replacement of the four justices who had been dismissed. The Commission notes that the aforementioned justice, as head of the judiciary, was later part of the Special Constitutional Chamber that rejected the alleged victims' challenge on constitutional grounds and rejected the subsequent appeal for review.

84. These actions are problematic, in the Commission's view, considering that this justice ordered the justices' replacement and thereby upheld the dismissal that was being challenged by means of a constitutional action that was under his consideration and was pending a decision.

85. The Commission considers that this situation raises serious doubts about his partiality, as it reveals that his approach to the case was not devoid of bias and subjectivity. Likewise, the Commission does not observe that the justice called into question provided convincing evidence that would erase legitimate fears or reasonable suspicions about his partiality.

86. In addition, the Commission underscores that on January 29, 2013, the Special Chamber of the Supreme Court rejected the alleged victims' constitutional appeal *in limine*, in other words without examining the merits of the matter, as it deemed that it did not have the authority to hear *amparo* appeals filed against the National Congress.

87. The Commission notes that the alleged victims attempted to challenge the decision to reject their appeal, filing an appeal for review with the Plenary of the Supreme Court, which was rejected on February 18, 2013. The Commission observes that the President of the Supreme Court created the Special Chamber that heard and decided upon the constitutional appeal, and then later he was part of the Plenary that rejected the appeal for review lodged by the dismissed justices, as was explained earlier.

88. In the Commission's view, the *amparo* appeal that was filed ended up being ineffective to protect the rights in question. Therefore, the Supreme Court, through its Special Chamber and later as a Plenary, by declining to review the decision of the Congress on the merits, left the alleged victims completely defenseless, as it failed to fully examine the aspects of both fact and law with respect to the decision to remove the four justices of the Constitutional Chamber, limiting its analysis to matters of jurisdiction. In addition, the Commission considers that the President of the Supreme Court's actions as described earlier violated the guarantee of impartiality in the context of the constitutional *amparo* appeal lodged by the alleged victims.

89. In view of the foregoing, the Commission concludes that the Honduran State is responsible for violating the rights established in Articles 8(1) and 25(1) of the American Convention in connection with Article 1(1) thereof, to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma.

6. Political rights⁸⁷

90. The Inter-American Court has indicated that: i) respect for judicial guarantees implies respect for judicial independence; ii) the scope of judicial independence translates into a judge's subjective right to be dismissed from his position exclusively for the reasons permitted, either by means of a process that complies with judicial guarantees or because the term or period of his mandate has expired, and iii) when a judge's tenure is affected in an arbitrary manner, the right to judicial independence is violated, in conjunction with the right to have access to and remain in public office, under general conditions of equality, established in Article 23(1)(c) of the American Convention.⁸⁸ The Court has found that access in equal conditions would constitute an insufficient

⁸⁷ Article 23 of the American Convention ("Right to Participate in Government") establishes, in its pertinent sections: "1. Every citizen shall enjoy the following rights and opportunities... c. to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings."

⁸⁸ I/A Court H.R., *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 23, 2013, Series C No. 266, par. 155.

guarantee if it were not accompanied by the effective protection of the continuance in what is accessed, which is related to observance of the principle of tenure for judges and the prohibition of their arbitrary dismissal.⁸⁹

91. In the instant case, as has been indicated, the alleged victims' separation was carried out arbitrarily, without observing due process guarantees, which in addition to having a concrete impact on the individual victims, must be understood in relation to the interference with the principle of judicial independence. In this regard, the Commission notes that in the context of the events of this case, prior to the justices' dismissal the Constitutional Chamber had declared unconstitutional at least three other laws approved by the government in office, and that on those occasions, the Honduran President severely criticized these judicial decisions.

92. The documents attached to the case file show that the then-President of the Republic, Porfirio Lobo, gave public statements related the decision by the Constitutional Chamber of the Supreme Court to declare the Special Law to Purge the Police Force of Corruption unconstitutional. He mentioned the names of the four alleged victims to the media, and the motion to set up a Special Committee to investigate the "administrative conduct of the justices" was put forward by a deputy from the ruling party. According to what has already been described, the aforementioned former President said that he was "totally in agreement" with the alleged victims' dismissal and indicated that "in his opinion, the members of the Constitutional Chamber do not deserve the trust of the Honduran people for opposing the police purge." Furthermore, the Commission considers it extremely serious that during the debate that ended with the justices' dismissal, military and police forces surrounded the parliamentary building. There is no doubt that this factor clearly put symbolic and material pressure on a democratically elected branch of government. Added to that situation is the statement by the then-President of the Congress, who told a media outlet that "he had discussed the issue of the justices' removal with President Lobo and that they had come to a consensus that this would be best for the country, and that agreement had been reached with the President of the Supreme Court regarding the appointment of the new justices."

93. Consequently, the Commission observes that there was a causal relationship between the statements made by the President of the Republic regarding rulings against the government's interests and the special investigation that was carried out by the Honduran Congress and that resulted in the victims' dismissal. In the Commission's view, the facts laid out show that the executive and legislative branches exerted clear pressure against the Constitutional Chamber, which was serious and ran contrary to the principle of judicial independence enshrined in the American Convention.

94. In this regard, the Commission observes that the arbitrary decision of the Congress was not adopted because of any possible administrative actions or infractions that led to some type of responsibility on the part of the dismissed judges; rather, it was in pursuit of a completely different purpose and had to do with an abuse of power. This had a highly negative impact on the institutional aspect of judicial independence, as it constituted an attack on the institution, altered the democratic order and the rule of law, and meant that at that moment there was no real separation of powers.

95. In view of what has been laid out, the Commission concludes that in the case at hand it has been established that José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma were removed from office in a proceeding in which there were violations both to due process of law as well as to the principle of legality under the terms explained throughout this report on the merits. In addition, it was established that the dismissal proceeding carried out by the Congress was implemented arbitrarily, in breach of the principle of judicial independence. Under these circumstances, and in keeping with the criterion mentioned in the preceding paragraph, the Commission considers that the State also violated the right to have access to and remain in public office, under general conditions of equality, established in Article 23(1)(c) of the American Convention in connection with Article 1(1) thereof,⁹⁰ to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma.

⁸⁹ I/A Court H.R., *Case of Colindres Schonenberg v. El Salvador*, Merits, Reparations, and Costs, Judgment of February 4, 2019, Series C No. 373, paras. 93 and 94.

⁹⁰ I/A Court H.R., *Case of the Supreme Court of Justice (Quintana Coello et al.) v. Ecuador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of August 23, 2013, Series C No. 266, par. 180; IACHR, Report No. 72/17, Case 13.019, Report on Merits, Eduardo Rico, [continúa...]

C. Right to personal integrity

96. On a number of occasions, pursuant to the cases heard, the case law of the Inter-American Court has referred to the obligation to investigate attacks on people's personal integrity and on their lives, but also threats or acts of harassment. The Court has held that the "obligation to investigate" is derived not only from international obligations but "that it is also derived from domestic legislation that refers to the duty to proactively investigate certain illicit conduct."⁹¹

97. In the instant case, the Commission recalls that the alleged victims reported that they had been targets of threats and harassment subsequent to their dismissal as justices of the Supreme Court, and even ended up leaving the country. Both Mr. Gutiérrez Navas and Mrs. Cruz Sequeira lodged complaints about the threats they had received. In addition, in the specific case of Rosalinda Cruz Sequeira, the National Human Rights Commission granted security measures for only a certain amount of time. The case file does not show that the State authorities took any steps to investigate or afford protection in response to the incidents that were reported.⁹²

98. The Commission considers that it has not been established that the State undertook any criminal or administrative investigations with respect to the acts of harassment and threats that were reported by the alleged victims and that were publicly known. Nor is the Commission aware that any protection measures were adopted for the alleged victims or their family members in the context of such risks.

99. Therefore, the Commission deems that the State is responsible for violating Articles 8(1) and 25(1) of the American Convention in connection with Articles 5 and 1(1) thereof, to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma.

V. CONCLUSIONS AND RECOMMENDATIONS

100. The Commission concludes that the Honduran State is responsible for violating the rights to judicial guarantees, the principle of legality, the guarantee of judicial independence, political rights, and judicial protection established in Articles 5, 8(1), 8(2)(b), (c), and (d), 9, 23(1)(c), and 25(1) of the American Convention in connection with the obligations established in Articles 1(1) and 2 thereof, to the detriment of José Antonio Gutiérrez Navas, Rosalinda Cruz Sequeira, José Francisco Ruiz Gaekel, and Gustavo Enrique Bustillo Palma.

101. Based on the foregoing conclusions,

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

1. Reinstatement the victims—should they so wish—to positions similar to the one they held in the Judicial Branch, with the same compensation, benefits, and rank that they would have today if they had not been dismissed. If, for well-justified reasons, reinstatement is not possible, they should be paid an alternative compensation.

2. Provide full pecuniary and nonpecuniary reparations for the rights violations declared in this report, including the payment of compensation for pecuniary and nonpecuniary damages.

Argentina, July 5, 2017, par. 124; 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, par. 192.

⁹¹ I/A Court H.R., *Case of Villaseñor Velarde et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment of February 5, 2019, Series C No. 374, paras. 110 and 111.

⁹² Petitioners' brief of November 20, 2018.

3. Adapt its domestic laws to ensure that disciplinary proceedings against the highest-level authorities of the judicial branch are compatible with the standards of judicial independence established in this report and comply with all due process guarantees and with the principle of legality.